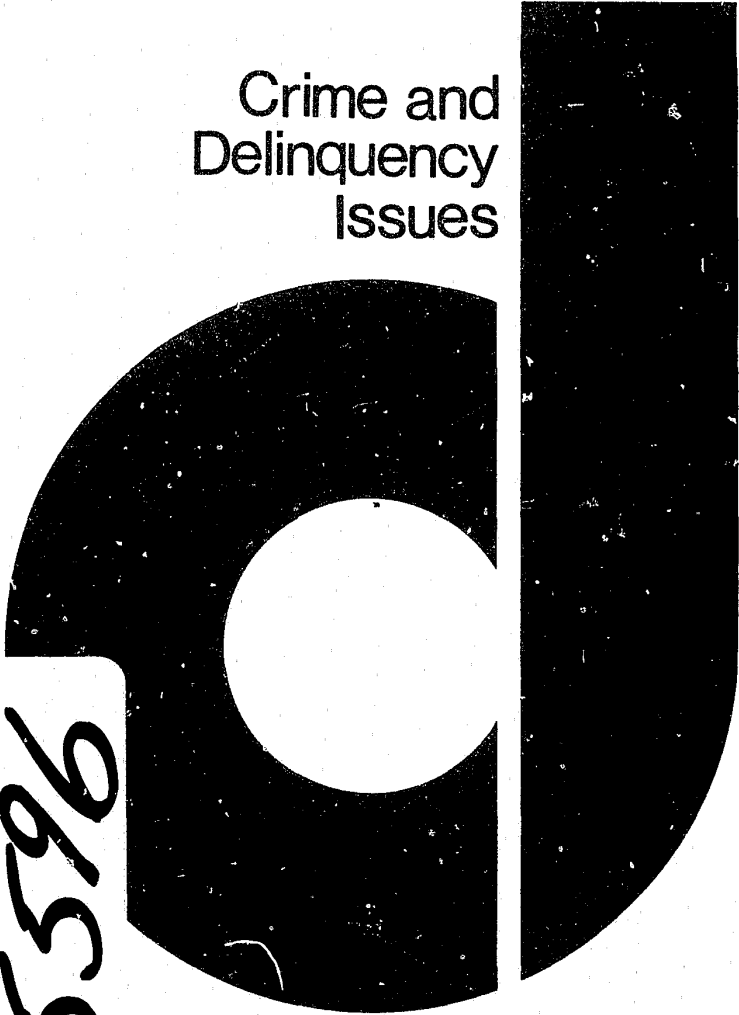


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# Decision-making in the Criminal Justice System: Reviews and Essays

Crime and  
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CHAPTER VIII

**Some Research Needs**

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IMPORTANCE OF DECISION STUDY

It has been argued in preceding chapters that available methods of diagnosis, classification, and prediction are inadequate to provide much useful guidance to law enforcement, prosecutorial, judicial, or correctional decision-making. Although much has been learned that can contribute to such guidance, it has been suggested that the decisions taken by criminal justice functionaries throughout the system rarely can be assured to be rational. A rational decision, according to Wilens (chapter V) "is that decision among those possible for the decision-maker which, in the light of the information available, maximizes the probability of the achievement of the purpose of the decision-maker in that specific and particular case."

It is clear that increased rationality in juvenile and criminal justice is likely to come about only after it has become possible to identify explicitly, with adequate operational definition, the specific objectives of each phase of the various parts of the apparatus designed to reduce, control, or at least cope with problems of delinquency and crime. A second requirement must be the identification and adequate description of the alternative decision choices at each step. The third necessity, about which we have perhaps the least evidence, is the requirement of information.

Information, as used here, does not refer to mere data, no matter how carefully collected nor how reliable. It refers, instead (as defined by Burnham in chapter VII) to those data which reduce uncertainty in the decision under consideration. This implies knowledge of the relation of the datum in question to the decision objectives; and this knowledge ordinarily is lacking.

It is far easier to conceptualize the information needs for more rational decision-making than to achieve them in practice. One reason is the present lack of consensus on objectives at each of the decision points which define the flow of persons through the process. Another

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is lack of knowledge generally of the relative effectiveness of the available alternatives—in terms of the objectives chosen—especially as these may differ for different classifications of persons. The third reason is that agency information systems with appropriate interfacing with other agencies in the system do not exist to provide the followup studies of persons which are essential to estimation of the branching probabilities of objective achievement along the tree of decisions.

Additional importance to study of criminal justice decisions must be ascribed by the fact that at each decision point considerable discretion by the decision-maker typically is permitted. Ordinarily, there is no explicitly stated policy to guide those decisions.

## DEFINITION OF DECISION OBJECTIVES

If the decision-maker is unclear on the objectives of a given decision, that person can hardly be expected to behave rationally in the sense of maximizing the probability of achieving that undefined purpose. Given a mixed set of criminal justice goals, however, including the possibly conflicting aims of punishment, deterrence, rehabilitation, or reintegration, it cannot be surprising to find absent a consensus on objectives within or among criminal justice agencies.

Much research is needed, at each of the stages of criminal justice procedures, to more explicitly define objectives with some degree of consensus and to give operational meaning to these terms of the "rational decision" equation. This may be expected to include a good deal of measurement development work, including at least more attention to the measurement of end result concepts such as offense severity, or recidivism, but also concepts related to intermediate, or earlier, stages.

The definition and improved measurement of objectives is an obvious requisite to improved effectiveness and efficiency, but these latter values still can be attained only in terms of those definitions. The meanings assigned to the more global concept, justice, could justifiably be assigned a logically higher priority for research and search for consensus, setting the stage for derivation of intermediate objectives to be sought in its pursuit. Even in the absence of such guidance, however, it seems clear that the concept, equity, may be regarded as a necessary though insufficient condition of justice. And it has been argued that the definition of objectives, with formulation of rules for decisions with respect to specific classifications of persons, provides a plausible means for increased equity in decision-making.

Examples of lack of clarity of definition and inadequate measurement of objectives abound in the juvenile and criminal justice systems. Research is needed at each of these steps to better define the decision problem, then to cull the information from the available data by assessment of the relations of data to objectives.

Among juvenile justice procedures, what are the objectives, for example, of taking a child into custody by law enforcement personnel? Setting aside the due process issues subsequently raised by (what amounted to) arrest of Gerald Gault (U.S. Supreme Court 1967) one may ask whether the objectives to the decision problem confronting the sheriff's officer in a like situation are clear, reasonably well agreed upon, and hence permit assessment of the rationality of the decision. Was the purpose to ensure Gerald's availability to the juvenile court? If so, were alternative procedures to achieve this aim available or possible of invention? Was the "arrest" or the subsequent detention required to prevent Gerald's harming of others, himself, or running away? Much attention has been given to the constitutional issues stemming from this famous case and to the potential impact of the Court's decision on the philosophy and practice of the juvenile courts. Little attention, however, has been given to the fundamental questions which must be asked when the rationality of the decisions (of the officer or the juvenile court judge) is examined. This is not to minimize the importance of the legal issues involved; but it is to assert that these may have little to do with whether or not decisions are taken in such a way as to maximize the probability of presumed objectives of those decisions.

When it comes to the postadjudication decision for placement of the young offender, we are in a situation analogous to the sentencing of adults, and no more clear on the objectives. To argue the relative merits of *parens patriae* and criminal sanctions adds little to such needed clarification. If this is incorrect, and if, for example, the philosophy of the juvenile courts leads to assignment of a greater degree of importance to rehabilitative aims, less to punitive and deterrence goals, this does not negate the importance of specifying when and how the assessment of rehabilitation is to be made. Only when such criteria are developed can we ask whether boys in Gerald Gault's circumstance ought rationally to be placed in custody, in detention, or in the training school in addition to asking whether constitutionally correct procedures are followed.

Some of the problems to be encountered in seeking improved definitions of police decision objectives are suggested by Pepinsky (chapter III). He proposes that the police and their clients will have to be equipped to define expectations for themselves, and that "the

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task before the social scientist-consultant is not that of defining the substance of policemen's expectations but of defining a procedure by which expectations can be articulated and revised by those who meet them," (p. 45). He provides a number of suggestions as how this might be done.

An example of the utility of greater clarity in decision objectives is given in the prosecution area by the project PROMIS discussed in chapter IV. Implicitly at least, the prosecutor has determined (by study of predictors of experienced prosecutor judgments) that cases to be prosecuted are those that are more serious and those that present the greater risks. Further, the inclusion of measures of these two variables in linear combination provides an explicit description of the decision policy with respect to the weighting of these determinants of the decision. In turn, the weighting of objectives may be inferred.

Whether or not the sole purpose of bail is to assure appearance of the defendant for trial is the focus of present controversy related to preventive detention. The arguments tend to focus on the traditional presumption of innocence before trial (although this is a stage in proceedings when probable cause presumably has been established) and on the lack of validity of predictions of new offenses (additional offenses?) if the person is released from confinement. Certainly, the objectives demand clarification; and in this case it may be that that must be done by the courts.

In the sentencing arena, judges are beset by conflicting societal demands for retribution, punishment, deterrence, rehabilitation, reintegration. It cannot surprise us, and we cannot blame the judges, if they are unable to clearly articulate the objectives of the individual decisions required of them. It may be possible, however, to identify the objectives which are implicit in their actions, through procedures analogous to those adopted for development of PROMIS and for the establishment of policy in the U.S. Board of Parole (discussed in chapter IV).

A further avenue toward useful research in this area, with promise of potential aid to judges in seeking a greater degree of rationality in their decisions, is suggested by Wilkins' proposal (chapter V) that it may be necessary to break down the complex process of arriving at a decision into simpler subproblems with later recombination. As his example of "Sentencing the 'Dangerous Offender'" makes clear, the objectives of sentencing may differ over various classifications of offenders.

A similar breakdown of problems into subproblems may be required in correctional placement decision-making, with similar con-

sequences for the statement of objectives. These may differ over classifications of prisoners, probationers, or parolees. Some may require secure custody and this may be, for those cases, regarded as the paramount objective. Which ones? Some may be thought to benefit, in terms of reintegration goals, from some types of probation supervision. Which ones, and what types? Some may be believed to profit, in terms of rehabilitation goals, from other placements. Which ones, what programs? Are the objectives the same for all categories of offender? Perhaps we need to differentiate not only different kinds of programs for different kinds of offenders but to articulate clearly different kinds of objectives for those combinations.

Burnham notes (chapter VII) the objective of maintenance of the internal stability of the system. How should this be taken into account in defining correctional objectives in pursuit of increased rationality in decisions? He notes also the number and frequency of decisions to which the prisoner is subject once he enters the correctional stage, particularly if a first decision results in confinement. There are many decisions to be made besides obviously critical ones such as those about parole or the length of sentence to be fixed. They include designation of the specific institution, and within that, placement in particular programs. The program goals and objectives, however, typically are notoriously lacking in definition. Rarely are these program objectives related explicitly to the more general aims of the correctional agency.

As Burnham points out further, ". . . it is correct answer feedback which is essential if decision-makers are to learn by their mistakes and so improve their performance over time" and "any system which hopes to be evaluative and self-improving must incorporate a regular correct answer feedback component." Obviously, the answer to "correct in what sense?" can be answered only in terms of the objectives of the particular decision.

Burnham's suggestion, however, that three main utilities are implicit (and sometimes explicit) in most policy statements by correctional agencies provides a starting point. The "justice" term in his formulation (p. 92) seems equivalent to or at least inclusive of the equity concept. The restraint and resocialization concepts are the familiar two possibly conflicting purposes; and Burnham notes that resocialization is usually seen as an aim to be pursued within the constraints of the first two concepts.

Explication of paroling decision objectives, like those concerning sentencing, is complicated by widely different legal structures among jurisdictions. In some instances, with indeterminate sentencing, the function is one of sentencing deferred. In other jurisdictions there is

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less discretion as to the length of sentence but still considerable leeway for placement alternatives, including placement in specific programs in confinement or on parole. The fact that objectives differ markedly among parole board jurisdictions (and sometimes within board memberships) is illustrated by the fact that some boards (or members) will assert the objective of selection of good risks for parole as an element of the decision process, while others argue that it is the poor risks who ought to be paroled. The latter assertion seems to surprise many people at least until they hear the rest of the argument: The good risks ought to be discharged; most offenders are released eventually, and both societal protection and rehabilitation may be enhanced by surveillance and provision of services to the poor risks.

Are correct parole placements to be judged by recidivism? If so, how is "recidivism" to be defined? Does the concept include parole violators returned to finish terms in prison without conviction for a new offense? If so, is the objective of such return the prevention or restraint of expected new offenses? If so, are the correct returns (parolees who would in fact commit new crimes) to be counted as successes for the board though as failures for the parolees? How would such correct answers be known? Are the incorrect returns failures for the board (since they would not in fact commit new offenses) but unhappy successes back in prison? If recidivism does *not* include parole violators returned to finish terms, are these persons to be returned to prison but counted as successes?

What are the intercorrelations among outcome criteria, which may be included as candidates for improved measures of paroling or correctional program objectives, such as work stability, freedom from drug or alcohol abuse, length of time in the community without conviction, or reduction in the seriousness value of offenses? How are such criteria to be measured? Can composite measures of objectives be defined as single scales to provide reasonable and satisfying objectives?

## INFORMATION ABOUT ALTERNATIVES

Knowledge that an alternative choice exists does not by itself provide the decision-maker with information. That is, the availability of the alternative does not reduce his uncertainty about the probable consequences of his selection; that requires knowledge of the relation of that choice to the decision objective. This is a principal reason for the need for program evaluation at each stage in the juvenile and

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criminal justice processes; and it is why such research is critical to the improvement of individual decision-making.

The general problem of program evaluation is a very large topic indeed, with many complexities. Generally, however, either experimental or quasi-experimental statistical designs are used, with the aim of determining how much if any of the variance in outcomes (i.e., consequences related to objectives) may be attributed reasonably to the program under study. This is the kind of information needed by the decision-maker; and each alternative available must be assessed in this way.

This circumstance exists at each stage of the system. The juvenile judge needs to know, from the evidence after followup study, whether detention vs. foster home placement makes any difference in terms of later delinquency. The judge needs to know empirically whether placement in the training school changes the probabilities of future delinquency, compared with other alternatives. The probation officer needs to know whether persons placed in treatment category A more likely do better or worse than do persons placed in category B. The judge requires knowledge of the different consequences, if any, of fines, probation, suspended sentences, combinations of these, or imprisonment. The classification committee in the prison reception-guidance center needs to be aware of the probable consequences of their placements.

These examples, of course, only hint at the complexity of the general problem. Some consequences of this complexity are as follows:

1. Agency information systems are required with sufficient sophistication to provide program evaluation feedback routinely.
2. Since it is not feasible to provide such feedback from experimental designs for all treatments of concern, the system must provide for statistical control of outcome-related nontreatment variables.
3. The interrelated nature of the criminal justice system is such that the necessary feedback can be obtained only by an appropriate interfacing of the inter-agency components.

In development of such systems, the interrelated nature of the concepts, diagnosis, classification, and prediction, must be recognized. Diagnostic data must be assessed to determine its utility for classifications demonstrably relevant to treatment placement. The criterion of relevancy is the proportion of variance in outcomes which is associated with treatment for specific groups of persons. Prediction measures must be developed and tested to provide the means for statistical control of nuisance variables in the feedback reporting system.



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Such a system would have great potential for both scientific and practical contributions. It could provide a general framework for adding to knowledge about the relative effectiveness of programs in achieving specified objectives for various classifications of offenders. At the same time, the decision-makers could be advised routinely of probable outcomes to their alternative decision choices. It could provide also a basis for feedback from parts of the system which deal with offenders at a later phase of the process to those on stage earlier in the drama. The police need information on the results of their decisions from prosecutors, judges, and corrections. The judge needs feedback on results of sentencing from the probation, prison, and parole agencies.

These arguments are related to issues of effectiveness and efficiency; but what of justice concerns? Such a system cannot define justice, but it can provide information necessary for addressing concerns at least of equity. Throughout the justice system, the data should be available to permit fairness comparisons for various classifications of offenders.

Given such a system, the needs for study of the decision-making process as suggested by Wilkins in chapter V would be no less significant. Such study can contribute not only to our understanding of perceived objectives by decision-makers and their perceived information needs, but also to our understanding of how information—to be most useful—is best arranged to assist them. These investigations should help define how decision-makers go about their tasks and indicate their preferences not only for different kinds of information but also different methods of presentation. This may be especially pertinent if decision choices are associated not only with the quality of the information but also with the mode of presentation. If decision choices are associated also with differing ways in which the information is processed by decision-makers, then types of decision-makers may have to be taken into account in systematic attempts to aid them.

## DECISION STUDY AND RELATED RESEARCH

It has been argued in this monograph that a study, of decisions at each step in the juvenile and criminal justice process provides a useful starting point for assessment of the rationality of that system. A focus on decisions may provide at the same time opportunities for increasing that rationality, especially if we can contrive to present demonstrably relevant information to decision-makers which enables

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them to enhance the probabilities of achieving agreed-upon objectives.

An analysis of typical decision problems encountered by criminal justice decision-makers emphasizes the needs for improved definition and measurement of objectives, for more complete specification of alternatives, for evidence not now available on the consequences of differing methods for handling offenders or providing treatment to them, and for building further on progress made toward useful methods for classifying offenders. A study of decisions aimed at assessment of their rationality clearly suggests needs for the development of information systems which are equipped to focus on program evaluations and to provide routine feedback to decision-makers. Such systems, to be effective, apparently will have to take account of decision-maker styles, or cognitive processes.

The problem of increasing the rationality of decision-making is thus extremely complex. Attention must be given to seemingly diverse but actually closely-related areas of study: problems of classification and prediction, treatment effectiveness, agency information systems, and decision-making processes. The studies discussed in this monograph represent steps toward solutions to the general problem, but much remains to be learned if we are to claim an increased rationality in these decisions. When we can justify such a claim we may claim also a contribution to effectiveness and fairness in the criminal justice system.

## REFERENCE

U.S. Supreme Court. *In re Gault*, 1967.

**END**