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Judicial Decisions and Sanction Patterns in Criminal Justice

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INTRODUCTION

There is current controversy in criminal law which centers on the criminal sanction and the delineation of purposes for the sentencing process. The debate focuses on the priority of four goals: retribution, deterrence, incapacitation, and rehabilitation. Critics of the present indeterminate sentencing and parole system have argued that rehabilitation has not worked and that treatment does not offer a viable model for the criminal law.[1] As a result, such critics have contended that emphasis should be placed on goals which can be realized and which correspond to the norms of equity and justice.[2] Proposals for fixed or determinate terms, guideline schemes, and presumptive sentences have been suggested as policy alternatives based on the need for deterrence, the primacy of public order, and the legitimacy of retribution. The question of goal priority is at the core of these policy proposals. This question has two aspects. The first questions what we should expect the criminal sanction to achieve. The second considers how we should order our priorities to fulfill society's need for stability and safety while recognizing and conforming to the unique demands that individual rights place on a democratic society.

On the surface one would assume that sanction priorities are determined by legislative bodies and merely implemented by justice agencies. In this perspective the question of goal priority would be an issue for legislative resolution. Current criticisms of the rehabilitative model, however, assert that the treatment ethic has been eroded by courts, corrections institutions and parole, and that a variety of sanction priorities is a serious detriment to the efficacy of criminal law.[3]

Assessments suggest that manifest criteria and purposes are not necessarily equivalent to operative norms and goals. Studies on the effectiveness of rehabilitative efforts, the priorities of criminal justice systems and personnel, and the virtual anti-rehabilitation effects of recent parole decision-making innovations, indicate that rehabilitation has taken a back seat to other criminal sanction priorities and that efforts in the name of rehabilitation have been directed to purposes other than treatment.[4] This conflict implies considerable disparity in the manifest and latent goals of the criminal sanction and illustrates the necessity of assessing operative criteria before entertaining policy proposals which would alter the substance and process of the criminal law.

METHOD OF ANALYSIS

Operative priorities can best be assessed by examining the goal patterns evident in key decision processes. "[D]ecisions provide the primary tools for researching goals,"[5] and decisions in the justice

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[1] In this regard see, e.g., Allen, Criminal Justice, Legal Values and the Rehabilitative Ideal, 50 J. CRIM. L.C. & P.S. 226 (1959); Morris, The Future of Imprisonment: Toward a Punitive Philosophy, 72 MICH. L. REV. 1161 (1974). Note also that "indeterminate" and "indefinite" are often used interchangeably. However, an indeterminate sentence theoretically involves commitment for life; while an indefinite sentence usually refers to the more common variant of legislatively set minimum and maximum terms. For elaboration, see ABA Resource Center on Correctional Law and Legal Services, Sentencing Computation Laws and Practices: A Preliminary Survey (1974).

[2] See, e.g., D. FOGEL, ... WE ARE THE LIVING PROOF ... (1975).

[3] See, e.g., D. STANLEY, PRISONERS AMONG US: THE PROBLEM OF PAROLE (1976); Bailey, Correctional Outcome: An Evaluation of One Hundred Reports, 57 J. CRIM. L.C. & P.S. 153 (1966); Martinson, What Works?—Questions and Answers About Prison Reform, 35 PUB. INTEREST 22 (1974).

[4] Project, Parole Release Decision Making and the Sentencing Process, 84 YALE L. J. 810 (1975).

[5] Hall & O'Leary, Frames of Reference in Decision-Making, in PROCEEDINGS OF THE NATIONAL PAROLE INSTITUTE XIV (1972).

process set the rest of the system in motion. Sentencing and parole are the two key post-conviction decisions in the criminal justice system. In no other areas is the dilemma of individual rights and public order more acute than when the decision-makers face the essential option of the release or incarceration of convicted felons. Due process demands safeguards to protect individual liberty, while public order concerns dominate assessments of the danger posed by an individual.

The decision to sentence rests with the trial court. Taking part in the formal and informal processes of bargain justice are the prosecuting attorney, the defense counsel, the probation official, and the judge. The sentencing decision can be conceived as a threefold option: 1) suspension of entire sentence through probation; 2) partial suspension of sentence, some incarceration and probation; and 3) incarceration.[6] This categorical decision represents the first, and perhaps the most critical, part of our "bifurcated" sentencing process.[7]

The decision to release on parole is the sole prerogative of the administrative board, appointed by the executive branch of government, which is known as the parole authority.[8] The parole decision has also been conceptualized as a categorical choice with the options before the board being (1) simple parole release; (2) extended parole, *i.e.,* parole release but at a date past initial eligibility; (3) continuance, *i.e.,* postponement of the release decision; and (4) denial.[9]

In this work, data for two decision studies were obtained from the Connecticut Board of Parole and the Connecticut Department of Adult Probation. The samples consisted of all criminal felonies disposed of (*i.e.,* sentenced) in the state's major trial courts during February and March, 1975, and of all the decisions of the parole board during the same time period.[10] While comparison of the two-

decision functions is not a rigorously controlled contrast, all means of similarity in analysis were taken to enhance a qualitative comparison.

Theoretical criteria were used to select the independent variables for decision explanation.[11] For the parole analysis, information in each inmate's parole file was assessed according to the nine categorical norms for decision-making that are set forth in the parole board's official policy statement.[12]

and New London counties. These courts were selected because they handled more than 75% of the entire criminal docket of the Superior Court for fiscal year 1974. The sentences disposed by these courts during the time period specified totaled 266. Excluding those cases that did not fall into one of the three categories and those with insufficient information, the sample equaled 245.

The total number of release decisions made by the parole board was 180. Four cases were excluded because of missing information.

Breakdown of Samples	
Decision Category	Number of Cases
Sentencing (n = 245)	
Suspension of sentence with probation	56
Partial suspension, some incarceration (less than one year), and probation	47
Incarceration	142
Parole (n = 176)	
Regular parole	89
Extended parole	18
Continuance	18
Denial	51

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[6] CONN. GEN. STAT. §§ 53a-28 to 53a-47 (1975).

[7] L. WILKINS, J. KRESS, D. GOTTFREDSON, J. CALPIN, & A. GELMAN, SENTENCING GUIDELINES: STRUCTURING JUDICIAL DECISIONS (1978). *See also* J. HOGARTH, SENTENCING AS A HUMAN PROCESS 3 (1971); Project, *supra* note 4.

[8] For a summary of statutory provisions, policy norms and board composition, see Connecticut State Board of Parole, Statement of Organization and Procedure (March 1, 1977).

[9] For a demonstration of the appropriateness of this categorization, see Talarico, *An Application of Discriminant Analysis in Criminal Justice Research,* 18 JURIMETRICS J. 46 (1977).

[10] The Superior Court is the state's major trial court. The sample consisted of cases disposed of by the Superior Court at its locations in Hartford, New Haven, Fairfield,

[11] It would have been possible to use all of the potential independent variables in a stepwise discriminant analysis, but the method was not considered appropriate in view of the viability of either methodological or theoretical means of data reduction. For additional reservations on stepwise procedures, see R. WONNACOTT, & T. WONNACOTT, ECONOMETRICS 312 (1970).

[12] The Board of Parole's Statement of Organization and Procedure specifies the following:

1. The nature and circumstances of the inmate's offense and his current attitude toward it.
2. The inmate's prior criminal record and his parole adjustment if he has been paroled previously.
3. The inmate's attitude toward family members, the victim, and authority in general.
4. The inmate's institutional adjustment, including his participation and progress in the areas of the institutional program important to his self-improvement.
5. The inmate's employment history, his occupational skills, and his employment stability.
6. The inmate's physical, mental, and emotional health.
7. The inmate's insight into the causes of his past criminal conduct.
8. The inmate's efforts to find resolutions to his personal problems such as addiction to narcotics, ex-

Information or potential variables that could be included in any one of the nine criteria were then applied in the discriminant analysis of the parole decision.[13] For the analysis of the setencing decisions, variable selection was patterned along the major information headings in the pre-sentencing report (PSI) compiled by the Department of Adult Probation. Because that report is legally required for sentencing convicted felons,[14] it was considered a reliable index of major information categories and, therefore, theoretically pertinent as a guide for variable selection.[15]

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cessive use of alcohol, the need of academic and vocational education, etc., and his use of the available resources related to such problems in the institutional program.
9. The adequacy of the inmate's parole plan. The latter includes the environment to which the inmate plans to return, the character of those with whom he plants to be associated, and the adequacy of his residence and employment program.
[13] The independent variables applied in the parole analysis consisted of the following:
  1. Age at first commitment
  2. Offense (severity)
  3. Weapon, injury, or threat of violence
  4. History of violence
  5. Number of prior arrests and convictions
  6. Number of prior parole revocations
  7. Family criminal record
  8. Family stability
  9. Mental health treatment
  10. Longest period of continuous employment
  11. Job at arrest
  12. Alcohol treatment
  13. Drug treatment
  14. Educational progress or treatment in prison
  15. Job training or work
  16. Work or education release
  17. Good-time (extra-meritorious) or equivalent commendation
  18. Number of furloughs
  19. Number of misconducts
  20. Parole plans—job
  21. Parole plans—residence
[14] CONN. GEN. STAT. §54–109 (1975).
[15] The independent variables applied in the sentencing analysis consisted of the following:
  1. Family criminal record
  2. Family stability
  3. Mental health treatment
  4. Alcohol problem treatment
  5. Drug problem treatment
  6. Longest continuous employment period
  7. Employment at time of arrest
  8. Age at first commitment and/or conviction
  9. Severity of offense
  10. Plea
  11. Violence in offense
  12. History of violence
  13. Criminal record
  14. Probation and Parole revocations

PATTERNS OF JUDICIAL DECISIONS

Parole

Implicit in the application of discriminant analysis to both the parole and sentencing samples were hypotheses related to the group and identity of variable coefficients.[16] Of particular interest was the possibility that coefficient patterns would emerge bearing some relation to the goals of retribution, deterrence, incapacitation, or rehabilitation. Included in such speculation was the hypothesis that a retributive pattern would emerge evidencing strong coefficients for the variables of offense severity, criminal record, history of violence, violence in conviction offense, and family criminal record. A similar hypothesis centered on a rehabilitative pattern that would exhibit strong coefficients for variables related to the convicted felon or inmate's progress in education and work training, drug and alcohol programs, mental health assessments, and "good time" commendations (*i.e.* a reduction in the sentence to be served, the reduction being based on good behavior). Likewise, an incapacitative pattern might be extracted that exhibited significant coefficients for variables relative to the inmate's threat to public safety.

The application of discriminant analysis to the two decision functions under study yielded interesting and significant results. Of primary importance were the coefficients of the independent variables and the goal patterns that they reflect. Like multiple regression, discriminant analysis yields coefficients for each of the independent variables across all functions. In the application of multiple discriminant models, the number of functions is equal to the number of groups or categories in the dependent variable minus one. Each function represents a linear combination of the set of independent variables and distinguishes among decision

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  15. Evaluation of psychiatrist, etc.
  16. Defense attorney
  17. Bail
  18. Victim's attitude
  19. Probation officer's recommendation
[16] Discriminant analysis is an appropriate linear model where the dependent variables are a categorical measure. For a comprehensive analysis of discriminant analysis, see F. Kort, Discriminant Analysis and Its Application to the Study of Social Phenomena (1975) (unpublished manuscript available on request from the author). *See also* J. OVERALL & C. KLETT, APPLIED MULTIVARIATE ANALYSIS (1972); W. COOLEY & P. LOHNES, MULTIVARIATE DATA ANALYSIS (1971). For the relationship between regression and discriminant analysis, see Kort, *Regression Analysis and Discriminant Analysis: An Application of R. A. Fisher's Theorem to Data in Political Science,* 67 AM. POL. SCI. REV. 555 (1973).

categories. Because discriminant solutions yield several linear combinations (in the case of parole, three; in sentencing, two), it is necessary to assess the decision group means or centroids to appreciate the particular effect of each function in decision discrimination.[17]

Observation of the group centroids for the parole analysis (Table 1) indicates that the first and most important function clearly distinguishes the parole decision from the other options, particularly from the denial option. The second function discriminates between the continuance decision and the other three options, that is, the non-decision category from the three decision choices. The third and least important function distinguishes the two middle decision categories from the extreme options of release on parole and denial.

Because the first function possesses maximum explanation of group discrimination (the second possesses maximum discrimination among linear combinations uncorrelated with the first and so on), the analysis of decision patterns focuses primarily on the variables and coefficients across that function. Table 2 displays the parole discriminant coefficients along the three functions. Considerable emphasis seems to be placed by the board on facts relative to employment. On the first and most significant function, variables such as job plans, work release, and job training in prison are directly related to the decision to release on parole. Variables relative to prison cooperation (drug treatment and good-time commendation) are also strongly related to release on parole, while the only variable that exhibits an inverse correlation with parole (and therefore direct relations to denial) is the variable measuring previous parole failures, *i.e.*, revocation. It is understandable that a history of negative experience with parole would deter a board from paroling an inmate again. Examination of variable weights and signs on the remaining and less important functions indicate the priority given to employment and treatment criteria and the virtual neglect of variables relative to the inmate's offense and criminal history.

What do these results tell us about parole decision-making? As Table 3 indicates, the board clearly exhibits some adherence to its stated policy criteria because approximately half of the discrimination occurs with variables related to the board's

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TABLE 1

GROUP CENTROIDS

Decision Category	Parole		
	Function		
	First	Second	Third
Parole	.355629	−.005350	−.066966
Extended parole	−.058944	−.200722	.504777
Continuance	−.227333	.395333	.196500
Denial	−.519568	−.059313	−.130549

Decision Category	Sentencing	
	Function	
	First	Second
No jail	−.596071	.123160
Some jail	−.295659	−.202127
Prison	.332964	.023204

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official criteria. Taking the variables that exhibit the strongest weight at face value, however, it is difficult to conclude that they represent any particular goal pattern or empirically reliable decisional base. How important are job plans, training, and experience for criminal behavior? Are they measures of rehabilitation? The literature on parole does not suggest that these variables are good predictors of parole risk. Even if one accepts the contention that it makes good sense for an inmate to have some training, experience, and expectation of viable employment, does the judgment of such a fact fall into the category of expertise and clinical assessment?

Variables associated with retribution and incapacitation displayed little or no weight in decision categorization. If the coefficient patterns indicated that board members were willing to release offenders who committed less serious offenses or who did not resort to violence in present or past criminal behavior, then one could assume that they were operating with some recognition of the priorities of retribution, incapacitation and even deterrence. The absence of any strong coefficients relative to offense severity, violence, and criminal history, however, indicates that these factors are rather neutral.

The last point is especially interesting in light of the reasons that the parole board gave to inmates who had been denied release. At the parole hearing itself the board emphasized three reasons for a denial of release: (1) the violence of the commitment offense; (2) the inmate's criminal record; and (3) the severity of the offense. Given the virtual

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[17] For every case in each decision category, discriminant analysis will yield a score that serves as an index to position that case in the most appropriate group. The group centroid represents the mean of those scores for each decision category in the dependent variable.

TABLE 2

VARIABLES* AND COEFFICIENTS ACROSS FUNCTIONS: PAROLE

First Function		Second Function		Third Function	
Work/educational release	.553	Alcohol problem treatment	−.394	Job training	.475
Parole plans—job	.433			Family stability	−.447
Drug problem treatment	.397	Family criminal record	−.368	Violence in offense	−.411
Job Training	.346	Parole plans—job	.361	Parole plans—job	−.364
Good-time recommendation	.255	Parole plans—residence	.347	Parole plans—residence	−.258
Parole plans—residence	.243	Work/educational release	.345	History of violence	−.244
Parole revocations	−.243	Educational program/progress	.328	Mental health treatment	−.210
		Parole revocations	−.294	Alcohol problem treatment	.163
		Job training	−.259	Drug problem treatment	.162
		Family stability	−.186	Family criminal record	.152
		History of violence	.159	Parole revocation	−.135

* Variables with coefficients with absolute value ≥ .1.

TABLE 3

SUMMARY OF PAROLE ANALYSIS

Discrimination among decision categories	Eta-Square (or R^2)	F	Probability of obtaining this value of F or a higher value by chance
Parole, extended parole, continuance, denial	0.562	2.321	$p < 0.001$

SUMMARY OF SENTENCING ANALYSIS

Discrimination among decision categories	Eta-Square (or R^2)	F	Probability of obtaining this value of F or a higher value by chance
Prison, some jail, no jail	0.495	4.794	$p < 0.001$

ignorance of these variables in decision discrimination, it appears that the board approached its decisional function in an unstructured fashion and attempted to convince itself and its "clients" otherwise.

If the variables that contribute the most to decision discrimination present such a problem for criteria and goal patterns, then what of the unaccounted for categorization? Critics of indeterminate sentencing and parole contend that the discretionary process leaves considerable room for factors unrelated to either rehabilitation or sentence determination. While this analysis offers no conclusive evidence on the impact of personal bias, cultural attitudes, or organizational norms, it is conceivable that variables related to these factors

affect decision outcome. Certainly the decision-makers' attitudes help to shape their perceptions and evaluations of inmate insight and rehabilitative progress. This possibility conforms to impressions derived from research observation of parole hearings as board members displayed considerable differences in manner, points of emphasis, and personality.

Sentencing

The application of discriminant analysis to the sentencing sample was directed to the same end as the parole study. The sentencing decision was operationalized as a threefold, categorical option. With the full complement of nineteen independent variables, discrimination among the three decision groups was explained by the two derived functions.

Table 4 summarizes the discriminatory effect of each independent variable on the two functions. Observation of the group centroids (Table 1) indicates that the first linear combination or function differentiates the prison option from the two less severe penalties of some jail and no jail. The second and less important function distinguishes the middle category from the two more extreme sentencing options.

Observation of the variable coefficients indicates interesting sentencing patterns. A particularly intriguing pattern deals with the defendant's processing in the justice system. Notice the importance in Table 4 of plea, the probation officer's recommendation, bail, and whether the defense attorney was a public defender or a private practitioner. These results indicate that defendants who refuse

TABLE 4

VARIABLES* AND COEFFICIENTS ACROSS FUNCTIONS: SENTENCING

First Function		Second Function	
Plea	.534	Alcohol Problem treatment	−.465
Mental health treatment	.454	Probation officer's recommendation	.382
Probation officer's recommendation	−.391	Bail	−.363
History of violence	−.384	Plea	−.359
Bail	−.279	Family criminal record	.327
Job at arrest	−.200	Job at arrest	.318
Evaluation of psychiatrist	−.183	Mental health treatment	.232
Defense attorney	.129	Violence in offense	.182
Family criminal record	.108	Defense attorney	.181

* Variables with absolute weights ≥ .1.

to plea bargain are placed in the most severe sentence category and suggest that the probation officer's recommendation for suspended sentence has considerable impact. Not surprisingly, the results show that defendants detained prior to sentencing are more likely to receive prison sentences than those released on bail. Furthermore, the results demonstrate that the services of private attorneys do not seem to be superior to the counsel of public defenders, at least in terms of the correlation between type of legal service and prison sentence. In addition to these .variables, observe the direct impact of treatment factors (mental health) on the more severe prison sentence. Note also that history of violence is inversely related to the prison option (the more violent the history, the more lenient the sentence). Expectedly, having a positive recommendation from the psychiatrist and a job at the time of arrest help a convicted felon to receive a less severe sentence.

These patterns lend support to long-standing criticisms and assumptions about criminal justice operations. The central role of the defendant's plea reinforces the notion that criminal courts operate on system maintenance norms far removed from the traditional principles of Anglo-American justice. Other organizational-type norms (*e.g.,* bail and defense attorney) have exhibited importance in previous research. The Bronx Sentencing Study conducted by the Vera Institute of Justice, for example, emphasized the impact of bail and defense counsel in sentencing outputs.[18] Those defendants who posted bail and acquired the services of a private attorney were less. likely to receive prison sentences than those who were detained in jail prior to sentencing and who used legal aid attorneys.

[18] J. LIEBERMAN, S. SCHAFFER, & J. MARTIN, THE BRONX SENTENCING PROJECT OF THE VERA INSTITUTE OF JUSTICE (1972).

In this analysis, bail has a more negative and discriminatory impact than defense counsel. That result has some serious implications if it supports the contention that economic position invades the judicial arena and biases defendant processing. If one acknowledges that the criminal justice system is related to and dependent upon other societal systems, such an occurrence is not surprising.

The weight of the variable measuring private or public legal counsel does not offer as strong a case as the ability to make bail. While some of the general literature criticizes the quality of legal assistance for the economically disadvantaged criminal defendant, the superiority of private counsel has not been definitively established. It is possible that a public defender experienced within the criminal justice system may provide better safeguards and service than a private attorney whose practice is largely civil.

The strength of the probation officer's recommendation in sentence categorization suggests several possible interpretations: the probation officer may be doing an exceptional job in pre-sentence investigations; the court may rely heavily on the expertise of the probation department; the probation officer may be good at "second-guessing" judicial and prosecutorial behavior; and/or all the system participants may indeed be looking for similar cues and responding to similar priorities. Interview and survey information supplementing the decision analysis offered mixed evidence. Superior Court judges indicated that they always relied on the pre-sentence reports while some prosecutors and defense attorneys remarked that the investigations were worthless. Observation of sentencing hearings indicated that in some cases the information in the report seemed to provide the "script" for the formal sentencing ritual.[19]

[19] This observation was made by Marc Gertz of the School of Criminology, Florida State University.

Previous research does not offer any conclusive basis for interpretation or even conjecture concerning the probation officer's recommendation. For instance, Carter and Wilkins found that judges do follow probation recommendations, but acknowledged that there were other possible sources of variation that might affect or explain the correlation.[20] Because there is a considerable amount of skepticism about the reliability and validity of presentence investigations,[21] it is difficult to draw any definitive conclusions.

The general importance of organizational-type norms in sentencing disposition suggests that system maintenance is a priority concern.[22] In the present study, this assessment was buttressed by information from interviews with state's attorneys, public defenders, and probation officials in the four courts from which the sample was derived. Many of these officials acknowledged that "keeping the system going" was a legitimate concern and that reforms which ignore or downplay the requirements of bargain justice would not succeed. In similar, though not explicit fashion, most Superior Court judges acknowledged that the recommendation of the state's attorney (in most cases the bargained charge and sentence) had the strongest single effect on sentence disposition. However, the same judges did not think that a system of fixed sentences would reduce the ability of the state to secure convictions. This suggests that the judiciary does not readily or easily acknowledge the role of plea bargaining in sentence determination.

Of particular interest is the marginal impact of the so-called legal criteria (severity of violence, criminal record, history of violence, etc.) in sentence *classification* when their weight is controlled in discriminant analysis by the effects of other variables. Of the variables categorized as legal, only history of violence and violence in offense exhibited any noticeable weight across the two functions. Even with these variables, only history of violence had any impact on the first function, while violence in offense was almost negligible on the second and less important function. How does one explain the virtual absence of offense severity, criminal record, probation and parole revocations, and age at first commitment or conviction as factors in the decision? At first glance, it might be assumed that these variables were highly correlated with either history of violence or one of the organizational or treatment variables exhibiting strong discriminant coefficients. Examination of the correlation matrix of the independent variables, however, eliminates this as a conclusive explanation.[23]

The general ineffectiveness of legal criteria in sentence discrimination suggests that variable measurement and the unit of analysis may somehow affect the investigation.[24] Severity of offense, for example, was scaled according to the maximum penalty imposed in the penal code. However, the offense so categorized was the conviction offense. It is conceivable that in the process of plea bargaining and in the concomitant dilution of traditional legal processes, conviction offense has lost its meaning. If this is so, then arrest charges might be the logical unit to consider when weighing the impact of the severity of the crime. This possibility certainly could relate to the parole analysis where offense severity was as unimportant as the sentencing analysis revealed. Observation of parole board hearings confirmed the assessment of the impact of arrest charges because board members frequently discussed the charges and commented that conviction offenses were almost always far less serious than the original act.

Speculation about the conviction offense seems to offer a potentially viable explanation of the ineffectiveness of legal criteria in sentence classification. Because this research demonstrates that the plea is the most important factor in sentencing discrimination, it is possible that the actual arrest charge is the most significant legal criterion despite the fact that the defendant pleads to and is convicted of, something quite different. While some have alleged that defendants "get off easy" in the bargaining process, it is possible that their actual sentence is not determined by legal guilt, but by what the particular criminal justice system actually perceives as factual culpability.[25]

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[20] Carter & Wilkins, *Some Factors in Sentencing Policy*, 58 J. CRIM. L. C. & P. S. 503 (1967).

[21] *See, e.g.*, Katkin, *Presentence Reports: An Analysis of Uses, Limitations and Civil Liberties Issues*, 55 MINN. L. REV. 15 (1970).

[22] In this regard, note Herbert Jacob's comment that particular punishment policies may not be the result of deliberate organizational structure stemming from a particular value position, but rather, assumptions accrued with little thought to values. Lecture by Herbert Jacob, Disposition of Felony Cases in Three Cities, Criminal Justice Series, The University of Connecticut (April 16, 1975).

[23] Appendix L in S. Talarico, Patterns of Decision-Making in the Judicial Process: The Special Cases of Probation and Parole (unpublished dissertation, The University of Connecticut, 1975).

[24] *See* Gertz & Talarico, *Problems of Reliability and Validity in Criminal Justice Research*, 5 J. CRIM. JUST. 217 (1977).

[25] In this regard, see T. Uhlman & D. Walker, Pleas No Bargains? Criminality, Case Dispositions and Defendant Treatment (paper presented at the 1977 Meetings of the American Political Science Association).

It is also possible that legal criteria may play a greater role in determining sentence severity than in delineating simple categories. Wilkins and his colleagues point out that sentencing is a bifurcated process in which two decisions are made in each case: (1) the basic type of disposition, and (2) the length or severity of the disposition. Once an offender has been grouped into a sentence category, it has been demonstrated that legal criteria may help to explain sentence length.[26] This fact, however, does not diminish the critical nature of the categorical decision, nor does it dilute the importance of variable patterns shown to be good group discrimminators.

In summary, the analysis suggests that bargain norms carry considerable weight in sentence classification. This offers, consequently, no goal pattern strictly comparable to one of the four possible sanction priorities. Punishment policy appears to be more related to system maintenance and functioning than to established criminal law purposes. Extensive interpretation, however, is limited by the fact that half of the decision discrimination is unexplained and by the obvious caveat that additional studies are needed to explore the effect of functional and system criteria on sentence determination.

COMPARATIVE INTERPRETATION

Comparative interpretation of the two analyses can be justified on several grounds. In both processes the decision-makers are asked to resolve the essential dilemma of the criminal law. As they attempt to reconcile the competing demands of individual rights and public order, the court and the parole board serve as the entrance and exit points for the correctional system. The similarity of dilemma and function is intensified by the interdependence of sentencing and parole. Terms of sentence and judicial intent obviously impinge on

parole decision-making, even though the actual time served is determined by the parole authority.

Qualitative comparison of the two analyses is based on two general findings: the degree of structure, and the patterns of goals reflected in the two decisional functions. With approximately fifty-six percent explanation of decision discrimination, the decisional processes of the parole board seem to be slightly more structured than those of the court, since the discrimination explained in the sentencing analysis totaled forty-nine percent. (Table 3). This is the opposite of traditional assumptions. The sentencing court has specific, legal criteria to use for sentence justification; these include severity of offense, criminal record, and violent offenses. In this respect, the penal code offers valid and legitimate standards for the categorization and punishment of deviant behavior. Conversely, the parole board does not have similar, justifiable criteria to use in its deliberative process. Because parole was established as a corollary to the indeterminate sentencing system and because that system is theoretically justified only in rehabilitative terms, release decision-making is conditioned on assessment of prison treatment effects. However, no precise standards for such effects have been developed and parole boards have been faced with a virtually impossible task. Therefore, it would be expected that parole boards would operate in a less structured decision context than the courts.

As a result, it cannot be said that the decisional processes of the parole board and the court are identical and that both are directed to particular goal priorities. Neither can it be concluded that the parole decisional process duplicates the sentencing function. What is striking about both decision functions is the absence of any strong patterns of decision orientation and the mixed reflection of ciminal sanction priorities. This reinforces the contention of critics who lament excessive discretion with ambiguous guidelines and who argue that decision criteria will be haphazardly applied unless and until the question of goal priority is adequately resolved.

[26] *See, e.g.,* Talarico, *Defining the Sentencing Decision: Implications of Alternate Conceptualizations,* 59 Soc. Sci. Q. 570 (1978).