Subjectivity in Sentencing

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The present paper describes a model of choice behavior based on a combination of personal construct theory and multiattribute utility theory. This model has been applied to the sentencing of offenders by magistrates with a high degree of success. The data collected from magistrates are also used to indicate extent of agreement in sentencing and to illustrate problems associated with verbal measures of construct similarity. Finally, it is suggested that the model has a wide range of application in both legal and nonlegal contexts.

INTRODUCTION

It is often pointed out that decisions underly most of our lives; we decide what to wear, what to eat, who to marry, whether to wage war, and so on. Despite this, decision theory does not seem to occupy a large part in psychology. The reason for this state of affairs is fairly simple: the models derived by decision theorists do not perform particularly well as psychological models in real-life situations, despite the fact that they may be mathematically both elegant and powerful. This has been particularly noticeable in the area of multiattribute utility (MAU) models, and has by no means escaped the notice of decision theorists themselves. Both Raiffa (1969) and Fischer (1972) raise the point that selection of attributes is crucial to the predictive success of such models, but neither offers solutions to the problem of selection.

Leaving decision theory aside for the moment, consider personal construct theory (PCT). This theory has enjoyed increasing popularity in recent years, mainly because it offers a useful framework for describing how a person views his or her world. Implicit in the theory is the notion that people act in accordance with the way they view the world. However, the theory offers no obvious link between construing and action. This gap is particularly obvious if one tries to predict specific behavior on the basis of PCT. The almost total lack of such attempts in the literature accords with this

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view, perhaps the only notable exception being Duck's (1973) work on friendship formation.

With a minimum of difficulty, it is possible to combine MAU and PCT in such a way that the weaknesses of each are compensated for by the strengths of the other. That is, PCT offers a methodology for eliciting relevant attributes (or constructs, in PCT terms) and MAU offers a means of using such attributes in order to predict behavior.

The present paper describes a study in which MAU and PCT were used in order to predict magistrates' sentencing behavior. Previous psychological studies of decision making related to the legal system have tended to focus on the question of guilt in the light of evidence. Typically, the decision maker is presented with evidence in a numerical form and his or her use of this evidence is compared with some model of optimum use, e.g., Bayes' theorem. The present study starts from the point where a verdict of "guilty" has been arrived at, and attempts to predict the choice of sentence by the magistrate.

The particular MAU model used was that suggested by Raiffa (1969) and may be represented as follows: The utility of outcome $n$, $U_n$, is given by

$$U_n = \lambda_1 x_{1n} + \lambda_2 x_{2n} + \lambda_3 x_{3n} + \cdots + \lambda_r x_{rn}$$

where $x_{rn}$ is the rating of outcome $n$ on the $r$th attribute dimension, and $\lambda_r$ is the weight assigned to the $r$th dimension. In the present study, the outcomes are sentences, the dimensions are personal constructs, and the weights are relative importance weights. In more general terms, the $x$'s represent the magistrate's beliefs about the sentences expressed in terms of personal constructs and the $\lambda$'s represent the magistrate's value system. For present purposes, it is assumed that any one magistrate's beliefs and values will be different for each case he or she considers.

To elaborate, consider the notion of rehabilitation often mentioned by magistrates. The extent to which any sentence will be considered "rehabilitative" will obviously depend on the case in question; the probation which may serve to rehabilitate a first-time offender may not have the same effect for a recidivist. Hence, the extent to which a magistrate considers a sentence rehabilitative must be determined for each case considered. Similarly, the magistrate's value system will be case specific; the importance of rehabilitation will change depending on the case in question.

**METHOD**

Nine magistrates took part in the study. Each was seen individually in a single session lasting about 2½ hours. Four of the magistrates were male, and all were in the age range 35-65 years. Magistrates offered their services on a voluntary basis and no payment was involved.

Each magistrate was presented with three case histories containing a brief description of the events leading to the charge, the plea, the finding of the court, and the past record of the defendant. Case 1 involved a fairly trivial case of shoplifting; case 2 involved the threatening use of a knife under the influence of drink; and case 3 involved larceny of a valuable piece of silverware.