Social Psychology and the Law: A Decision-Making Approach to the Criminal Justice System

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This chapter describes the theoretical approach that has guided much of our own research on the criminal justice system. In developing this theoretical approach, we have focused on the *behavior* of the participants in the system rather than on the letter of the law. Furthermore, we do not describe how participants in the criminal justice system *ought* to behave; instead we attempt to provide a theoretical approach useful in understanding how they actually do behave. Because the extent to which rules of law and discretion mix in determining the behavior of participants in the criminal justice system is largely unknown, much of our knowledge about the behavior of participants can come only from empirical investigations. For this reason, we believe an adequate theoretical treatment of the criminal justice system must be closely linked to the empirical determination of factors that control the behavior of the participants, whether or not these factors are legally sanctioned.

THE RULE OF LAW VERSUS DISCRETION

The traditional view of the criminal justice system, as presented in most legal textbooks, portrays the behavior of the participants in the system as determined largely by the rule of law, due process, and administrative guidelines. Each action by a participant is seemingly constrained by a set of rules, precedents, statutory limitations, constitutional interpretations, and so on, all designed to minimize the chances of convicting the innocent, to prevent personal abuses of legally sanctioned power, to insure due process, and to create an

atmosphere of impartial and fair treatment. These rules are expected to prevent participants from taking some actions (such as a judge telling a jury how to vote or a police officer coercing a suspect to supply a confession) and require them to perform other actions (such as a police officer reading *Miranda* rights to an arrestee or a judge informing defendants of the charges against them). In fact, the traditional view assumes that few actions can be taken without being fully scrutinized for adherence to established rules and guidelines. Failures to conform to existing rules are believed to result in mistrials, dismissals, and appeals to higher courts. Although it is admitted in this traditional view that there may be some areas in the system where small degrees of discretion do exist, by far the majority of actions are assumed to be highly constrained.

A consequence of this traditional view of the criminal justice system is the belief that a complete understanding of the operation of the system can be acquired merely by studying the full complexity of the procedural requirements described in various constitutional, common, and statutory laws, administrative policies, and procedural guidelines. If the actions of the participants in the system are highly restricted by various rules, then one need only know the rules in order to understand how participants in the system behave.

More recently, another view of the criminal justice system has been proposed (Bottomley, 1973; Chambliss, 1968; Cicourel, 1968; Davis, 1969; Frank, 1949; Green, 1961; Hogarth, 1971; Nagel and Neef, 1977; Shaver, Gilbert, and Williams, 1975; Wilkins, 1962, 1964). This view asserts that most of the rules and policies provide very broad, rather than specific, guidelines for action—so broad, in fact, that in many instances the participants are virtually free to behave as they wish. For example, the sentencing of convicted adult felons in most states in the United States and in England is determined by a judicial decision (Carter and Wilkins, 1967; Dawson, 1969; Hood, 1962; Thomas, 1970). The options available to the judge and many of the steps that must be taken prior to reaching a decision are constrained by both law and administrative policy. However, because the range of sentencing options typically available to the judge is so broad, and because the rules do not specify, in detail, how the judge is to take account of such factors as prior record, social history, remorse, education, occupation, potential for rehabilitation, and so on, people convicted of the identical crime can, and often do, receive very different treatments, even from the same judge (Hogarth, 1971; O'Donnell, Churgin, and Curtis, 1977).

Similar situations in which participants have more or less complete discretion over a wide range of decision alternatives exist throughout the criminal justice system. Police officers have discretion in decid-

ing when and whom to arrest and, within wide limits, what crimes the arrestee is to be charged with (Kadish, 1962; LaFave, 1965; Piliavin and Briar, 1964; Reiss, 1971; Toch, 1969). Subsequently, assistant district attorneys can decide to drop, reduce, or add charges (Miller, 1970). In preliminary hearings, the presiding judge can often dismiss all or some of the charges and reduce others (Miller, 1970). District attorneys can plea bargain to whatever extent they deem appropriate and thereby again alter the nature of the charges, as well as affect the final sentence (Newman, 1966; Rosett and Cressey, 1976). Similar opportunities to determine in a discretionary manner how a case is handled exist throughout the system.

In summary, according to the more recent view, the operation of the criminal justice system cannot be understood by examining laws, policies, and procedural guidelines, mainly because the actual operation of the system consists of the various behaviors of the participants, and in most cases these behaviors are highly *discretionary* and thus only *loosely* constrained by the rule of law.

THEORETICAL APPROACHES
TO THE CRIMINAL JUSTICE SYSTEM

A number of theoretical perspectives have been taken in an attempt to explain the discretionary actions of participants in the criminal justice system. One that is common among social psychologists is to use quasi-legal settings, procedures, and materials as a testing ground for concepts currently of interest in a field of inquiry other than the law (Davis et al., 1975; Kaplan and Kemmerick, 1974; Landy and Aronson, 1969; Lerner, 1970; Mitchell and Byrne, 1973; Pepitone, 1975; Pepitone and DiNubile, 1976; Shaver, Gilbert, and Williams, 1975; Sigall and Ostrove, 1975; Vidmar, 1972). Concepts are borrowed from social-psychological theories and then empirically tested under conditions that attempt to simulate a few isolated, impoverished aspects of the legal system. Often, the role that the decision under study plays in the system is completely ignored so as to make it appear that the theoretical concepts are important and apply to "relevant" and "meaningful" settings. Equity principles, attributional biases, perceived similarity of attitudes, attraction, polarization effects in group decisions, and impression management are but a few examples of social-psychological concepts that have been or could easily be used to "explain" the behavior of participants in artificial simulations of the legal system.

Several features of this kind of approach should be noted. First, it implicitly assumes that a small set of mediational constructs will be

sufficient to account for the behavior of most of the participants in the legal system. Everyone is assumed to be affected by, say, attributional biases. Different mediators might be proposed to explain the behavior of district attorneys than to explain jury decisions but, nevertheless, only a few concepts should be required to understand the behavior of each type of participant. Second, many potentially important causal factors of concern to participants in the criminal justice system may be of little importance in a theoretical analysis based on concepts borrowed from social psychology. For example, when trying to predict a judge's sentencing decision, the sentence recommendation of a probation officer may appear—to social psychologists—to be of less importance than, for example, the attitude similarity between the defendant and the judge, primarily because the latter is a popular theoretical concept and the former is not. Thus, the real interest in this kind of general approach is not in accounting, *as completely as possible*, for the behavior of participants in the criminal justice system, but rather to determine whether a variable derived from social-psychological theories accounts for some variance in a subject's quasi-legal behavior, even if it explains only a meager (but statistically significant) portion of that variance. Third, as we discuss in the next chapter, simulation methodology may not prove adequate to the task it has been given. Fourth, the emphasis on testing ideas borrowed from theories developed elsewhere (e.g., small-group dynamics and attribution theory) tends to direct attention almost exclusively toward certain participants (e.g., juries) and away from the larger picture, i.e., the description of the actual operation of the entire criminal justice system that would be invaluable from a predictive point of view. Methods and procedures for studying the variables that affect the behavior of participants in the system are chosen, not because they provide externally valid representations of processes in the criminal justice system, but because they may result in internally valid tests of hypotheses (see Chapter 2 for further discussion of this point).

A somewhat different theoretical approach from that described above—but one that also attempts to explain the discretionary actions of participants—postulates the existence of global individual-difference factors (Gaudet, Harris, and St. John, 1933; Green, 1961; Hamilton, 1976; Hogarth, 1971; McFatter, 1978; Nagel, 1962, 1963). Attitudes toward law and order, philosophies of sentencing, liberalism/conservatism, political party affiliation, personality characteristics, economic background, financial interests, sex, age, race, and legal training are examples of some of the global individual-difference factors that have been examined in recent years. In general, individual-

difference factors have been able to account for a significant portion of the variation in judicial decisions, but usually only a small percentage of the total variation is explained by such global factors. Furthermore, even if individual-difference factors were capable of explaining a larger portion of the variation, the causal influence of situational factors (e.g., the size of one's case load, the number of cases that are backlogged, who one's superior is, and the current political climate), role-related variables (e.g., the fact that assistant district attorneys are more likely to be promoted for obtaining convictions, and police officers are more likely to be rewarded for making arrests), and case factors (e.g., race, prior record, educational background, and severity of crime) are generally ignored in this theoretical approach (but see Bottomley, 1973, for an exception). If case factors, for example, do account for variation in the decisions made by key participants, then a theoretical approach that focuses exclusively on global individual-difference factors will necessarily leave unexplained some potentially explainable variation in each participant's behavior. In short, causal factors, other than those used to explain differences between participants, will almost certainly be required if a complete account of the day-to-day operation of the criminal justice system is the goal.

THE PRESENT APPROACH: AN INTERCONNECTED NETWORK OF DECISION-MAKERS

Our own theoretical approach to the criminal justice system is quite different from the two outlined above, but shares much with that described by Wilkins (1964) and pursued by the American Bar Foundation (especially Dawson, LaFave, Miller, and Newman) and the President's Commission on Law Enforcement and the Administration of Justice (1967a, 1967b). Rather than view the system merely as an interesting domain in which to test theoretical concepts borrowed from other fields, our goal is to understand how the criminal justice system actually operates. What circumstances determine which of the many decision options typically available to participants in the system are actually chosen? What causal factors account for the most variation in these decisions, both within a single participant (e.g., a particular sentencing judge) and within a class of particular participants (e.g., judges of a county superior court)? What are the causal relationships between actions taken by participants at different points in the system (e.g., the effect that a judge's decision to release a defendant on his own recognizance has on the sentencing recom-

mendation that a probation officer provides to a different judge several months later)?

What the rule of law constrains

We view the laws, policies, and guidelines relevant to the operation of the criminal justice system as providing only a broad framework that primarily constrains:

1. The range of decision options typically available to different participants.

2. The temporal order in which decisions about a case (defendant) will be made.

3. The class of participants (e.g., district attorneys, judges, defendants, probation officers) that will make the decisions.

4. Gross aspects of the way in which case-relevant information is gathered, selected, and exchanged (e.g., the point at which a probation officer conducts interviews, the fact that a police officer often describes aspects of cases to an assistant district attorney, who then files a complaint, and so on).

The laws, policies, and guidelines generally:

1. Do not specify the exact types of information that the participants must take into account (e.g., Should the fact that the defendant had two prior felony convictions be taken into account?) or the ordering of the different levels within each type (e.g., Is a threat with an unloaded handgun worse than one with a kitchen knife?).

2. Do not precisely instruct the participants about the relative importance that should be given to the different types of information (e.g., How much more or less important is prior record than severity of offense?).

3. Do not provide the rules that should be used to combine different types of information (e.g., Should different factors be configurally combined, or would a simple additive rule suffice?).

4. Do not outline the role, if any, that social-influence channels should play in a given participant's decision (e.g., How much weight should a probation officer's sentencing recommendation be given?).

Decision nodes, or classes of participants

The fact that decisional freedoms exist in a context in which the temporal flow of decisions is largely constrained suggests a conceptualization of the criminal justice system as a temporally ordered and interconnected network of decision "nodes." A given node would consist of a class of decision-makers, each of whom is required by procedure or law to reach a specified decision. The members of a particular class of participants have in common the fact that they chose from the same set of decision alternatives at the same point in the temporal flow of events. For example, a group of judges, each of whom determines the sentences for convicted felons, would constitute a particular node in our conceptualization. Only those decisions that affect the progress of cases through system, i.e., are related to the method of disposition of cases, are defined as nodes. For example, a judge's decision about *when* to schedule a preliminary hearing would not, in general, be included as a decision node in our approach. On the other hand, it is important to note that not all of the important nodes need be included in legal guidelines. Some nodes might refer to decisions that are largely available for public inspection (e.g., the charges listed in an indictment), while other nodes might refer to decisions made away from the public eye and not specifically included in guidelines (e.g., various stages in the plea-bargaining process).

It is important to emphasize that even though we claim that the decision strategy for each node is far from specified by legal or administrative guidelines, we assume that the decisions of the participants can, nevertheless, be described by an *empirically* derived rule. That is, the behavior of the participants is assumed to be orderly rather than random. Furthermore, even though every case might be different in one respect or another (as many participants in the system are quick to point out), there are enough similarities among cases that rules capable of predicting decisions can be discovered.

On the other hand, our approach in no way requires that identical decisions be reached by decision-makers in different nodes even when participants in the different nodes are exposed to *identical* patterns of case characteristics. Any number of factors might lead participants in different nodes to use different decision strategies. For example, the incentive structure for police officers is quite different from that for assistant district attorneys. The arresting officer may have a supervisor who values felony over misdemeanor arrests, or the officer's promotions may depend, in part, on the *number of arrests;* whereas an assistant district attorney may be more concerned about *conviction rate.* For this reason, even though the decision-mak-

ers in both nodes may be exposed to the same information pool, e.g., in deciding on which charges to book the defendant (the police officer's decision) and which charges to include in the complaint (the assistant district attorney's decision), they may well use entirely different decision strategies.

As the above discussion suggests, it would be possible to focus research attention on factors (e.g., incentive structure) that lead different decision nodes to use different strategies. This seems an admirable aim. However, we currently know very little about the nature of the decision strategies that are actually being used by the different classes of participants. For example, it is possible for decision-makers to agree frequently in the selection of decision options, yet use quite different strategies in reaching those decisions (Einhorn, 1974). Furthermore, decision strategies can differ in a number of ways (selection and classification of information, subjective evaluation, weighting, combination, and so on), and until the exact nature of differences in decisions is known, searching for more abstract explanations for the differences seems futile.

Connections among nodes

The connections among nodes are seen as causal pathways, many of which involve social influence. More specifically, a connection between two nodes is assumed to exist if events in one node control the decisions reached in the other node. The causal influence from one node to another may be direct (as when a district attorney attempts to influence a judge's bail decision by argument) or indirect (as when a pretrial decision by a judge not to release defendants on their own recognizance adversely affects the severity of the sentences given by another judge much later in the processing of the cases), and unidirectional or bidirectional (in the latter case, as when a defense attorney and a district attorney attempt to influence each other's decisions during plea bargaining).

PREDICTING THE OPERATION
OF THE CRIMINAL JUSTICE SYSTEM

To provide a complete and predictively useful account of the operation of the criminal justice system from our theoretical perspective requires that we:

  1. Define classes of participants (decision-makers) according to the type of decision that is made.

2. Specify the range of decision options available to each class.

3. Identify the exact types of information available to each class of participants prior to a decision.

4. Obtain estimates for the subjective values and weights of these various types of information.

5. Select models of the combination strategies used at each point.

6. Trace the causal influence channels connecting the different classes of participants.

If all of these components have been correctly defined and estimated, the result is a predictively accurate *theory* of the particular criminal justice system being studied. If any of these steps is missing, or if the empirically derived solutions at a given step are in error (e.g., an important influence channel has been overlooked, or a particular type of information has been greatly underweighted at a given node), the theory will generally provide unsatisfactory predictions of the behavior of participants in the system.

The temporal flow of cases

The first step in constructing a predictive theory of the criminal justice system based on our approach is to define the set of decisions and classes of participants making those decisions and to place these decision nodes in an appropriate temporal order. Figure 1.1 shows one model (from President's Commission, 1967a) with relevant base-rate data from the Index Crimes for the United States in 1965.

This model provides a useful starting point, although several important decision nodes are conspicuously absent. The temporal flow of cases through several major decision events (whether to commit a crime, whether to arrest, whether to charge with a felony, whether to dismiss the charges, whether to plea bargain, what sentence to give, and whether to release from prison) can be seen clearly, however. Of equal interest are some surprising statistical facts about the progress of cases through this social structure. For example, a rather dramatic difference seems to exist among the nodes in determining what charges, if any, should be brought against defendants. In approximately 40% of the cases, the district attorney reduced or dropped completely the charges that the arresting agency felt were appropriate. Judges decided to dismiss approximately 5% of the cases in which adults had been formally accused of a crime by the district attorney. Note also that most guilty determinations (73%) were
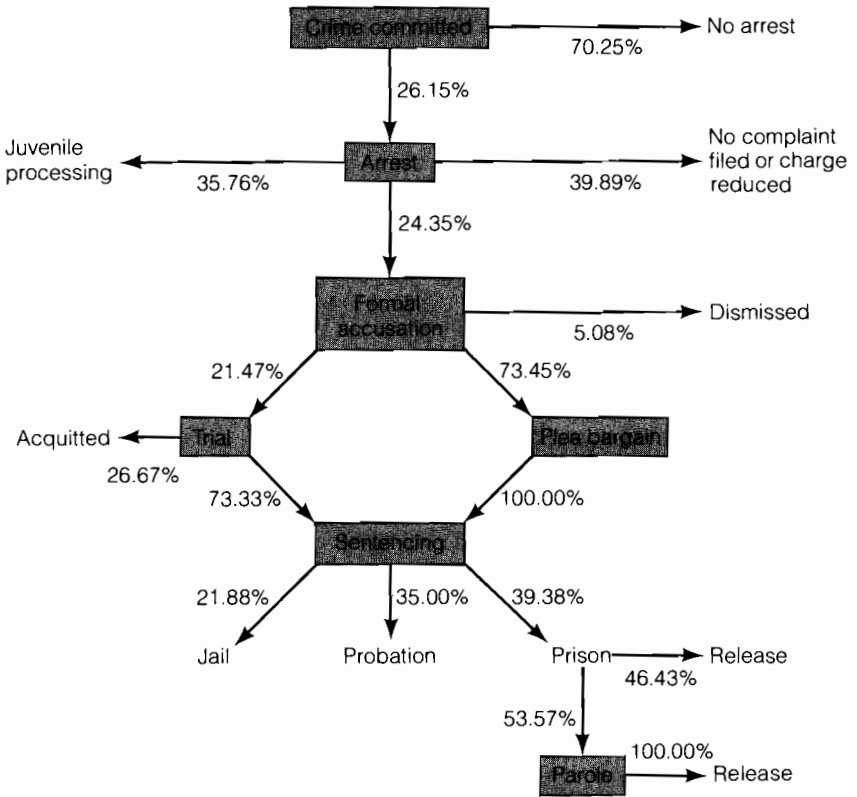
12

Figure 1.1
A model of the major decision nodes in the criminal justice system and of the temporal flow of cases through those decision nodes. Each box represents a decision that determines the eventual disposition of the case. Arrows represent the flow of cases from one decision to the next. The percentages indicate the proportion of cases reaching a particular decision node that were disposed of in the labeled manner. (From President's Commission on Law Enforcement and the Administration of Justice, 1967a.)

obtained because the defendant had pleaded guilty. Contrary to common opinion, as exemplified by the broad news coverage typically given to jury trials, such trials played only a minor role in determining the disposition of cases.

The relatively infrequent use of jury trials is of interest because it highlights a difference between the present approach and most others. A major portion of the research in social psychology that deals with legal issues has been concerned with jury decision making (Tapp, 1976). However, as the previous data suggest, one could literally treat jury decisions as *noise* in the system and lose very little

predictive ability. If the goal is to understand how the system actually operates, researchers would do much better to concentrate on the defense attorney's and assistant district attorney's decision not to go to trial, and the defendant's decision to admit guilt of some offense in exchange for other charges being dropped (Gregory, Mowen, and Linder, 1978), than to study jury decisions in great detail.

Several important nodes are left out of the model in Figure 1.1. Following the decision by a potential defendant to engage in an action that might be defined as a crime, an important node to include prior to arrest is the victim's (when there is one) decision to report the crime. These first two nodes, along with the decision to arrest, determine, in part, the nature of the information that is used in the remaining steps of the system. Whether a given action is to be classified as a criminal one largely depends on decisions made at these three points. For example, whether a sexual encounter is considered rape or lawful intercourse, whether an aggressive interchange is defined as an assault or an argument, or whether the removal of property is called theft or borrowing depends on the label that the "victim" decides to use to describe the event. Unless victims consider themselves to be such, it is unlikely that particular interpersonal encounters will formally enter the criminal justice system. In addition, while most police manuals instruct officers to enforce all laws against all people without exception (Goldstein, 1960), it is clear that they also provide officers with considerable discretion in terms of when, how, and whether to arrest, as well as what charges to file. Besides, many laws are so vague that officers are forced to make discretionary decisions about the intent of the legislature in passing the law.

Not shown in the model in Figure 1.1 is the fact that a very large proportion of police arrests are for criminal actions that have not been reported by victims. Instead, officers, as part of their patrol, make a decision to investigate a situation that appears suspect; as a consequence, an arrest is made. Because many arrests are of this nature, most police departments also include some arrest review procedure prior to booking the accused. This review is another important node left out of the model in Figure 1.1.

Soon after the district attorney has filed a complaint and decided on a specific set of charges, an arraignment and a bail hearing are held. The presiding judge's decision about the amount of bail to set, if any, forms another node of considerable significance for later events. For example, the kind of information about the defendant that will be available to participants at later decision nodes depends on whether the defendant is in jail or not. Defendants' contacts with their attorneys and the presentence investigation by probation offi-
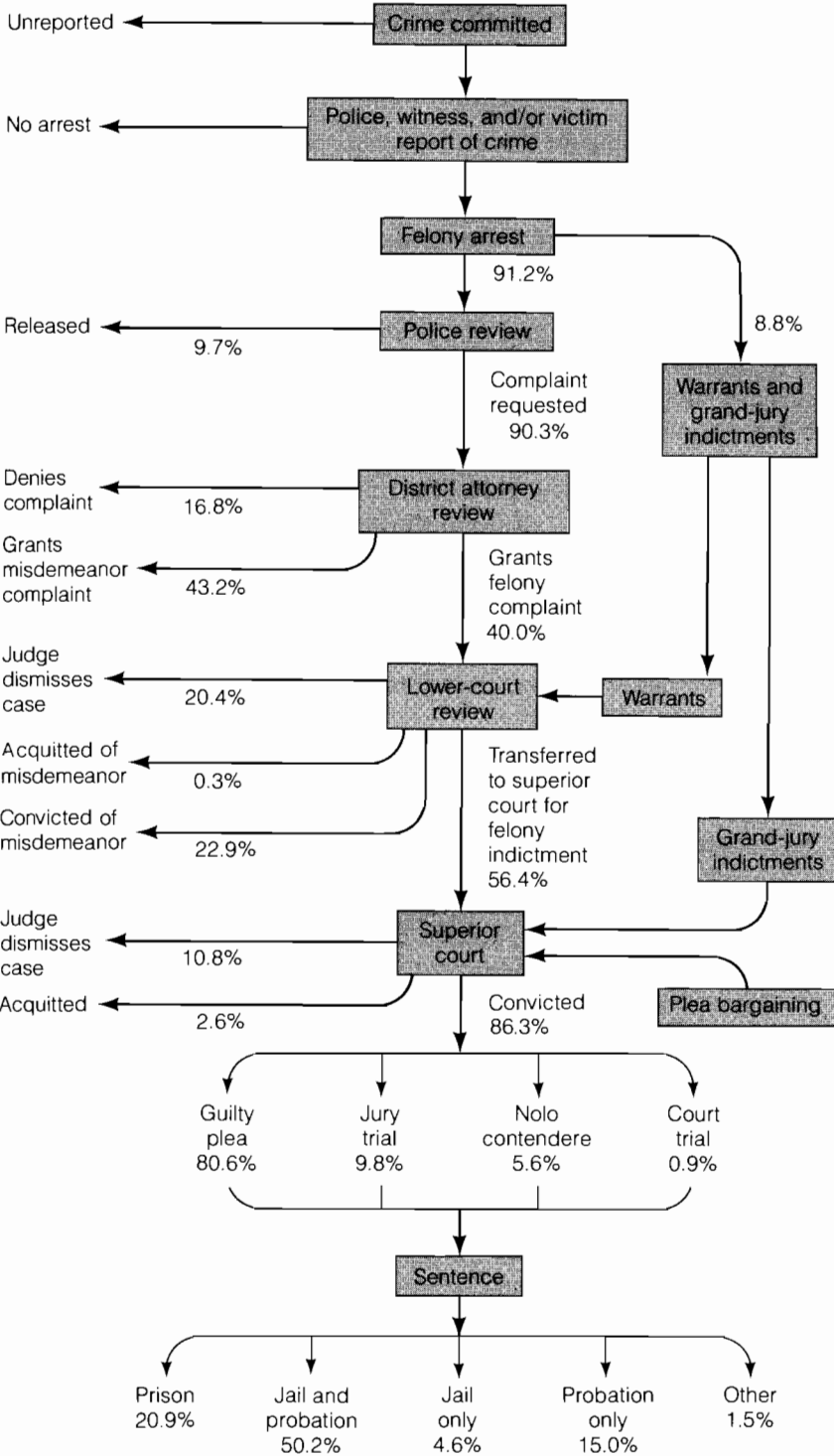
cers might be limited or altered if they take place in a county jail rather than in a private office.

Several preliminary hearings in which a judge (and/or a grand jury) decides whether a felony (as opposed to a lesser crime) has been committed and whether "reasonable grounds" exist as to the defendant's guilt are important decision nodes that occur after a complaint has been filed but before the final determination of guilt is made. Concurrent with these events, plea bargaining is usually taking place. Various official and unofficial encounters between the defense and district attorneys, often involving the judge, usually occur during plea bargaining. Following the guilty plea, and after gathering considerable background information about the defendant, a probation officer usually makes a specific recommendation regarding the suitability of the defendant for probation, sets limitations on the defendant's behavior that are included as conditions of probation (e.g., not to associate with known drug users, to attend evening school), and in many jurisdictions also makes recommendations about the specifics of the sentence (e.g., the amount of the fine, the number of days in the local county jail, etc.) if straight probation is not considered appropriate. These decision nodes are also missing from the model in Figure 1.1.

Figure 1.2 presents a more complete and representative model of the temporal flow of major decisions in the criminal justice system of most states. It also provides a structure for linking together most of the empirical-research chapters of the book. These chapters were written by individuals especially familiar with the decision node that forms the subject of their chapters. Unfortunately, some decision nodes presented in Figure 1.2 are particularly difficult to study, either because obtaining relevant data is extremely time-consuming or because the participants refuse to expose the process to thorough observation. Chapters on these nodes are therefore conspicuously missing from this book. On the other hand, by asking the various contributors to concentrate on the decision-making process of the relevant node, we attempted to provide a view of the remaining parts of the system that is more or less consistent with the theoretical approach that is described in this chapter.

Figure 1.2
A more detailed model of the major decision nodes in the criminal justice system. This model provides a method of organizing most of the chapters in this volume. The case-processing data presented in this figure are from the more than 145,500 felony arrests made in the state of California in 1977. Percentages were computed on a node-by-node basis. The data were obtained from the California Bureau of Criminal Statistics.

Unreported ← Crime committed

No arrest ← Police, witness, and/or victim report of crime

Felony arrest
91.2%

Released ← Police review
9.7%

8.8%

Complaint requested
90.3%

Warrants and grand-jury indictments

Denies complaint ← District attorney review
16.8%

Grants misdemeanor complaint
43.2%

Grants felony complaint
40.0%

Judge dismisses case ← Lower-court review
20.4%

Warrants

Acquitted of misdemeanor
0.3%

Convicted of misdemeanor
22.9%

Transferred to superior court for felony indictment
56.4%

Grand-jury indictments

Judge dismisses case ← Superior court
10.8%

Acquitted
2.6%

Plea bargaining

Convicted
86.3%

Guilty plea
80.6%

Jury trial
9.8%

Nolo contendere
5.6%

Court trial
0.9%

Sentence

Prison
20.9%

Jail and probation
50.2%

Jail only
4.6%

Probation only
15.0%

Other
1.5%

The unit of analysis

Once a set of decision nodes has been defined and the nodes have been placed in a particular temporal order, the next step in developing a predictive model is to select the unit of analysis that is to be used in constructing empirically derived decision rules for the various nodes. Our approach differs from some others in that the *case* (a particular person who has committed or has been charged with a crime) constitutes the basic unit of analysis rather than such things as type of crime, court, county, state, and so on. That is, we do not advocate developing models of decision strategies by comparing decision rates across several states, counties within a state, or the same state at different points in time. If the goal is to predict the decisions a given case will elicit as it moves through the system, then confining empirical analyses to the level of cases seems most appropriate.

The categories of case-relevant information used as potential predictors of decisions and the rules used to classify decision options are defined, in our approach, in terms compatible with the language of the criminal justice system rather than with theoretical concepts borrowed from other areas. For example, crimes are coded in terms of established penal-code categories and not in terms of some independent metric of severity. Similarly, categories of information defined as different by the legal system (e.g., the defendant was under the influence of alcohol versus drugs when the crime was committed) are not collapsed merely because an attribution theorist could claim that a judge or jurors will make similar attributions about the causes of the defendant's actions in both instances.

A consequence of using categories that are derived from the legal system is that we tend to ignore mediational explanations for the decision rules that are discovered. An assistant district attorney's use of the arresting officer's violation of search-and-seizure laws in deciding whether to prosecute a given case is not explained in terms of perceptions of equity, attributional bias, interpersonal attraction, or any other mediational concept typically cited by social psychologists to "explain" behavior. Instead, we focus on the percent of variance that can be statistically explained by variables that are commonly known and well understood by participants in the criminal justice system. In the above example, we would be content to note that violations of search and seizure accounted for a particular percentage of the attorney's refusals to file charges. It is not that we deny the possibility of constructing models that emphasize mediational accounts of the behavior of participants; we merely question the ability of such account to add anything useful to the descriptive accounts that are more easily communicated to legal professionals.

Decision strategies

The empirical derivation of models of the decision strategies used in each node is the last step in the process. The goal of this stage of the analysis is to select from the many possible factors (i.e., categories of information and sources of influence) those that account for the largest percent of variance (unexplainable by other already known factors or combination of factors) in the decision being studied. Causal pathways from other decision nodes are also examined by including events in prior nodes as possible predictors of the current decision. The particular modeling procedures and quantitative techniques used depend on the node being analyzed; however, multiple-regression analysis and log-linear analysis constitute two of the more common techniques.

It is important to note that these empirically derived decision strategies need not bear any resemblance to the strategies that the participants *claim* they use in reaching their decisions. Our concern is with discovering those factors that account for variation in the decisions and the best way to put them together to predict the most variance in future decisions. Participants may report that one or more factors have an influence on their decisions, and these reports may indeed reflect the amount of time the participants spend thinking about these factors. Yet, these same factors need not account for variation in the decisions. People may spend time thinking about things that in fact rarely affect the final decision and/or rarely think about things that do. We do not contend that people do not accurately report their own phenomenology or any other mediating events; we simply contend that such events need not offer the most useful causal model of the frequent decisions that the participants must make. The purpose of our decision models is not to simulate the phenomenology of the decision-maker, but rather to provide a procedure for combining and weighting different types of information so that accurate case-by-case predictions of the behavior of the participants can be made.

Disparity: individual differences within a node

An important feature of our approach is that it can provide an account of differences in the behavior of participants within a node that is compatible with, and utilizes the same concepts as, the explanation of the behavior of the node treated as a single unit. For example, the same decision-making concepts (e.g., the kinds of information available, their subjective values, their relative weights, the rules used to combine them) can be used to understand the way in which judges set bail in bail review hearings (Ebbesen and Konečni, 1975) and the

individual differences among the various judges within this node. Furthermore, by studying a particular node in the context of other decision nodes rather than in isolation (as is often done by others), our approach offers the opportunity to distinguish real from spurious individual differences in decision-making strategies among the participants within a particular node (see Ebbesen and Konečni, 1981).

More specifically, differences among participants in the frequency with which various decision alternatives are selected (e.g., a greater likelihood of plea bargaining by one assistant district attorney than another) may reflect either systematic differences in the distribution of features of cases assigned to different participants within a node or more basic differences in their decision strategies. Various features of cases may well be used as criteria by participants at other nodes in the system to decide which individual within a different node will handle a given case. For example, defense attorneys may believe that certain judges will be more or less favorable to a particular kind of case and attempt to arrange the situation so that a preferred individual makes the required decision.

It is of interest to note that such modes of behavior can serve to maintain *false* beliefs about the existence of individual differences and also provide an alternative explanation for some findings from other individual-difference studies. A particular judge might have a reputation for lenient decisions with regard to rape cases and because of it be exposed to a higher—compared to other judges—percentage of cases that involve rape-related charges. As a consequence, this judge's frequency of selecting certain sentencing options might well be different from other judges' (e.g., more probation decisions). Such differences in sentencing behavior might serve to maintain the image of the judge as relatively lenient. Furthermore, if the reputation were derived not from the actual decisions but rather from the judge's general demeanor or attitudes expressed in court or elsewhere, then a "discovered" relationship between those attitudes and the decisions made by the judge could be an artifact of various defense attorneys' decisions to seek that judge out when handling cases with particular attributes. In short, the fact that individual differences in decisions can be predicted by personality or attitude factors establishes neither that individual difference variables are causes of judicial decisions nor that the *reported* individual differences are real. Individual differences within a node must be seen in light of the operation of social-influence channels among nodes before the real nature of individual differences can be known (see Nagel and Neef, 1977, for a similar point).

Our theoretical approach allows for several different types of "true" individual differences. For example, when deciding whether to arrest

an individual, police officers may differ in their perceptions of the seriousness of particular criminal actions or of particular mitigating circumstances. Alternatively, the relative weight given to knowledge of the person's past criminal activity, the circumstances of the current investigation, the number of arrests made that month, and other relevant factors might vary from one officer to the next. Officers might also differ in the strategies they use to combine the various factors to reach a final decision. Thus, individual differences might emerge in scaling, weighting, and combination strategies. As can be seen, the same decision-making concepts are used to describe individual differences within a node as to describe the aggregated action of that node when treated as a part of the entire system.

JUSTICE AND OTHER IDEALS

In using our theoretical approach, we do not attempt to impose particular social or political values or to suggest how the criminal justice system ought to operate. The book does not contain advice on how to eliminate injustice, nor does it take sides on issues such as whether sentencing should fit the crime or the individual, whether the bail system should be eliminated, and whether plea bargaining or parole procedures are unjust. Instead, the aim is to develop a predictively useful description of the system, which can then be compared to a large variety of standards obtained from any number of sources. Unless one knows how the system actually operates, many attacks on the current system for not conforming to a particular standard may be unjustified, and other attacks may be warranted. For example, some might argue that race should not be a factor in determining the sentence that a defendant receives. Attacks on the system from this perspective because blacks or chicanos are more likely than whites to receive certain sentences might be shown to be misdirected once a complete description of the system is known. Differential prison rates, for example, across race might prove to be due to any number of other factors correlated with race. Members of one racial group may be more likely to commit the types of crimes that more frequently result in prison sentences. Violence may be more acceptable to some subcultures than to others, and those subcultures may be correlated with race. For example, street gangs that condone and even approve of violent crimes may be more likely to occur in densely populated urban areas, and these areas may also contain disproportionate numbers of youths from one or another race. Changing social conditions (e.g., unemployment rates across races, social acceptance of drug use) are also likely to affect the relative number of individuals

from different racial groups that are arrested for different types of crimes. If a condition of probation is that an individual be steadily employed, and unemployment is associated with race, the likelihood of receiving straight probation as a sentence could appear to be affected by race. In short, defendant characteristics, such as race, age, and sex, that seem to affect the decisions of participants in the system may be correlated with other features of the case that are the actual factors controlling the decision. Once the decision strategies are discovered, it may turn out that the issue is not how to prevent a defendant's race (sex, age, or whatever) from being considered, but whether, say, the specific nature of the crime should play the role that it does.

The present approach also allows us to evaluate claims that certain factors have not been taken into account by key participants to the extent that they should. For example, it might appear that severity of the crime is not sufficiently affecting the nature of the sentence convicted felons receive. Evidence might emerge as a result of studying the causal pathways among nodes that severity is strongly influencing an earlier decision, such as the district attorney's decision to reduce or drop charges, and that the weak effect of severity later on in the process is due to its having been taken into account at an earlier decision node.

An empirically derived theory of the operation of the system can also be compared to the participants' own standards of how the system should be and is operating. Discrepancies can provide useful information not only about how to alter the system but also about the quality of the participants' own data gathering and conclusion drawing. Much of the information that one participant has about the behavior of other participants may be obtained by hearsay or be based on features of behavior that are actually irrelevant to the day-to-day operation of the system. For example, defense and district attorneys might develop beliefs about how judges make decisions on the basis of what judges claim, in court, are the important aspects of a case. These claims may have little to do with the factors that actually predict the judges' decisions, however, either because the judges are mentioning factors that they believe the public would like to have considered or because they are describing features of their thought processes that are not associated with the ability of specific factors to predict decisions over many cases.

One commonly agreed upon standard within the criminal justice system requires that different decision-makers within a given node should reach identical decisions when given the identical pool of information about a case. Many critics of the criminal justice system delight in describing what appear to be major violations of this stan-

dard. The validity of such criticisms depends on the claim that different participants within a node are exposed to identical information pools or at least that the information sets are identical in all *relevant* respects (President's Commission, 1967b). Therefore, unless the pool of information that is to be used in a decision is clearly specified, the presence of disparity can always be justified by a claim that cases differ along one or more unknown dimensions that are assumed to be taken into account by all of the participants in a similar manner. Thus, decision disparity can be discussed only in the context of a specified information pool. Because there is little agreement about which factors should and should not be taken into account at various points in the system, the question of disparity within a node is of secondary interest in this book.

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