



E&W Sentencing  
Guidelines

The Problem

Methodology

Findings

Discussion

## 2017 SLSA Conference

### Mind the Step:

# A More Comprehensive Empirical Study of the Functioning of the England and Wales Sentencing Guidelines

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# Empirical Studies on Sentencing

E&W Sentencing  
Guidelines

The Problem

Methodology

Findings

Discussion

- Analyses of sentence data have strongly relied on regression modelling
- These models are quite useful at estimating the effect of different factor on the sentence outcome
- Data analysis of real sentences has an advantage in terms of external and ecological validity

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The Problem

Methodology

Findings

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- Over the years these models have become increasingly sophisticated (eg. multilevel modelling, quantile regression, etc.)
- However, all of them share one same assumption regarding the nature of the sentencing process:  

All the relevant factors and the subsequent sentence outcome are considered simultaneously
- This assumption can be unrealistic since often preliminary decisions are made before the final sentence outcome is passed

# The E&W Sentencing Guidelines

## E&W Sentencing Guidelines

### The Problem

### Methodology

### Findings

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- The 2011 E&W assault guidelines established a new step-based structure to be replicated by subsequent guidelines
- Sentencers have to go through a list of nine steps before deciding the final sentence outcome:
  - ① Determine offence category according to its seriousness
  - ② Preliminary sentence within category range
  - ③ Consider assistance to prosecution
  - ④ Reductions for guilty plea
  - ⑤ Consider if the offender meets the dangerousness criteria
  - ⑥ Application of the totality principle
  - ⑦ Compensation and ancillary orders
  - ⑧ Provide reasons
  - ⑨ Considerations for remand time



## Implications of Using Standard Models

E&W Sentencing  
Guidelines

**The Problem**

Methodology

Findings

Discussion

- What is the problem with disregarding this step structure?



# Implications of Using Standard Models

E&W Sentencing  
Guidelines

**The Problem**

Methodology

Findings

Discussion

- What is the problem with disregarding this step structure?
  - From a methodological point of view:  
Model estimates are inevitably less precise than they could be  
and they are at higher risk of being biased



# Implications of Using Standard Models

E&W Sentencing  
Guidelines

**The Problem**

Methodology

Findings

Discussion

- What is the problem with disregarding this step structure?
  - From a methodological point of view:  
Model estimates are inevitably less precise than they could be and they are at higher risk of being biased
  - From a substantive point of view:  
We miss out on the possibility of exploring the effect of each of the preliminary stages in determining the final sentence, and the interplays between them



# Methodology

E&W Sentencing  
Guidelines

The Problem

**Methodology**

Findings

Discussion

- Instead of using the standard regression form, ie.

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_k X_k + \mu$$





E&W Sentencing  
Guidelines

The Problem

**Methodology**

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- Instead of using the standard regression form, ie.

$$Y = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \dots + \beta_k X_k + \mu$$

- We suggest employing a multivariate model, ie.

$$Y_1 = \beta_{0,1} + \beta_{1,1} X_1 + \beta_{2,1} X_2 + \dots + \beta_{k,1} X_k + \beta_{k+1,1} Y_2 + \beta_{k+2,1} Y_3 + \mu_1$$

$$Y_2 = \beta_{0,2} + \beta_{1,2} X_1 + \beta_{2,2} X_2 + \dots + \beta_{k,2} X_k + \beta_{k+1,2} Y_1 + \beta_{k+2,2} Y_3 + \mu_2$$

$$Y_3 = \beta_{0,3} + \beta_{1,3} X_1 + \beta_{2,3} X_2 + \dots + \beta_{k,3} X_k + \beta_{k+1,3} Y_1 + \beta_{k+2,3} Y_2 + \mu_3$$

⋮



## Sample

E&W Sentencing  
Guidelines

The Problem

**Methodology**

Findings

Discussion

- Our sample is composed of 2877 cases of assault sentenced in the Crown Court in the second half of 2011
- This is an excerpt of the Crown Court Sentencing Survey
- A truly unique dataset capturing case characteristics with an unprecedented level of detail
- Covering three outcomes from the guidelines' step structure: seriousness, guilty plea reduction, and final sentence outcome

- Each of those outcomes is “regressed” by the factors identified in the guideline as relevant:
  - level of seriousness ← factors indicating higher or lower harm and culpability (premeditation, racially motivated, self-defence, etc.)
  - guilty plea reductions ← stage at which the guilty plea was entered (guilty plea entered at first opportunity, at the trial, etc.)
  - final sentence outcome (disposal type) ← all of the above plus other aggravating and mitigating factors (on bail, remorse, etc.)
- The model is expanded to control for the court location where the sentence was passed



# Findings

- At first sight everything seems to point in the right direction
  - The level of seriousness (Step One) is positively associated with the severity of the sentence outcome
  - So are aggravating factors identified in Step Two, while mitigating factors have a negative effect
  - The extent of guilty plea reductions is associated with the timing of the guilty plea



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E&W Sentencing  
Guidelines

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- At first sight everything seems to point in the right direction
  - The level of seriousness (Step One) is positively associated with the severity of the sentence outcome
  - So are aggravating factors identified in Step Two, while mitigating factors have a negative effect
  - The extent of guilty plea reductions is associated with the timing of the guilty plea
- However, evidence of mediated effects is also detected
  - Eight different Step One factors affect the level of seriousness but also the final sentence outcome
  - Guideline steps are not entirely watertight
  - Factors meant to be considered at specific steps can also have an effect on the final sentence outcome



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Guidelines

The Problem

Methodology

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- Very limited evidence of unwarranted disparities between courts
  - No more than four of the 76 court locations explored sentence significantly more harshly or leniently than the average
  - Between court disparities at different steps are not correlated amongst themselves
  - That is, courts are not systematically harsher or more lenient across the step structure
  - We do not have the counter-factual but this suggests the step-structure possibly tempering extreme decisions



## Discussion

- In England and Wales multivariate models should become the next generation of models for the analysis of sentence data
- By linking three different steps we have obtained:
  - More precise estimates of the effect of the factors featured in the guidelines
  - Less biased estimates since we can now identify direct and indirect effects on the final sentence outcome
  - New insights into the implementation of the guidelines and their innovative step-structure



## Discussion

- In England and Wales multivariate models should become the next generation of models for the analysis of sentence data
- By linking three different steps we have obtained:
  - More precise estimates of the effect of the factors featured in the guidelines
  - Less biased estimates since we can now identify direct and indirect effects on the final sentence outcome
  - New insights into the implementation of the guidelines and their innovative step-structure
- In future research it would be interesting to:
  - complete the list of nine steps in a single model
  - look at cases sentenced in the Magistrates' courts
  - look beyond sentencing and incorporate other steps of the criminal justice process