

Beyond Guidelines:

How Judicial Interaction Promotes Consistency in Sentencing

Policy reforms aimed at enhancing consistency in sentencing have traditionally focused on implementing formal - more or less prescriptive - guidelines. These typically indicate the range of acceptable sentences for a given case and specify how different offence and offender characteristics should be weighed in reaching that decision.

In this talk, I argue that consistency can also be fostered through less intrusive approaches that do not threaten judicial discretion. Specifically, I present exploratory evidence on the positive role played by judicial rotation across courts.

This hypothesis was first advanced by Hester (2017), who interviewed judges from South Carolina, a U.S. jurisdiction notable for its lack of sentencing guidelines and its practice of rotating judges between courts. Hester found that such rotation enables judges to learn from one another and calibrate their sentencing practices organically, without relying on top-down directives.

In Pina-Sánchez et al. (2019), we sought to test this hypothesis indirectly using data from the Crown Court of England and Wales. In that jurisdiction, some judges (district judges) rotate across courts, while others do not. Because no official sentencing dataset includes judge identifiers, we scraped sentencing remarks uploaded to *thelawpages.com*. Our analysis showed that rotating judges handled a more heterogeneous caseload (the standard deviation of the log-transformed custodial sentence length was 1.10 vs. 0.69). However, after controlling for case characteristics, residual variability was lower among rotating judges (0.40 vs. 0.45), suggesting a more consistent approach.

Similarly, in Drápal & Pina-Sánchez (2022), we examined judges' sentencing patterns over time and found that as judges progressed in their careers, their individual approaches converged toward the overall average across all the outcomes studied (incarceration decisions, sentence length, guilt adjudication, and use of penal orders). We hypothesised that this convergence reflects greater experience and exposure to peers' sentencing patterns - another pathway to consistency through informal learning.

TLDR:

If you've ever graded student work, you might notice that your marking becomes more consistent after discussing criteria with colleagues or after marking more assignments. We see a similar effect in judicial sentencing: interaction and experience promote consistency. This matters because it shows that sentencing consistency can be improved without imposing strict rules, therefore avoiding potential downsides such as reduced judicial discretion, loss of individualisation, or increased sentence severity.

References

Drápal, J. and Pina-Sánchez, J. (2023). What is the value of judicial experience? Exploring judge trajectories using longitudinal data. *Justice Quarterly*, 40(2):211–240

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Pina-Sánchez, J., Grech, D., Brunton-Smith, I., and Sferopoulos, D. (2019b). Exploring the origin of sentencing disparities in the Crown Court: Using text mining techniques to differentiate between court and judge disparities. *Social Science Research*, 84:1-13