

SENTENCING ACADEMY

Sentencing Academy Research Summary

Exploring the origin of sentencing disparities in the Crown Court: Using text mining techniques to differentiate between court and judge disparities

Jose Pina-Sánchez

Quantitative studies on sentencing have been constrained by the type of data accessible to researchers. Two main options are generally available - requesting access to courts to conduct questionnaires, observations, or file reviews; or relying on official statistics supplied by the Ministry of Justice or the Sentencing Council. The former group of research strategies is both expensive and time-consuming, with studies typically based on small samples restricted to one or a few courts, whereas studies relying on official records are limited to the information that the judiciary is willing to disclose, with the judge id normally censored. As a result research efforts exploring the prevalence of sentencing disparities have disregarded judge disparities and focused instead on the measurement of disparities across courts, regions, or criminal justice areas.

Here we use text mining techniques to access an online archive (www.thelawpages.com) of sentences records processed in the Crown Court, which include the name of the judge who imposed the sentence and the court where the trial took place. Using this new dataset we compare the magnitude of the unwarranted disparities originated at the court and the judge level, and explore the interactions between them taking place when judges rotate across courts. A subsample of 7,221 violent and sexual interpersonal offences sentenced to prison in the Crown Court from 2007 to 2017 was analysed using advance multi-level models.

We find that unwarranted disparities between judges are substantially larger than between courts, highlighting the importance of correctly accounting for between-judge disparities in sentencing data analyses. We also find that judges who rotate across courts sentence a more heterogeneous caseload, but in what could be a counter-intuitive finding, they do so more consistently (i.e. similarly to each other) than those judges who only sentence from the same court. We do not find evidence of significant differences in sentencing based on the judge's gender. By contrast, judicial career stage appears to have an important effect on the relative severity of the punishment, with High Court judges sentencing significantly more severely than any other type of judges. This might be expected, given the more serious cases that High Court judges are required to handle.

In conclusion, for the specific case of the Crown Court it is not so much the location where the case is processed, but the judge presiding over the case within that location, that will have the potential for providing an unduly lenient or harsher sentence. This stands at odds with results from Johnson (2006) who found that judge-level disparities tended to be smaller than those originating between courts at the Pennsylvania County Court. Such discrepancies regarding the main source of unwarranted disparities highlights the importance of correctly recognising the different contexts in which different jurisdictions operate. In what concerns the jurisdiction of England and Wales, these results also demand a reconsideration of the operationalisation and evaluation of the concept of consistency in sentencing. In an interview to the BBC the former Chairman of the Sentencing Council indicated that, in relation to the - then - new sentencing guidelines “[...] *the aim is to increase the consistency of approach to sentencing so that offenders receive the same approach whether they're being sentenced in Bristol, Birmingham, Bolton or Basildon*” (Lord

Justice Leveson, 2011). However, our findings indicate that these forms of between court disparities only represent the tip of the iceberg.

Additional policy implications could also follow from having detected ‘rotating judges’ to be more consistent. This finding corroborates Hester (2016) hypotheses regarding the beneficial effects associated with judicial rotation in the form of the spread of general sentencing principles and challenging of local procedures. In a time when the jurisdiction of England and Wales has embarked in a process of sentencing reform to promote consistency through the design of guidelines, it might be worth considering complementary strategies such as fostering judicial rotation amongst non-circuit judges. This strategy is particularly interesting since it might be seen as less intrusive on judicial autonomy, avoiding some of the negative side-effects that have been associated to sentencing guidelines.

Lastly, one final methodological point is worth discussing. The growing sophistication of text mining techniques has made it possible for us to reconstruct key features of a sample of cases processed through the Crown Court. In particular, we were able to make use of information that is not normally present in official data (such as the name of the judge, or the number of offences that featured in the case). The records available at ‘The Law Pages’, also capture information on additional features often ignored in official data, such as the name of the barrister that defended the case, as well as some of the remarks made by the judge in the sentence transcript. We encourage other researchers to replicate our text mining strategy to explore other important under-researched questions about the operation of the court system, including: i) the effect of legal representation; ii) the application of the totality principle; or iii) the ways that judges make use of controversial case features such as the offence being committed while the offender was intoxicated.

Citation:

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For a copy of the full article, contact: j.pinasanchez@leeds.ac.uk

Further Reading:

Hester, R. (2016). Judicial rotation as centripetal force: Sentencing in the court communities of South Carolina. *Criminology* 55(1), 205–235.

Johnson, B. D. (2006). The multilevel context of criminal sentencing: Integrating judge and County level influences. *Criminology* 44(2), 259–298.

Pina-Sánchez, J., Brunton-Smith, I., & Li, G. (2018). Mind the step: A more insightful and robust analysis of the sentencing process in England and Wales under the new sentencing guidelines. *Criminology & Criminal Justice*.

