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2019 SLSA Conference

Sentencing Gender?
Investigating the Extent and Origin of Sentencing
Gender Disparities in the Crown Court

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- Sentencing in England & Wales is thought to be gender neutral
- Recent reports advocate for a differential scheme for women
 - The Corston Report
 - All Party Parliamentary Group on Women in the Penal System
 - The MoJ Female Offender Strategy
- Based on a series of factors differentiating female offenders
 - Women commit less serious crimes
 - Are more likely to self-harm while in custody
 - Higher prevalence of mental illness
 - Often the primary or sole carers
 - Lower recidivism rates
 - Lower risk to harm others

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- The evidence put forward justifies a more lenient approach towards female offenders
- We question, however, the validity of the premise that sentencing in England & Wales is gender neutral
- Recent empirical studies point at a more favourable treatment of female offenders
 - Hopkins et al. (2016)
 - A sample of 354,699 offenders from the Police National Computer
 - Controlling for broad offence categories and previous convictions
 - Male offenders 88% more likely to be incarcerated
 - Lightowlers (2018)
 - A sample of 30,861 assault offenders from the Crown Court Sentencing Survey
 - Controlling for the specific offence type, plea, harm, culpability, aggravating and mitigating factors
 - Male offenders 110% more likely to be incarcerated

Empirical Evidence

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- These findings have passed unnoticed
 - Not cited in any of the reports advocating for a differential scheme
- Yet, they are extremely relevant
 - Before deciding where we want to go we should understand where we are
- Now, the evidence available is not conclusive of a differential treatment
 - Legitimate factors not controlled for might be explaining the disparities detected in Hopkins et al. (2016)
 - The observed disparities in Lightowlers (2018) might be limited to assault offences
 - Public protection considerations have not been explored
 - Also, Lightowlers (2018) identified how the application of certain factors can explain some of those disparities

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- We use the Crown Court Sentencing Survey to expand Lightowlers (2018)
- We model the probability of imprisonment for drugs offences
 - From April 2012 to March 2015
 - 15,737 male defendants and 1,236 female defendants
- We model the probability of imprisonment for burglary offences
 - From January 2012 to March 2015
 - 19,086 male defendants and 907 female defendants
- For assault offences we look at the probability of imprisonment and sentence length
 - From June 2011 to December 2011
 - 4,091 male defendants and 432 female defendants
 - Out of which 48.5% sentenced to immediate custody



Burglary

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	Mean
<i>Dependent Variable</i>	
Custody	0.751
<i>Offender Characteristics</i>	
Male	0.955
Age: 25 to 34	0.365
Age: 35 to 44	0.213
Age: 45 to 54	0.061
Age over 54	0.008
Reference category: 18 to 24	0.353
<i>Specific Type of Offense</i>	
Domestic burglary	0.746
Non-domestic burglary	0.202
Other burglary	0.024
Reference category: Aggravated burglary	0.027
<i>3rd On Factors</i>	
Significant degree of loss	0.237
Vandalism of property	0.123
Victim on premises	0.325
Significant injury/trauma	0.090
Violence particularly involving a weapon	0.051
Context of public disorder	0.012
No injury/trauma	0.128
No violence, no weapon	0.169
Nothing stolen or low value	0.177
Limited damage/disturbance	0.157
Deliberately targeted	0.257
Significant planning	0.202
Equipped for burglary	0.179
Weapon present on entry	0.038
Member of gang	0.273
Offender exploited by others	0.023
Offence committed on impulse	0.101
Mental disorder	0.028
<i>3rd Two Factors</i>	
Previous convictions: 1 to 3	0.259
Previous convictions: 4 to 9	0.216
Previous convictions: 10 or more	0.248
Reference category: none	0.277
Offence committed on bail	0.061
Child at home	0.051
Committed at night	0.267
Abuse of power	0.029
Gratuitous degradation	0.007
Steps taken to prevent reporting	0.005
Victim compelled to leave home	0.009
Community impact	0.020
Under the influence of alcohol/drugs	0.156
Failure to comply with court orders	0.111
On licence	0.109
TIC's	0.067
Subordinate role in a gang	0.053
Injuries caused recklessly	0.002
Made voluntary reparation	0.009
No previous relevant convictions	0.083
Remorse	0.204
Good character	0.036
Determination to address addiction	0.090
Serious medical condition	0.013
Lack of maturity	0.067
Lapse of time	0.009
Primary carer	0.016
<i>3rd Four Factors</i>	
GUILTY PLEA ENTERED AT FIRST OPPORTUNITY	0.549



Drugs

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	Mean
<i>Dependent Variables</i>	
Custody	0.551
<i>Offender Characteristics</i>	
Male	0.927
Age: 25 to 34	0.363
Age: 35 to 44	0.189
Age: 45 to 54	0.102
Age: over 54	0.028
Reference category: 18 to 24	0.319
<i>Social Type of Offense</i>	
Possession with intent to supply	0.494
Production/cultivation	0.278
Supplying	0.193
Reference category: Bringing in / taking out	0.035
<i>Drug Class</i>	
Class C	0.015
Cocaine	0.247
Heroin	0.150
Other class A	0.030
Other class B	0.060
Reference category: Cannabis	0.498
<i>Calculability</i>	
Lesser role	0.314
Significant role	0.659
Reference category: Leading role	0.027
<i>Step Two Factors</i>	
Previous convictions: 1-3	0.265
Previous convictions: 4-9	0.067
Previous convictions: 10 or more	0.028
Reference category: none	0.639
Permitted under 18 to deliver	0.002
On bail	0.030
Sophisticated concealment	0.029
Exposure of others to danger	0.004
Presence of weapon	0.009
High penalty	0.114
Failure to comply with court orders	0.038
On licence	0.027
Targeting premises of vulnerable people	0.001
Large scale	0.061
Presence of others	0.026
Unlawful access to utility supply	0.043
Level of profit	0.098
Premises adapted to facilitate drug activity	0.055
Location of premises	0.015
Length of time premises used	0.018
Nature of likely supply	0.036
Possession in school	0.002
Possession in prison	0.005
Volume of activity permitted	0.013
Community impact	0.015
Lack of sophistication of concealment	0.118
Involvement due to coercion	0.096
Mistaken belief type of drug	0.005
Isolated incident	0.101
Low penalty	0.036
No previous relevant convictions	0.356
Offender's vulnerability exploited	0.080
Remote	0.277
Good character	0.167
Determination to address addiction	0.143
Serious medical condition	0.041
Lack of maturity	0.092
Mental disorder	0.021
Primary carer for dependent relatives	0.056
Addicted to the same drug	0.186
Using cannabis to help with medical condition	0.021
<i>Step Four Factors</i>	
Guilt plea entered at first opportunity	0.624



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<i>Dependent Variables</i>	Mean (std.dev.)
Sentence length	730.1 (743.3)
Custody	0.485
<i>Offender Characteristics</i>	
Male	0.904
Age	28.9 (9.8)
<i>Offence Type</i>	
GBH with intent	0.087
GBH	0.212
Affray	0.191
Common assault	0.078
Reference category: ABH	0.433
<i>Step One Factors</i>	
Deliberate harm	0.044
Hostility disability	0.002
Intent: serious harm	0.032
Leading role gang	0.056
Hostility age / gender	0.006
Premeditation	0.083
Racially motivated	0.009
Hostility orientation	0.003
Targeting vulnerable	0.065
Use of weapon	0.346
Serious injury	0.249
Sustained assault	0.206
Vulnerable victim	0.110
Lack premeditation	0.246
Mental disorder	0.024
Provocation	0.086
Self-defence	0.055
Subordinate role	0.044
Injury less serious	0.260
<i>Step Two Factors</i>	
Previous convictions: 1-3	0.096
Previous convictions: 4-9	0.062
Reference category: none	0.842
Abuse of trust	0.018
Against public	0.047
On bail	0.026
Dispose of evidence	0.007
Victim forced leave	0.012
Community impact	0.005
Failure warnings	0.013
Failure court orders	0.052
Gratuitous degradation	0.019
Location	0.259
Waiver on licence	0.018
Ongoing effect	0.139
Presence of others	0.165
Previous violence	0.065
Timing of offence	0.102
Under drugs / alcohol	0.288
Address addiction	0.077
Lack of maturity	0.092
Good character	0.167
Isolated incident	0.158
Lapse of time	0.029
Medical condition	0.026
Mental disability	0.034
No relevant convictions	0.266
Primary care	0.035
Genuine remorse	0.338
Single blow	0.190
<i>Step Four Factors</i>	
GUILTY plea at first opportunity	0.313

Background

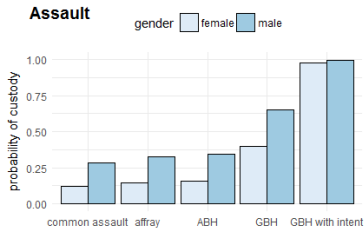
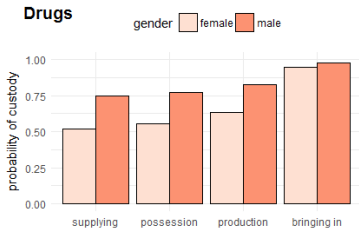
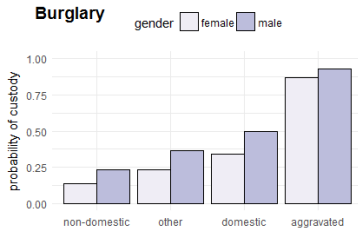
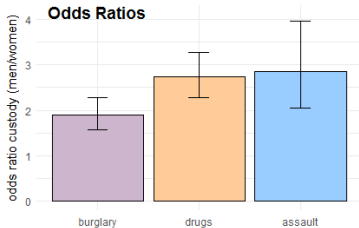
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- Two key additions to identify the extent and causes of gender disparities
- Quantile regression to assess disparities across the sentence length distribution
 - Women disproportionately sentenced to short custodial sentences
 - Longer sentences might be associated with riskier offenders
- Interactions between gender and all aggravating and mitigating factors
 - It is possible that some mitigating factors are applied differently for male and female offenders
 - If so, this could help us understand the causes behind the observed disparities

Results: Custody



Results: Sentence Length

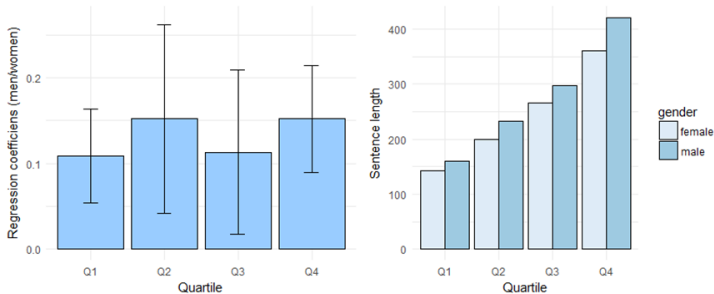
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- Custodial sentences on average 14% longer for male offenders
- Seems stable across the distribution of sentence length





Results: Interactions

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- For drug offences interactions between gender and 39 case characteristics were explored
 - 28 of those interactions were affected by multicollinearity
 - 9 of the remaining 11 interactions were not statistically significant
 - ‘Mistaken belief regarding type of drug’ is applied as a mitigating effect for male offenders but as an aggravating effect for female offenders
 - The main differential gender effect remains practically unaltered
 - ‘Offender’s vulnerability exploited’ is treated as an aggravating factor for male offenders
- For burglary offences 42 case characteristics were explored
 - 37 affected by multicollinearity
 - The remaining 5 were not found statistically significant

Discussion

- Male offenders roughly 2.5 times more likely to be incarcerated
 - After committing the same crime
 - Controlling for factors such as ‘mental illness’ or ‘caring responsibilities’
 - Public protection does not seem to explain these disparities
 - Nor the differential application of guideline factors
 - Rehabilitation only partially controlled (probation officers’ reports not included)
 - Perhaps can be attributed to higher harm of custody on women, or the fewer female prisons
- This evidence can help to frame the debate
 - Currently sentencing in England and Wales is not gender neutral
 - Our analysis can help to pin down the normative debate
 - Is a 2.5 odds ratio large enough?
- We can look at the effect of other factors to provide context
 - e.g. for burglary: gender (1.90) > ‘significant planning’ (1.73), but < ‘significant injury or trauma’ (2.83)
 - For drugs: gender (2.89) \simeq ‘large scale operation’ (2.91), but < ‘presence of a weapon’ (3.19)



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Limitations

- Social desirability bias?
 - Judges trying to show they are more lenient towards female offenders
- Missing data (not at random?)
 - Judges who filled the questionnaires might be more lenient towards women
- Coarseness of the data
 - Most factors measured as binary variables
 - Masking much of the heterogeneity within them
- To identify differential application of other guideline factors we need more data
 - Unfortunately the Crown Court Sentencing Survey was decommissioned in 2015