



SLS Conference

Location and Sentencing: To What Extent Do Contextual Factors Explain Unwarranted between Court Disparities?

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Between Court Disparities

Disparities

Methodology

Findings

Discussion

- Between court disparities: different approaches to sentencing across courts



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- Between court disparities: different approaches to sentencing across courts
- Over the last decade sentencing guidelines have been put in place to eliminate this problem
- “[...] *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 on the BBC, 2011)

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- “[...] *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 on the BBC, 2011)
- Evidence on the effectiveness of the guidelines is very limited, and the general belief is that between court disparities are very present
- Too often stories on between court disparities are picked up by the news or shared in social media, with real damaging effects



Sentencing in The News

- Disparities
- Methodology
- Findings
- Discussion

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“In 2011, Northamptonshire courts gave custodial sentences in 6.5% of cases, compared with 1.5% in Warwickshire”

- Concluding remarks were seriously damaging

“BBC legal affairs correspondent Clive Coleman said there was something of a postcode lottery in magistrates giving jail terms”

Evidence from the UK

- Unfortunately the view of sentencing being a ‘postcode lottery’ cannot be entirely dispelled
- All previous studies have detected evidence of unwarranted between court disparities to a certain extent, e.g:
 - Based on qualitative interviews Tarling (1979) and Herbert (2004) found that magistrates strived to maintain within court consistency, but not so much with their neighbouring courts
 - Using statistical models Pina-Sánchez and Linacre (2013) detected that the Crown Court in Norwich, Merthyr Tydfil, and five others, were sentencing systematically more leniently
- To be able to tackle the problem we need to know what is causing these disparities



Exploring Contextual Effects in the US

Disparities

Methodology

Findings

Discussion

- Over the last decade a new wave of studies have explored the extent to which disparities are caused by the context
- They rely on four tools:
 - data on the socioeconomic characteristics of the region
 - data capturing the characteristics of the courtroom
 - data on the characteristics of the case
 - the integration of them all using multilevel modelling
- Johnson (2006) found that smaller courts, those where jail space was available, and those located in counties with higher percentage of Hispanic population sentenced more harshly



Disparities

Methodology

Findings

Discussion

Methodology

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- We did not just replicate it, we exceed the level of detail by gathering a far richer database
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- We did not just replicate it, we exceed the level of detail by gathering a far richer database
- The data gathered includes:
 - Ten variables on the social composition of the court neighbourhood from the 2011 Census, e.g. % of *men*, % *aged > 45*, % *muslim*
 - Fifteen variables from on the court characteristics from gov.uk, e.g. whether there is *parking* available, the *closing* time of the court, or the *volume* of offences processed
 - Fifty-eight variables capturing the characteristics of the case, e.g. whether a *guilty plea* was entered, the number of *previous convictions*, whether the assault was *premeditated*
 - The last is 50 more than the average of the American studies, and 47 more than Pina-Sánchez and Linacre (2013)



Methodology

Disparities

Methodology

Findings

Discussion

- The higher level of detail in the description of the area and the court characteristics allows to test new hypotheses
- More importantly, the higher detail in the description of the case allows to separate true unwarranted disparities in sentencing from just differences in the caseloads processed across courts
- This is crucial to rule out the possibility of spurious correlations



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Disparities
Methodology
Findings
Discussion

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 - The effect pointing at harsher sentencing in areas where Hispanics are a bigger minority (Johnson, 2006), could be due to more serious crimes being processed in those areas, and not an illegitimate/unwarranted/subjective sentencing approach



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Disparities
Methodology
Findings
Discussion

- To assess the consequences of looking at truly unwarranted disparities, or just between court variability in caseloads, different models were run
- Modelling the custodial sentence length on the area and court level characteristics we found:



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- Modelling the custodial sentence length on the area and court level characteristics we found:
 - Courts located in areas populated by *muslims*, or with more senior managers (*SEC-1*) sentenced more harshly than the average
 - e.g. if the court is located in an area where the percentage of *muslims* is ten percent points higher than the average sentence length increases by 21%



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- Modelling the custodial sentence length on the area and court level characteristics we found:
 - on the other hand, being located in areas with more people *older than 45*, or having *wifi* in the court is associated with more lenient sentencing



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Disparities

Methodology

Findings

Discussion

- However, when controlling for the case characteristics most of these effects disappear
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- However, when controlling for the case characteristics most of these effects disappear
- The effect of *wifi* halved and only the courts' *volume* of cases was now negatively associated with sentence length
- Importantly the model now became remarkably accurate:
 - The probability of correctly predicting if an offender was incarcerated went from 57.3% to 81.4%
 - The percentage of the variability in sentence length accurately predicted went from 6% to 70%



Discussion

- There are differences in the use of sentence outcomes across courts, but they are due to differences in the cases processed, not really to different approaches to sentencing
- The only exception being the small influences of the courts' *volume* of cases and availability of *wifi*
- Academic implications:

- There are differences in the use of sentence outcomes across courts, but they are due to differences in the cases processed, not really to different approaches to sentencing
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- Academic implications:
 - This analysis raises the bar in terms of methodological rigour; arguably the most detailed study on the topic
 - Future studies should emphasise the inclusion of case characteristics much more than what it has been done before, or at least acknowledge the lack of them as a limitation
 - It also raises questions about whether previous studies would have found area/court effects if the same level of detail had been applied
 - The same rationale can be applied to studies on discrimination when the case characteristics are not properly controlled for



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- Policy implications:
 - It is extremely important to disseminate the view that there is no such thing as a ‘postcode lottery’
 - For the MoJ and the Sentencing Council it is in their own interest to make their data more accessible
 - The Sentencing Council might want to look into the effect of court size in the future



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 - The Sentencing Council might want to look into the effect of court size in the future
- Important limitations regarding external validity:
 - Only applies to offences of assault passed at the Crown Court
 - This is about 2% of all sentences passed in England and Wales
 - New data on different offences or from the magistrates is required to replicate this study