

# Law

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# Three important theories

- Equity: for determining fairness
- Attribution: involved in judgments of guilt (not "innocence")
- Decision theory: to describe the nature of the process

# The basic theory

- Perceived fairness in an exchange depends on the relationship between one person's indexed outcomes and those of the other:

$$\frac{O_A}{I_A} = \frac{O_B}{I_B}$$

# Restoration of equity

- Actual or psychological
- Inputs or outcomes
- Self or other
  
- Or leave the field

# Harmdoers and victims

- Self-concept distress
- Retaliation distress
  
- Direct compensation of victims
- Self-deprivation by offender

# Restoring psychological equity

- Derogation of victims
- Minimization of suffering
- Denial of responsibility
- Justification of actions

# Direct restoration

- Victim retaliation
- Forgiveness by victim
- Compelled compensation
- Compelled punishment

# Offender's suffering

- Background and circumstances
- Police misbehavior
- Pretrial detention
- Suffering from participation in criminal activity
- Remorse

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# Jones's correspondent inference theory

- Degree of behavioral choice perceived
- Common and noncommon effects
- Assumed desirability of effects
  
- Correspondence of inference to behavior is highest when actions are out-of-role

# Kelley's attribution theory

- Single instances *vs.* multiple chances
- Schemata
  - Multiple necessary
  - Multiple sufficient
- Covariation
  - Times and modalities: distinctiveness
  - Circumstances: consistency
  - Persons: consensus

# Attribution biases

- Actor-observer effect
- “Fundamental attribution error”
- Base-rate fallacies
- False consensus effects
- Counterfactual thinking
- Cultural limitations
- Motivational biases

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# What is decision making?

- Problem-solving activity
  - Consideration of alternatives
  - Choices among possibilities
  - Commitment of resources
- 
- A *process*, not an action

# Well-structured problems

- Existing state is clear
- Desired state is clear
- Limited number of alternate paths
- Established rules for defining preferences among paths

# Ill-structured problems

- Existing state unclear
- Desired state unclear
- Lots of alternate paths
- No clear way for identifying preferences among paths

# The ideal

- Examine all alternatives
- Consider objectives, values achieved by each choice
- Weigh risks of negatives
- Search for new information
- Assimilate expert opinion, even when it contradicts
- Re-examine before final choice
- Contingent implementation plans

# Bounded rationality

- Information is expensive
- Optimization process is cumbersome
- Framing effects and biases
- Competing demands with equal status

# Errors and biases

- Sunk costs
- Escalation of commitment
- Hindsight bias
- Groupthink
- Choice shifts

# Decision strategies

- Optimization
- Satisficing, quasi-satisficing
- Elimination by aspects
- “muddling through”
- Mixed scanning

# Jury selection

- Litigator “lore” about jurors is at best unsubstantiated, at worst wrong
- Juror bias scale identifies conviction-prone versus acquittal-prone
- Scientific jury selection: Marcia Clark should have listened
- But is it ethical?

# Death qualification

- If jury decides on the penalty, then jury members cannot be unalterably opposed to the death penalty
- But there are two critical problems
  - Voir dire to establish qualification is likely to enhance presumptions of guilt
  - Qualified jurors are more conviction-prone

# Before the trial

- DNA shows eyewitnesses often wrong
  - Emotional state during incident
  - Weapons focus effect
  - Cross-race identification bias
  - Reconstructive memory (Loftus)
- Faulty lineup structure and instructions
- Witness coaching

# Investigation

- Round up the usual suspects
- Over-reliance on eyewitnesses
- Pressure to clear high-profile cases
- Interrogation tactics: “I understand”
- Innocent people *do* confess, and then *do* come to believe their confessions
- Even rejected confessions count

# During the trial

- Lingering effects of pretrial publicity
- Inadmissible (stricken) testimony
- Judge's instructions typically follow, but this is closing the barn door
- Jury nullification
- Deliberation is a social process, but often the outcome is predetermined

# Sentencing and beyond

- What are the goals (people prefer "just deserts")
- Who is doing the sentencing?
- Sentencing disparity and guidelines
- Prison and "scared straight"