

Ceremonial Justice: Crime and Punishment in a Loosely Coupled System*

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ABSTRACT

Currently dominant Durkheimian and Marxian models of criminal justice assume a tight fit between structure and function in the criminal courts. This paper offers an alternative conception of crime and punishment as a loosely coupled organizational system. Our discussion focuses on the historical shift from a classical to a positivist philosophy of sentencing and the emerging profession of probation as a symbol of this transition. However, our empirical analysis of sentencing decisions in felony cases reveals that the influence of probation officers in the presentencing process is subordinate to that of prosecutors. This finding suggests that the involvement of probation officers in sentencing decisions is often ceremonial, and we suggest that the concept of "loose coupling" from organizational theory provides a means of understanding how this finding reflects the dominant legitimation and efficiency needs of contemporary criminal courts.

Conceptions of justice change, and with them the structures of doing justice. The most significant conceptual change of this century in the realm of criminal justice is a shift from the classical to the positivist view of crime and punishment. Put simply, the positivist position is that punishments must fit the individual criminal rather than the crime. Thus, where the classical theorists—such as Beccaria, Bentham, and Romilly—urged a close fit between infraction and reaction, the positivists—Lombroso, Ferri, and Garofalo—were more anxious to match the sanction to its recipient (Mannheim; Vold). This shift found encouragement in the American political environment at the turn of the century.

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It was during the Progressive Era that the themes of positivism were reflected in North American crime and delinquency legislation (Hagan and Leon; Platt). First in juvenile court laws, and then in adult probation statutes, the Progressives created legal structures to match their new conceptions of the delinquent and the criminal. The Progressive assumption, quite simply, was that "if the laws are the right laws, and if they can be enforced by the right men. . . . everything would be better" (Hofstadter, 202). The "right laws" in this case were those allowing attention to the needs of individual offenders (see Matza).

The most conspicuous structural manifestations of the new individualized or socialized justice (Pound) were the grafting of juvenile and adult probation departments onto existing criminal justice systems, and the resulting involvement of probation officers in the presentencing process. Following Meyer and Rowan, it is our thesis that the attachment of probation subsystems to American courts had more to do with the making of legal myths than with the restructuring of the way decisions actually are made. In other words, the source of this change was more ideological than material, resulting in ritualized court practices characterized more by ceremony than substance. Hence, we contend that an understanding of the historical and organizational relationship between myth and ceremony in the criminal courts is essential to the development of an accurate and comprehensive theory of court operations.

Old and New Theories of Crime and Punishment

The currently dominant theories of crime and punishment assume a tight fit between structure and function in the criminal courts. For example, the Marxian class conflict model posits modern capitalism as an economic infrastructure that requires a coercive system of criminal justice to preserve the domination of one class by another (Chambliss; Chambliss and Seidman; Quinney, a,b). The assumption of this perspective is that the courts are structured such that class-linked, extra-legal offender characteristics exercise a strong influence on decision-making. Alternatively, the Durkheimian consensus model (Durkheim, a,b; see also Bohannan; Fuller) posits a close correspondence between the widely shared values of a society and the criminal justice system that both expresses and preserves this system of values through the evenhanded enforcement of laws. The assumption of this perspective is that legally defined offense characteristics exercise a strong influence on decision-making. In other words, the Marxian and Durkheimian models *disagree* on the factors assumed to influence legal decision-making, but they agree that this decision-making is structured in a way that one or the other set of factors exercises a profound influence.

Yet, the evidence commonly cited to affirm or deny the Marxian conflict and Durkheimian consensus positions is curiously ambiguous (see Hagan, a). Those studies which reveal the influence of social class position in sentencing decisions (Arnold; Bullock; Forslund; Judson et al.; Swigert and Farrell; Thomas and Cage; Thornberry) typically find that its influence is weak. At the same time, those studies which question the influence of social class in sentencing decisions (Burke and Turk; Chiricos and Waldo; Green, a,b; Terry) rarely find evidence that legal or court-related variables exercise a profound impact on sentence dispositions. The single finding that is consistent throughout this empirical literature is that, whether legal-consensus or class conflict factors are the focus of the analysis, the unexplained variance in sentencing looms large. This observation holds even in the case where the two types of variables are combined (e.g., Hogarth).

It is our contention that these findings may be symptomatic of what some organizational theorists have called a "loosely coupled system." Leaving aside temporarily the precise meaning attached to this concept, we note that there is some precedent for a conception of looseness in the American criminal justice system. Perhaps most significantly, Reiss speaks of American criminal justice as a "loosely articulated hierarchy of subsystems (114-20)." Similarly, Eisenstein and Jacob note that even "the judge does not rule or govern, at most, he manages, and often he is managed by others" (37). Reiss goes on to suggest that "the major means of control among the subsystems is *internal* to each" with the significant consequence that "each subsystem creates its own system of justice." If true, these observations have important theoretical and methodological implications for the direction of criminal justice research.

CRIME AND PUNISHMENT AS A LOOSELY COUPLED SYSTEM

We begin with a connotative definition. Loose coupling is meant to evoke the image of entities (e.g., court subsystems) which are responsive to one another, while still maintaining independent identities and some evidence of physical or logical separateness (Weick). Meyer and Rowan add to this conception an enumeration of characteristics associated with loosely coupled formal organizations—structural elements are only loosely linked to one another and to activities, rules are often violated, decisions often go unimplemented, or if implemented have uncertain consequences, techniques are often of uncertain efficacy, and evaluation and inspection systems are often subverted or rendered so vague as to provide little coordination. We argue here that many of these characteristics are manifest in the criminal justice system, and furthermore that the consequences of this loose organizational coupling can be recognized at the level of individual sentencing decisions. At this level of analysis, Glassman suggests that entities may be

considered loosely coupled to the extent that (a) they share few variables in common, (b) the variables shared in common differ substantially in their degree of influence, or (c) the variables shared in common are weak in comparison to other variables considered. The concept of loose coupling, therefore, has implications for analysis of organizational processes at both micro- and macro-levels.

A salient advantage of loosely coupled systems is that they can easily take on new appendages demanded by changes in the external environment, while at the same time selectively ignoring the activities of these new appendages. The importance of this capability, in Weberian terms, is that *the organization is able to maintain and often increase its institutional legitimacy without dramatically changing its day-to-day practices*. The more such organizations change, the more, for many practical purposes, they remain the same. For purposes of our discussion, the result may be interpreted as a propagation of myth and ceremony in the administration of criminal justice.

MYTH, CEREMONY, AND INDIVIDUALIZED JUSTICE

As we noted at the outset, the notion of individualized justice emerged in an era of social reform, as part of broader efforts to humanize the bureaucratic structures of post-industrial society. The standards of individualized justice, including most notably attempts to attend to the *social needs of individuals*, represent what Meyer and Rowan call "institutionalized rules." They suggest that as legitimated institutional rules arise in given domains of work activity (e.g., the criminal courts), formal organizations form and expand by incorporating these rules as structural elements. Correspondingly, we have indicated that as the conception of individualized justice grew in popularity in this century, there emerged an organized probation movement (see Chute; Timascheff) whose principal goal was legislation recognizing a new profession of probation workers, functioning in probation departments within the juvenile and criminal courts. This new profession was to operationalize the institutional rules of individualized justice through the preparation of often lengthy presentence reports describing the offender's social and legal history and containing the probation officer's individualized recommendation for sentence (see Hagan, b).

The willingness of the courts to take on the profession of probation work as a subsystem may, of course, be explained in terms of the legitimization needs of the court. However, Meyer and Rowan note that cultural legitimacy and organizational efficiency can be inversely related. Thus, "specific contexts highlight the inadequacies of the prescriptions of generalized myths, and inconsistent structural elements conflict over jurisdictional rights" (356). It is in these contexts that systemic decoupling is

most likely to occur, with the consequence that conflicts may be avoided and legitimacy maintained. In other words, decoupling can preserve myths and prevent demystification.

The institutional rule of individualized justice requires a skillful mixture of coupling and decoupling for its preservation. On the one hand, Matza notes, and our review of the sentencing literature confirms, that "the principle of individualized justice results in a frame of reference that is so large, so all-inclusive, that any relation between the criteria of judgment and the disposition remains obscure" (115). The organizational dilemma, then, centers on the basis for reaching judgment. Individualized justice presumably demands attention to individual needs—but, which needs? How known? And, by whom discerned? Matza argues that there is only one possible answer to these questions, based on the "professional training, experience, and judgment" of court agents, whereby "any system with an extremely wide frame of reference in which the items included . . . are neither specifically enumerated nor weighted must come to rely heavily on professional judgment" (16). Hence, the organizational significance of the presentence report and recommendation of the probation officer for arriving at sentencing decisions. Yet reliance on the professional judgments of probation officers is a workable solution to the dispositional dilemmas of individualized justice only insofar as these recommendations do not seriously impede the efficiency needs of the court organization. It is only under these conditions that the organization can function as a *tightly coupled system*. Alternatively, a problem arises when efficiency needs require outcomes different from those recommended by probation officers. It is under these circumstances that *decoupling* becomes a means of ceremonially preserving the myth of individualization.

The criminal courts have responded to the potential disjunction between individualization and efficiency by expanding the decision-making network. Recommendations are requested not only from the agent of individualization—the probation officer—but from the agent of the state—the prosecutor—as well. The prosecutor, of course, represents a set of interests antithetical to individualization, being concerned instead with the efficient processing of large numbers of cases. The significance of including the prosecutor in the making of sentencing decisions is that when efficiency needs (e.g., rewarding guilty pleas and punishing resource-taxing claims of innocence) become salient, the prosecutor's recommendation can be followed and the probation officer's ignored. In terms of its ceremonial effects, this strategy depends on procedures followed in almost all court systems: that the prosecutor's recommendation for sentence is presented orally in court, while the probation officer's recommendation is submitted in writing as part of the presentence report undisclosed to the offender or to members of the public (see Zastrow). The failure to disclose the probation officer's recommendation can conceal the fact that an elaborate pre-

sentencing process aimed at individualization has effectively been ignored. This process is mystified still further in some jurisdictions by concluding the presentence report with an "evaluation" in place of the more explicit recommendation, and in others no report is requested at all. In other words, there are various means of loosening the coupling between the judiciary and the probation subsystem while still maintaining the general myth and ceremony of individualization which is fundamental to probation work.

The rest of this paper pursues these themes through a quantitative analysis of sentencing in one criminal court jurisdiction, King County (Seattle), Washington, in 1973. We first develop a model which incorporates theoretically relevant sources of variation in the disposition of sentences and provides an organizational view of the sentencing process. Then, after describing our data and methods, we present an analysis and interpretation of this model using structural equation models.

Model, Method and Data

The model we will examine here provides an organizational perspective on what social psychologists often refer to as a labeling process. The label involved, of course, is the disposition imposed on the person convicted. Our population consists of the 1,832 adult felony convictions in the King County Superior Court in 1973 (Bayley), and our analyses are based on a systematic random sample of 504 cases obtained from the case files of the court. Our model, represented in Figure 1, incorporates six classes of variables—offender-, offense-, and court-related characteristics, recommendations made to the judge, judge differences in the propensity for using particular sentences, and finally, the disposition ultimately imposed.

The model developed here conceptualizes sentencing as a *process*. This ingredient allows us not only to specify the influences of factors associated with differing perspectives as they occur temporally, but also to articulate complex linkages of variables reflecting different theoretical orientations as they impinge on one another. For example, although the sentencing literature (reviewed briefly above) indicates that the effects of offender characteristics, e.g., race, net of offense-related factors (the so-called legal factors) are not overwhelmingly large in magnitude, it is still possible that these variables indirectly influence sentencing decisions through offense- and court-related factors. In viewing the effects of these variables in processual terms we are able to highlight the organizationally relevant ways in which they are connected.

Reading Figure 1 from left to right, causal consideration is given first to *offender* characteristics emphasized in the Marxian conflict perspective. Our data provide measures of a number of offender characteristics—age,

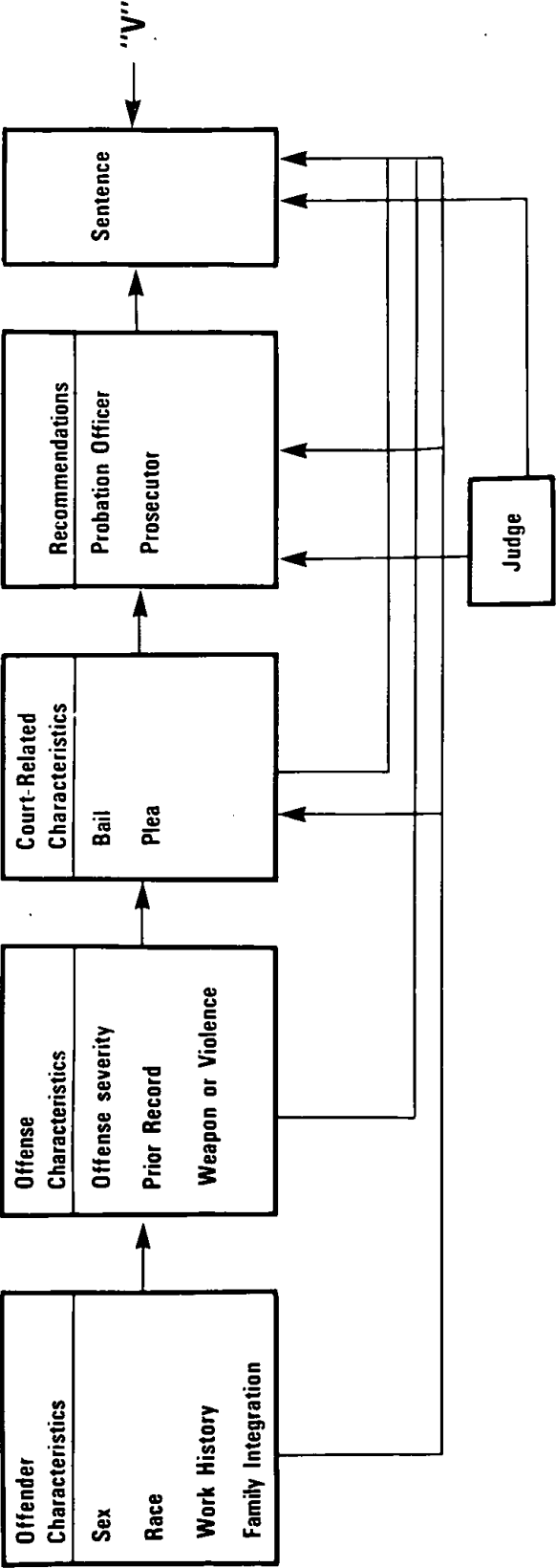


Figure 1. DETERMINANTS OF SENTENCING

education, occupation, marital status, race, sex, work history, and family integration. The first four of these variables were shown to be of little consequence for sentencing in a preliminary analysis using these data (Hewitt). The remaining four offender characteristics are included in the analysis presented here. Each of these variables is coded in binary form with the presumed disadvantaged level of the variable assigned the higher value (for example, for race, white = 0 and nonwhite = 1). The work history variable reflects stable vs. unstable employment, where an individual's work history is considered unstable if there were two or more periods of unemployment or one period of six or more months duration during the two years prior to conviction. Family integration indicates whether the defendant had children for whom he or she was responsible, had ties with family of origin, or was married and living with a spouse.

Second in the causal ordering depicted in Figure 1 is the set of *offense* characteristics emphasized in the Durkheimian consensus perspective. The consensus model indicates that "the application of sanctions reflects threats to the most basic values of the society" (McDonald). One such value strongly condemns the use of violence, and so the use of a weapon or violence in committing the alleged offense is included as a variable in our model. This variable is measured as a binary variable here, the high value assigned to cases where a weapon or violence was used. In addition, the severity of the offense reflects basic social values, and we have incorporated this variable in the model developed here. We use a ranking of the severity of the primary offense, with offenses grouped into eight ordered categories.¹ Finally, the prior record of the convicted felon is incorporated in the model as a variable reflecting the offender's past threat to the fundamental values of society. This variable is measured as a simple count of the actual number of prior convictions.

The organizational perspective introduced in this paper requires the inclusion of several *court-related* variables, seldom considered in research on the determinants of sentencing (but see Bernstein et al.). This set of factors is temporally subsequent to offender- and offense-related factors, but antecedent to the recommendation variables shown in Figure 1. The offender's initial plea is included in the model on the expectation that the efficiency needs of the organization require a penalty for those defendants who insist on the expense of a trial. This variable is measured as a binary variable, assigning a high value to those cases pleading guilty. The pretrial release status (or bail status) of the offender is included in the model on the expectation that early professional judgment regarding the offender affects later organizational decisions. In this analysis release status is measured as a binary variable, with a high value assigned to cases released prior to the trial. Although a variety of legal and extra-legal factors are alleged to influence decisions about bail (Landes), the decision itself is not intended to influence the ultimate determination of sentence. A number of discus-

sions (e.g., Matza) suggest, however, that expressions of professional judgment, wherever they occur in the process, are organizationally useful in the sentencing decision.

Our previous discussion emphasized the importance of the probation officer as the professional agent of individualization and the prosecutor as the professional agent of the state. In terms of our conceptual model the *recommendations* of these agents are hypothesized to be significant in the eventual disposition of sentence (see Figure 1). The magnitudes and relative magnitudes of these influences, as well as the basis for the exercise of influence, indicate organizational properties of the criminal court system. We have argued that the system of justice involves a loosely coupled set of subsystems—the judge, the prosecutor and the probation department—and have maintained that, as a historical response to the needs of the individual offender, the role of the probation officer is largely ceremonial, preserving the myth of individualization in the court process. The probation officer is organizationally the most active participant in the sentencing process, engaged in extensive presentence investigations and the preparation of elaborate presentence reports, but we expect that this input is frequently muted. From an organizational viewpoint this involves a *decoupling* of one subsystem, the probation department, from the ultimate decision, either by ignoring the officer's evaluation/recommendation, by weighing the recommendation lightly, or by not requesting a recommendation.

Previous research into the role of the probation officer (Carter and Wilkins; Hagan, a,b) has considered probation officer influences in sentencing only in samples where presentence reports have been requested. The present data, therefore, allow an assessment of the importance of the probation officer in a broader context. Also, to the best of our knowledge, no previous research has measured the prosecutor's recommendation for sentence and assessed its relative impact. The net result of this omission is to underestimate the influence of the prosecutor and thereby to help perpetuate the myth of individualization. Our analysis seeks to take into account the extent to which these two agents—the prosecutor and the probation officer—are related.

The final source of variation depicted in the model in Figure 1, the *judge*, allows another means of pursuing the issue of coupling. It may be recalled that one definition of loose coupling requires some evidence of independence or separateness among subsystems (Weick). Our model pursues this issue in two ways. First, we consider judge differences (this is the variable labeled "judge" in Figure 1). It is frequently argued (cf. Carter and Wilkins) that probation officers make their recommendations to judges in a syncophantic manner, anticipating the predispositions of judges and recommending sentences accordingly. In order to examine this aspect of what is essentially the hypothesis of tight coupling, we developed a mea-

sure of the differential predisposition of each judge to award a particular sentence. With the forbearance of the reader we will briefly describe the methods we used. We first coded each of twenty judges in our sample as separate binary or "dummy" variables.² Next, we regressed our sentence outcomes (described below) individually on this set of judge dummies and the offender-, offense- and court-related characteristics (but not the recommendation variables). The result of these regressions provided an effect for each judge which is interpretable as the likelihood of assigning a particular sentence, *independent of offender, offense-, and court-related factors associated with a particular offender*. This effect was then assigned to the judge as a measure of predisposition to sentence in a particular way, independent of the characteristics of the case (offender, offense, and court). This variable is included in our model as a potential influence on the recommendations of the prosecutor and the probation officer, and we may thereby test the hypothesized influence of the judge on these recommendations.³

The second manner by which we pursue the issue of system coupling insofar as the judge is concerned involves the interpretation of the residual in our analysis. By definition, the residual (labeled "V" in Figure 1) is independent of all measured variables which have been included in the model—offender-, offense-, and court-related factors, judge differences and the probation and prosecution recommendations—and as such it may be interpreted as the individual power of the judge to affect the disposition of sentence. We term this the "residual power of the judge." In a tightly coupled criminal justice system, the judge acts in concert with other subsystems (the probation and prosecution subsystems), and one would expect there to be relatively minor effects of the judge, i.e., little residual power. By contrast, in a less cohesive system—a loosely coupled system—the size of the residual may be large. A relatively large residual (i.e., a low coefficient of determination [R^2]), then, provides evidence of a loosely coupled system.

Finally, we use the severity of sentencing as the dependent variable in our model. Five categories of sentence were possible in the court system we study: (i) deferred sentence, (ii) suspended sentence, (iii) probation (no jail time), (iv) probation with jail time, (v) incarceration. These categories are roughly ordered from least to most severe. There is no evidence, however, that they represent equidistant levels of a sentence severity variable, and there is little justification for treating them as such (although this is a common practice in sentencing research). The deferred sentence, used in slightly over one-half of the cases, is clearly the least severe of the five categories. Persons given this sentence must satisfy a brief probationary period, but after these conditions are met the judge can erase all record of conviction. All other categories represent more severe forms of treatment. Given the even distribution of cases over this category vs. all others (.54 vs. .46), we decided to use a binary variable representing this distinction,

where cases receiving a deferred sentence were assigned a high value. At the opposite pole of the severity continuum is the incarceration sentence. This sentence differs from probation with jail time in both the length of confinement (incarceration sentences are for one or more years; jail time is less than one year) and the nature of the institutional confinement (incarceration involves confinement in the state prison or reformatory; jail time is served in the county jail). As an adjunct to the "deferred" category we performed similar analyses using a binary variable based on the incarceration vs. all others distinction, where persons given an incarceration sentence were assigned a high value.

Our use of the extreme categories of sentencing in parallel analyses allows us to approximate a concept of sentence severity. If there is a single dimension of severity, we should expect to find similar effects of opposite signs for all our determinants of sentencing.⁴ The use of binary dependent variables allows us to interpret regression coefficients for predictor variables as expected increments or decrements in the probability of receiving a particular sentence (for example, a deferred sentence).⁵

Our analysis makes use of structural equation models estimated by ordinary least squares. We estimate several sets of reduced-form equations for the sentence outcomes, beginning with the offender-related characteristics and adding groups of variables in sequence following the causal ordering portrayed in Figure 1. For example, we first estimate a regression equation for "deferred" sentence including the sex, race, work history and family integration variables, then we estimate an equation including these variables plus the offense characteristics, then one including offender, offense and court-related characteristics, and so on until all determinants of sentencing are included. This approach allows us to decompose the effects of all variables in the analysis into their direct and indirect effects (see Alwin and Hauser). This method permits us to trace the means by which a given variable exercises its effect, as well as an assessment of its relative importance compared to other variables. In addition, we examine in more detail the relative influences of the offender-, offense-, and court-related variables and judge differences on the recommendation variables. Although these may be inferred from the preceding analysis, this separate analysis will speak more directly to the important aspect of the loose coupling hypothesis, that subsystems which are loosely coupled respond to different influences (Glassman). To the extent, then, that prosecutors' and probation officers' recommendations depend on similar aspects of the case, the system may be viewed as tightly coupled; but, to the extent that they depend on different factors, the system can be viewed as loosely coupled.

Findings

The descriptive univariate statistics for the variables in our analysis are given in Table 1. Tables 2 and 3 present the reduced-form and structural coefficients (in both metric and standard form) for the two codings of the dependent variable. The first column of each table presents the regression of sentence on the offender characteristics viewed as important by conflict theorists—sex, race, work history, and family integration. The second column then adds the offense-related characteristics emphasized by the consensus perspective—the severity of the offense, the use of weapon or violence in the commission of the offense, and the offender's prior record. The third through fifth columns then add the variables we have associated with the organizational view—first, the offender's plea and bail status; then (in the fourth column) the judge differences variable; and finally (in the fifth column) we add the prosecutor's and probation officer's recommendations. The coefficient associated with a variable in the first equation in which it appears is the variable's total effect. The differences in the coefficients in any two adjacent columns thereafter represent the indirect effects of variables in the prior column by way of variables added in the subsequent column. Finally, coefficients in column five are the direct effects of the variables (see Alwin and Hauser).

Our findings indicate that being female, white, having a stable work history and family ties increase the likelihood of a deferred sentence and reduce the likelihood of an incarceration sentence. All of these effects are judged to be statistically significant ($p < .05$). These effects are uniformly reduced when the variables suggested by the consensus perspective—offense severity, prior record and use of a weapon and violence—are introduced into the equation (column 2). For example, the effects of race are reduced by 63 and 51 percent in Tables 2 and 3 respectively, below statistical significance. This indicates that the white vs. nonwhite distinction affects the sentence a person receives because nonwhites are more likely to be charged with more severe offenses, more likely to have used violence in the offense, and more likely to have had a prior record of convictions; and these factors all influence the eventual sentence (especially prior record). In other words, the race effect is largely indirect. A similar observation may be made regarding the effects of work history and to a lesser extent sex and family integration. The effects of sex on the deferred and incarceration sentences are reduced by 40 and 80 percent respectively by removing their indirect effects through the offense-related variables. In the case of the deferred sentence a statistically significant effect remains, and it is possible for us to state that, independent of the offense characteristics, being female increases one's likelihood of receiving a deferred sentence by 15 percent. It is also worth noting that being in a stable family

Table 1. DESCRIPTIVE STATISTIC FOR VARIABLES IN ANALYSIS—CONVICTED FELONY CASES, KING COUNTY, WASHINGTON, 1973 (N = 504)

| Variable | \bar{X} | S |
|--|-----------|-------|
| Sex | .794 | .405 |
| Race | .675 | .469 |
| Work | .287 | .453 |
| Family | .724 | .447 |
| Severity of offense | 3.355 | 2.333 |
| Weapon or violence | .153 | .360 |
| Prior record | .352 | .478 |
| Plea | .879 | .326 |
| Bail | .762 | .426 |
| Judge-deferred sentence | .369 | .075 |
| Judge-incarceration sentence | .466 | .053 |
| Probation recommendation-deferred sentence | .425 | .495 |
| Probation recommendation-incarceration sentence | .095 | .294 |
| Prosecutor recommendation-deferred sentence | .377 | .485 |
| Prosecutor recommendation-incarceration sentence | .214 | .411 |
| Sentence-deferred | .538 | .499 |
| Sentence-incarceration | .149 | .356 |

increases the likelihood of a deferred sentence by 12 percent, net of offense factors, and decreases the likelihood of incarceration by 10 percent.

The offense-related variables all affect the sentencing outcome in some way, controlling for offender characteristics. The most sizeable effect is that associated with prior record—the likelihood of receiving an incarceration is 14 percent greater for persons with one prior conviction, and the likelihood of a deferred sentence for such persons is 43 percent less than persons with no prior record. The use of a weapon or violence increases the likelihood of an incarceration sentence by 19 percent and decreases the likelihood of a deferred sentence by 13 percent. The severity of the primary offense charged is much less important than the prior offense variable for the deferred sentence, but about equal in its effect on incarceration. Offenders whose offenses differ by as much as one standard deviation on our offense severity scale (2.3) differ by only 4.5 and 6.5 in their resulting likelihoods of receiving deferred and incarceration sentences respectively.

Our findings up to this point provide some evidence for both the Marxian conflict emphasis on offender characteristics and the Durkheimian consensus emphasis on offense-related factors, although the latter appear to be somewhat more important. More significantly, our results illustrate the interdependence of both sets of factors in affecting sentencing. Specifically, we note that the offender characteristics measured here depend on

Table 2. REDUCED-FORM AND STRUCTURAL EQUATIONS FOR DEFERRED SENTENCES—CONVICTED FELONY CASES, KING COUNTY, WASHINGTON, 1973 ($N = 504$)

| | (1) | (2) | (3) | (4) | (5) |
|--------------------------------|--------|--------|--------|--------|--------|
| A. <u>Metric</u> | | | | | |
| Sex | -.258* | -.153* | -.134* | -.135* | -.082* |
| Race | .103* | .038 | .023 | .025 | .047 |
| Work | .166* | .064 | .019 | .027 | .001 |
| Family | .189* | .124* | .082* | .071 | .054 |
| Offense | | -.019 | -.012 | -.012 | -.013 |
| Weapon | | -.134* | -.045 | -.050 | .044 |
| Record | | -.426* | -.360* | -.354* | -.172* |
| Plea | | | .151* | .164* | .073 |
| Bail | | | .303* | .298* | .184* |
| Judge | | | | .998* | .956* |
| Prob. rec. | | | | | .153* |
| Pros. rec. | | | | | .416* |
| Intercept | .489 | .758 | .372 | .759 | -.150 |
| B. <u>Standard Form</u> | | | | | |
| Sex | -.209* | -.124* | -.108* | -.109* | -.067* |
| Race | .097* | .036 | .022 | .023 | .045 |
| Work | .151* | .058 | .018 | .025 | .001 |
| Family | .170* | .111* | .074* | .064 | .049 |
| Offense | | -.087 | -.056 | -.055 | -.061 |
| Weapon | | -.097* | -.032 | -.036 | .032 |
| Record | | -.408* | -.345* | -.339* | -.166* |
| Plea | | | .099* | .107* | .048 |
| Bail | | | .259* | .254* | .158* |
| Judge | | | | .150* | .145* |
| Prob. rec. | | | | | .152* |
| Pros. rec. | | | | | .404* |
| R^2 | .125 | .304 | .365 | .387 | .537 |

*Significant at .05 level.

the offense-related factors to transmit their effects, or stated in another way, variation in the offense-related factors depends to some extent on the offender characteristics. We must also note, however, that while both perspectives suggest important variables, the combination of the two sets of variables does not account for a majority of the variation in sentence severity—the R^2 's, are .304 and .226.

Columns 3 through 5 of Table 2 and 3 bring us to a consideration of the variables we have associated with an organizational view of sentencing.

Table 3. REDUCED-FORM AND STRUCTURAL EQUATIONS FOR INCARCERATION SENTENCES—
CONVICTED FELONY CASES, KING COUNTY, WASHINGTON, 1973 (N = 504)

| | (1) | (2) | (3) | (4) | (5) |
|-------------------------|--------|--------|--------|--------|--------|
| A. Metric | | | | | |
| Sex | .091* | .018 | .001 | -.006 | -.025 |
| Race | -.094* | -.046 | -.029 | -.034 | -.006 |
| Work | -.115* | -.064* | -.026 | -.032 | -.034 |
| Family | -.126* | -.095* | -.063* | -.075* | -.062* |
| Offense | | .028* | .022* | .022* | .021* |
| Weapon | | .190* | .109* | .107* | -.008 |
| Record | | .138* | .078* | .076* | .019 |
| Plea | | | -.189* | -.169* | -.069* |
| Bail | | | -.253* | -.253* | -.114* |
| Judge | | | | 1.002* | .803* |
| Prob. rec. | | | | | .259* |
| Pros. rec. | | | | | .377* |
| Intercept | .265 | .082 | .462 | -.001 | -.180 |
| B. Standard Form | | | | | |
| Sex | .103* | .020 | .001 | -.007 | -.029 |
| Race | -.124* | -.061 | -.039 | -.045 | -.008 |
| Work | -.146* | -.081* | -.033 | -.041 | -.043 |
| Family | -.158* | -.119* | -.079* | -.094* | -.078* |
| Offense | | .182* | .143* | .144* | .139* |
| Weapon | | .192* | .110* | .108* | -.009 |
| Record | | .185* | .105* | .101* | .025 |
| Plea | | | -.173* | -.155* | -.063* |
| Bail | | | -.304* | -.303* | -.137* |
| Judge | | | | .149* | .119* |
| Prob. rec. | | | | | .213* |
| Pros. rec. | | | | | .435* |
| R ² | .089 | .226 | .327 | .348 | .549 |

Taking first the court-related factors (see column 3), it is clear that plea and bail have notable effects on sentence severity. Holding the offender and offense characteristics constant, a guilty plea increases the likelihood of a deferred sentence by 15 percent and decreases the likelihood of an incarceration sentence by 19 percent. Similarly, a released status increases the likelihood of a deferred sentence by 30 percent and reduces the chances of incarceration by 25 percent. The court-related factors mediate some of the influence of the prior variables. Of particular note is the fact that about two-thirds of the effect of the use of a weapon or violence on deferred sentence

is mediated by plea and bail, while slightly less than one-half of the effect on incarceration sentence is so mediated. About 16 percent of the effect of prior record on deferred sentence and about 45 percent of its effect on incarceration is mediated by plea and bail. While this does not provide a complete interpretation of the effects mediated by these court-related factors, we have summarized the important indirect effects. We should reiterate that ideally plea and bail status should have no impact on sentencing. The fact that they have moderately strong effects not only assists us in the interpretation of the effects of prior variables, but underscores the importance of organizational factors for sentencing as well.

In column 4 of Tables 2 and 3 we have introduced the variable which measures the judge's predisposition to sentence in a particular way. The metric coefficients for this variable in these tables are not interpretable, because of the way we have constructed the variable. The standardized coefficients are interpretable as the square roots of the proportions of variance in the sentence outcome which lie between judges after the offender, offense and court characteristics have been controlled. Squaring the standardized coefficients gives the proportions of variance attributable to judge differences, about 2 percent in either case. More importantly, however, we wish to examine the extent to which the recommendations of prosecutors and probation officers depend on the known predispositions of judges to sentence in particular ways. By comparing the judge effects which are recorded in columns 4 and 5 of the tables we are provided the first evidence of loose coupling among the court subsystems. The very small reductions in the coefficients associated with the judge variable with the introduction of the two recommendation variables indicates that judge differences can account for very little of the variation in the recommendations they receive from either the probation officer or the prosecutor. This finding is in sharp contrast to the frequent suggestion that such recommendations are simply a formality. This suggestion is also contradicted by the effects of the probation officer and the prosecutor recommendations recorded in column 5 of the tables. With all other variables held constant, a positive recommendation of a deferred sentence by the prosecutor increases the likelihood of such a sentence by 42 percent, while a prosecutor's recommendation of an incarceration sentence increases the likelihood of incarceration by nearly 38 percent. The comparable figures for probation officers' recommendations are 15 and 26 percent. It is clear from this that the prosecution recommendation is more important than the probation department's recommendation. Thus, in spite of the attention given by the courts to the philosophy of individualization at the institutional level, and despite the introduction of this philosophy into the court through the profession of probation, it remains that the principal agent of the state's interest in mass processing, the prosecutor, exercises the dominant influence on sentencing. We interpret the relative importance of these two factors in terms of the myth and

ceremony surrounding the notion of individualization and the participation of probation workers in the presentencing process.

By incorporating the variables suggested by the organizational perspective into the equations for sentencing we have substantially improved the explained variance— R^2 's of .537 and .549 for deferred and incarceration sentences respectively. The relative improvements may be gauged by comparing these R^2 's with those obtained before introducing the organizational variables—the unique contributions of the entire set of organizational variables are .233 and .323 for deferred and incarceration sentences respectively. Even though we can explain slightly over one-half of the variance in the sentencing outcomes with the array of variables measured in the present research, unmeasured factors unique to each case, termed here the residual discretionary power of the judge, have a strong effect on the sentence outcome. The residual path coefficients for column 5 of the tables are .680 and .671 for the deferred and incarceration sentences. Given the specification of our model as a relatively complete accounting of the known determinants of sentencing, we have few alternatives but to interpret this residual in terms of the judge's influence. This provides further evidence of the hypothesis of a loosely coupled system of criminal justice. Although the probation officer and, especially, the prosecutor have some influence on the judge's decision, the major influences on the judge's decision are unrelated to these recommendations. Compare, for example the standardized (path) coefficients for the probation officer, the prosecutor, judge differences, and "within" judge factors. In the case of the deferred sentence they are: .152, .414, .145 and .680; and in the case of the incarceration sentence they are: .213, .435, .119 and .671. There is little doubt that, measured in terms of factors which affect the sentencing decisions of judges, the criminal court system is a loosely coupled organizational system.

Our final task is to assess the different bases of influence on the recommendations of the prosecutor and the probation officer. The recommendations of these two subsystems are potentially responsive to different sets of factors, and to the extent this occurs, these subsystems may be described as loosely coupled. Table 4 presents the regressions of deferred and incarceration sentences on all the prior variables—offender, offense, court-related characteristics, and judge differences. Generally, comparing the metric coefficients for both dependent variables reveals that the prosecutors give somewhat more attention to both offense and court factors than do probation officers, but neither appears to be overly sensitive to the attributes of the offender (although the prosecutor is more likely to recommend a deferred sentence for females, other things equal). These findings suggest some communality in the factors which influence the recommendations of these agents of the system, but with one distinctively important theoretical difference. The offender's plea has a statistically significant impact on the prosecutor's recommendation, increasing the likelihood of a

Table 4. STRUCTURAL EQUATIONS FOR PROBATION OFFICERS' AND PROSECUTOR'S RECOMMENDATIONS, DEFERRED AND INCARCERATION SENTENCES—CONVICTED FELONY CASES, KING COUNTY, WASHINGTON, 1973 (N = 504)

| | Probation Officers' Recommendations | | Prosecutor's Recommendations | |
|-----------------------------------|-------------------------------------|----------------------|------------------------------|----------------------------|
| | Metric | Standard | Metric | Standard |
| A. Deferred Sentences | | | | |
| Sex | -.077 | -.062 | -.097 | -.081* |
| Work | .054 | .049 | .043 | .040 |
| Race | -.015 | -.014 | -.049 | -.047 |
| Family | .057 | .051 | -.021 | .018 |
| Offense | -.001 | -.001 | -.003 | .015 |
| Record | -.280* | -.270* | -.333* | -.326* |
| Weapon | -.168* | -.123* | -.163* | -.121* |
| Plea | .107 | .071 | .177* | .119* |
| Bail | .197* | .169* | .199* | .175* |
| Judge | .485 | .074 | -.801 | -.012 |
| Intercept = | .140 | R ² = .23 | Intercept = | .312 R ² = .27 |
| B. Incarceration Sentences | | | | |
| Sex | .006 | .008 | .046 | .045 |
| Work | -.011 | -.016 | .011 | .012 |
| Race | -.053 | -.084 | -.039 | -.044 |
| Family | .014 | .022 | -.044 | -.048 |
| Offense | .003 | .021 | .001 | .002 |
| Record | .038 | .062 | .125 | .145* |
| Weapon | .135 | .166* | .213 | .187* |
| Plea | -.037 | -.040 | -.241 | -.191* |
| Bail | -.142 | -.206* | -.270 | -.281* |
| Judge | -.087 | -.016 | .587 | .076 |
| Intercept = | .257 | R ² = .14 | Intercept = | .300 R ² = .310 |

deferred sentence by 18 percent and decreasing the chance of incarceration by 24 percent. The plea variable, however, has no significant effect on the probation officer's recommendation. This difference is very likely due to the prosecutor's sensitivity to the organizational need to encourage the efficient resolution of cases, a sensitivity which leads the prosecutor to reward those who assist in meeting the efficiency demands by pleading guilty. It is this pressure toward efficiency and the mass production of cases that undercuts the court's commitment to individualization and makes it more likely that the probation officer's recommendation for sentence is a ceremony in service of a myth.

Discussion and Conclusions

Contemporary theories of crime and punishment assume a tight fit between structure and function in the criminal courts. Marxian theory assumes that criminal courts serve the interests of the rich by oppressing the poor, while the Durkheimian perspective assumes that a more even-handed enforcement of law functions to preserve values that members of society share in common. The present research, like most of its predecessors, fails to provide strong support for these viewpoints. We have argued that the assumption of a tight fit between structure and function is a key source of error in these earlier models, offering in their place an organizational perspective on criminal justice decision-making as the product of a loosely coupled organizational system.

One of the sources of loose coupling in the criminal justice system is the historical shift from a classical to a positivist philosophy of crime and punishment. Positivism focused new attention on the social needs of individual offenders, as represented in the call for a new, individualized justice. The emergence of the probation profession and the involvement of probation officers in the presentencing process are the structural products of this philosophical change, providing a new source of legitimation for the activities of the court. However, the goals of court efficiency and individualization are contradictory. One means of resolving this contradiction involves the decoupling of probation work from much of the courts' decision-making, substituting the influence of the prosecutor for that of the probation officer in the presentencing process. Prosecutors' distinctive impact on the sentencing process reflects the court system's need to reward and punish offender compliance in efficiently resolving cases. Meanwhile, the maintenance of the formal involvement of probation officers in the presentencing process allows perpetuation of the myth of individualization, if only in a ceremonial form.

We have discussed at length the implications of loose coupling, and we offer some final comments on the possible consequences of tight coupling. Criminal justice systems are formally hierarchical in their organization, and under conditions of tight coupling, then, such systems are likely to find their direction from the top. Marxist theory correctly warns of the potential implications of such a situation, emphasizing the point that law can become an instrument of coercion used by a ruling class. In view of our findings, the greatest threat of such an outcome may lie in prosecutors' influence increasing to the point where they alone are tightly coupled to the judiciary. It is therefore important to emphasize that the alternative to the system of ceremonial justice we have described is not *necessarily* a type of justice that many of us would prefer. A better match between preference and performance in the field of crime and punishment awaits a clearer understanding of the articulation of the organizational units we optimistically designate "the criminal justice system."

Notes

1. Thirty different offenses were recorded in the sample. These were initially categorized into 8 categories according to the nature and severity of the offense as follows: (a) crimes against the person I (manslaughter, rape, and personal assault); (b) crimes against the person II (robbery and attempted robbery); (c) property crimes I (burglary and attempted burglary); (d) property crimes II (auto theft, arson, and the destruction of property); (e) property crimes III (forgery, credit card theft, and credit card forgery); (f) property crimes IV (grand larceny and attempted grand larceny); (g) violation of the Uniform Controlled Substances Act (drug violations); and (h) all other offenses (carnal knowledge, soliciting a minor, violations of firearms laws, professional gambling, sodomy, bestiality, and criminal trespass). These categories were constructed to parallel as closely as possible those developed by Rossi et al. However, because differences in the primary data make this comparison uncertain, we undertook an additional empirical assessment of our categorization. The offense categories were ordered by ranking them first in terms of their likelihood of receiving a particular sentence disposition (see text). The average rank over the four sentence outcomes was used to order the categories (we combined sentence categories ii and iii for these purposes). The resulting ranking appears to confirm our theoretical inferences in that the ordering deduced from Rossi et al. persists. This ranking is as follows (beginning with the least severe):

1. Drug violations (1.5)
2. Property crimes IV (3.0)
3. Property crimes III (3.5)
4. Other offenses (4.5)
5. Property crimes II (4.7)
6. Property crimes I (5.25)
7. Crimes against the person II (6.25)
8. Crimes against the person I (7.25)

It is worth noting that in terms of explaining variation in the dependent variables used in the present analysis, this variable performs as well as the use of a set of dummy variables representing the eight categories of offense.

2. There were actually more than 30 judges in the sample, but only 20 judges had 10 or more cases in our sample. Those judges having fewer than 10 cases were assigned to a common category which served as the "omitted category" in our regression analyses described here (see text).

3. We have essentially used an analysis of covariance model (see Fennessey) to adjust the judge means for differences in offender, offense, and court variables. Then, the resulting "adjusted means" are assigned to individual cases to represent the differences in judges' propensities for using a particular sentence. Our method is analogous to methods used to assess school context effects (see Alwin).

4. We should qualify this statement to take into account the fact that our recommendation variables in an equation for a given dependent variable correspond to the sentence represented by the dependent variable. For example, where "deferred sentence" is the dependent variable the two recommendation variables index the prosecutor's and probation officer's recommendations of a deferred sentence ("1" if yes, "0" if no). So, the signs of the coefficients for the recommendation variables will be positive regardless of the dependent variable of concern.

5. Other analytic solutions may be found in limited-dependent variable approaches (e.g., Goldberger), in polytomous dependent variable approaches (e.g., Goodman), or in multiple discriminant analysis (e.g., Cooley and Lohnes).

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