



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

El Falso Dilema entre Consistencia o Individualizacion de las Penas

Jose Pina-Sánchez



Introduccion

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Es deseable que la imposicion de penas se haga de manera consistente
 - Casos similares deberian recibir penas similares
 - Elimina las disparidades injustificadas
 - Hace que el sistema sea mas predecible y transparente
 - Aumenta su legitimidad



Introduccion

Introduccion

Sentencing Guidelines

Inglaterra y Gales

Fomentar la Comunicacion

Rotacion de Jueces Ganar Experiencia

Conclusion

Reformas Creativas Investigacion Empirica

- Es deseable que la imposicion de penas se haga de manera consistente
 - Casos similares deberian recibir penas similares
 - Elimina las disparidades injustificadas
 - Hace que el sistema sea mas predecible y transparente
 - Aumenta su legitimidad
- Al fomentar la consistencia se vulnera la individualizacion
 - No hay dos casos iguales
 - Las penas deben ser diferentes para reflejar los elementos consitutivos de cada caso
 - La discrecionalidad judicial es necesaria



Un Falso Dilema?

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica



Un Falso Dilema?

Introduccion

Sentencing Guidelines

Inglaterra y Gales

Fomentar la Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion

Empirica

- Cierta nivel de abstraccion es util
 - Ayuda a ilustrar un potencial conflicto entre principios
 - La posibilidad de ‘consecuencias imprevistas’
- Puede ser problematico cuando se toman como dogma
 - Convierten la toma de sentencias en un juego de suma zero
 - Dan lugar a conclusiones erroneas
 - Impiden reformas necesarias

Un Falso Dilema?

Introduccion

Sentencing Guidelines

Inglaterra y Gales

Fomentar la Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Cierta nivel de abstraccion es util
 - Ayuda a ilustrar un potencial conflicto entre principios
 - La posibilidad de ‘consecuencias imprevistas’
- Puede ser problematico cuando se toman como dogma
 - Convierten la toma de sentencias en un juego de suma zero
 - Dan lugar a conclusiones erroneas
 - Impiden reformas necesarias
- Presento una serie de estudios que cuestionan tal dicotomia
 - Basados en las ‘sentencing guidelines’ de Inglaterra y Gales
 - Y en ejemplos de practicas que fomentan la consistencia sin vulnerar la discrecionalidad judicial
- Concluyo subrayando la importancia de la investigacion empirica en ‘sentencing’



Sentencing Guidelines

Introduccion

**Sentencing
Guidelines**

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- El debate consistencia vs individualizacion ha ido de la mano de la imposicion de sentencing guidelines
 - Reglas mas o menos prescriptivas que estructuran el proceso de imposicion de sentencias
 - En muchos casos excesivamente reduccionistas, vulnerando la discrecionalidad judicial

Sentencing Guidelines

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- El debate consistencia vs individualizacion ha ido de la mano de la imposicion de sentencing guidelines
 - Reglas mas o menos prescriptivas que estructuran el proceso de imposicion de sentencias
 - En muchos casos excesivamente reduccionistas, vulnerando la discrecionalidad judicial
- El caso mas conocido es el de las ‘grid-based guidelines’ de EEUU
 - Donde un rango de penas es prescrito basado en dos criterios: tipo de ofensa y numero de condenas previas
 - Desarrolladas desde los 70 en respuesta a disparidades etnicas
 - Se han reformado en muchas de sus jurisdicciones pero en algunos estados siguen en pie

Minnesota Sentencing Guidelines

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in <i>italics</i>)		CRIMINAL HISTORY SCORE						
		0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (intentional murder; drive-by- shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ²	426 363-480 ²
<i>Murder, 3rd Degree Murder, 2nd Degree (unintentional murder)</i>	10	150 128-180	165 141-198	180 153-216	195 166-234	210 179-252	225 192-270	240 204-288
<i>Assault, 1st Degree</i>	9	86 74-103	98 84-117	110 94-132	122 104-146	134 114-160	146 125-175	158 135-189
<i>Agg. Robbery, 1st Degree; Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	48 41-57	58 50-69	68 58-81	78 67-93	88 75-105	98 84-117	108 92-129
<i>Felony DWI; Financial Exploitation of a Vulnerable Adult</i>	7	36	42	48	54 46-64	60 51-72	66 57-79	72 62-84 ^{2,3}
<i>Assault, 2nd Degree Burglary, 1st Degree (Occupied Dwelling)</i>	6	21	27	33	39 34-46	45 39-54	51 44-61	57 49-68
<i>Residential Burglary; Simple Robbery</i>	5	18	23	28	33 29-39	38 33-45	43 37-51	48 41-57
<i>Nonresidential Burglary</i>	4	12 ¹	15	18	21	24 21-28	27 23-32	30 26-36
<i>Theft Crimes (Over \$5,000)</i>	3	12 ¹	13	15	17	19 17-22	21 18-25	23 20-27
<i>Theft Crimes (\$5,000 or less) Check Forgery (\$251-\$2,500)</i>	2	12 ¹	12 ¹	13	15	17	19	21 18-25
<i>Assault, 4th Degree Fleeing a Peace Officer</i>	1	12 ¹	12 ¹	12 ¹	13	15	17	19 17-22



Las 'Guidelines' Inglesas

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Este tipo de guidelines de parrilla a perpetuado la vision de consistencia en oposicion a individualidad
- Existen muchos otros modelos de guidelines mas flexibles
- El ejemplo de las guidelines de Inglaterra y Gales



Las 'Guidelines' Inglesas

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Este tipo de guidelines de parrilla a perpetuado la vision de consistencia en oposicion a individualidad
- Existen muchos otros modelos de guidelines mas flexibles
- El ejemplo de las guidelines de Inglaterra y Gales
 - Establecen una estructura a seguir que refleja los procedimientos que se venian considerando de manera no reglada
 - Revisando de manera secuencial los principales elementos constitutivos del delito y el contexto del delincuente
 - Aceptando discrecionalidad en la ponderacion de factores y en la valoracion la pena



Las 'Guidelines' Inglesas

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Diferentes 'guidelines' para diferentes delitos
- Una estructura obligatoria compuesta de nueve pasos
 - ① Determinar el nivel de seriedad (daño y culpabilidad)
 - ② Determinar la presencia de agravantes o mitigantes
 - ③ Consideracion de la asistencia al proceso de enjuiciamiento
 - ④ Reduccion por declaracion de culpabilidad
 - ⑤ Consideracion de la peligrosidad del delincuente
 - ⑥ Aplicacion del principio de totalidad
 - ⑦ Compensaciones y requerimientos adicionales
 - ⑧ Razonamiento de la sentencia
 - ⑨ Consideracion del tiempo pasado en prision preventiva



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

Assault

Definitive Guideline

DEFINITIVE GUIDELINE



Contents

Applicability of guideline	2
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (section 18)	3
Inflicting grievous bodily harm/Unlawful wounding (section 20)	7
Assault occasioning actual bodily harm (section 47)	11
Assault with intent to resist arrest (section 38)	15
Assault on a police constable in execution of his duty (section 89)	19
Common assault (section 39)	23
Annex: Fine bands and community orders	27



Contents

Applicability of guideline	2
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (section 18)	3
Inflicting grievous bodily harm/Unlawful wounding (section 20)	7
Assault occasioning actual bodily harm (section 47)	11
Assault with intent to resist arrest (section 38)	15
Assault on a police constable in execution of his duty (section 89)	19
Common assault (section 39)	23
Annex: Fine bands and community orders	27

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1 Greater harm (serious injury must normally be present) **and** higher culpability

Category 2 Greater harm (serious injury must normally be present) **and** lower culpability;
or lesser harm **and** higher culpability

Category 3 Lesser harm **and** lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability

Statutory aggravating factors:

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

**STEP ONE****Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
Statutory aggravating factors:	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
Other aggravating factors:	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
ComunicacionRotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

ABH

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
-------------------	--

Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
-------------------	--

Category 3	Lesser harm and lower culpability
-------------------	--

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability**Statutory aggravating factors:**

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	1 year 6 months' custody	1 – 3 years' custody
Category 2	26 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band A fine – High level community order



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica**STEP TWO****Starting point and category range**

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	1 year 6 months' custody	1 – 3 years' custody
Category 2	26 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band A fine – High level community order



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Offence committed against those working in the public sector or providing a service to the public

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

ABH



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica**Factors increasing seriousness***Statutory aggravating factors:*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Offence committed against those working in the public sector or providing a service to the public

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

ABH

**STEP THREE****Consider any other factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.



Resultados: Consistencia

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Pregunta: Como se podria valorar si las 'guidelines' afectaron la consistencia en las sentencias?

Resultados: Consistencia

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Pregunta: Como se podria valorar si las ‘guidelines’ afectaron la consistencia en las sentencias?
- Controlando por la mayoria de factores incluidos en las ‘guidelines’ encontramos..
 - 80.8% de las penas de prision pueden ser predecidas de manera exacta
 - Las disparidades que no pueden ser explicadas cayeron un 7% al introducir las guidelines para delitos de agresion
 - De las disparidades que no pueden ser explicadas solo el 4% se pueden atribuir a diferencias systematicas entre juzgados
 - No hay diferencias entre juzgados en la aplicacion de factores indicados en las ‘guidelines’
 - Isaac, A., Pina-Sánchez, J., and Varela, A. (2021). The impact of three guidelines on consistency in sentencing. *Sentencing Council for England and Wales*



Resultados: Consistencia

Introduccion

Sentencing
Guidelines

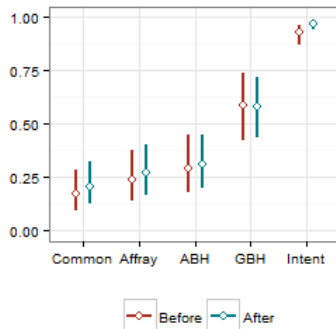
Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica





Resultados: Individualizacion

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Pregunta: Como se podria valorar si las 'guidelines' afectaron el principio de individualizacion?



Resultados: Individualizacion

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Pregunta: Como se podria valorar si las 'guidelines' afectaron el principio de individualizacion?
- Observamos cambios en el numero de factores y tipos de sentencias utilizados
 - 56% de las penas de prision se concentran en diez tipos
 - Esa proporcion se redujo de 58.3% a 53.7% al implementar la guideline de agresion

Resultados: Individualizacion

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Pregunta: Como se podria valorar si las ‘guidelines’ afectaron el principio de individualizacion?
- Observamos cambios en el numero de factores y tipos de sentencias utilizados
 - 56% de las penas de prision se concentran en diez tipos
 - Esa proporcion se redujo de 58.3% a 53.7% al implementar la guideline de agresion
 - El numero medio de factores usados incremento de 3.6 a 4.7
 - Posiblemente como resultado de imponer la secuencia de pasos donde se revisan factores relevantes (‘nudge the judge?’)
 - Roberts, J. V., Pina-Sánchez, J., and Marder, I. (2018). Individualisation at sentencing: The effects of guidelines and ‘preferred’ numbers. *Criminal Law Review*, 2:123–136



Resultados: Individualizacion

Introduccion

Sentencing
Guidelines

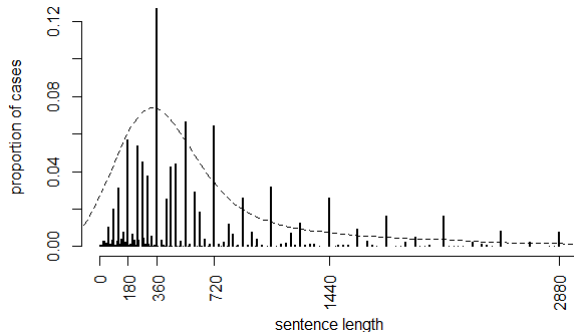
Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica





Resultados: Individualizacion

Introduccion

Sentencing
Guidelines

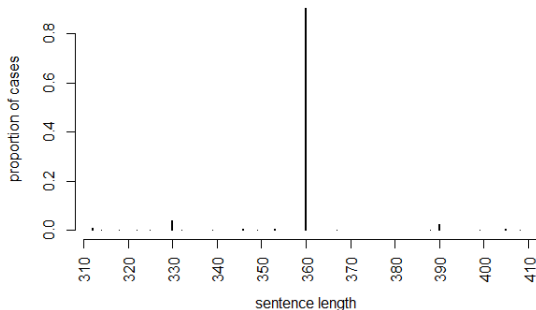
Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica





Resultados: Guidelines Inglesas

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Individualizacion y consistencia no son necesariamente principios opuestos
- La discrecionalidad judicial no es condicion suficiente para asegurar la individualizacion de las penas
 - Imponer la revision de los factores que componen el caso ayuda a tomar una decision mas holistica
 - Marder, I. and Pina-Sánchez, J. (2020). Nudge the judge? Theorising the interaction between heuristics, sentencing guidelines and sentence clustering. *Criminology & Criminal Justice*, 20(4):399–415

Rotacion de Jueces

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Los jueces que estan mas expuestos a la practica de otros jueces sentencian de manera mas consistente
- La rotacion de jueces hace que se diseminen normas y practicas no escritas y fomenta su harmonizacion
 - Sin afectar a la discrecionalidad judicial
 - Evidencia cualitativa y cuantitativa al rotar jueces en Carolina del Sur y la Crown Court de Inglaterra
 - Hester, R. (2017). Judicial rotation as centripetal force: Sentencing in the court communities of South Carolina. *Criminology*, 55(1), 205-235.
 - Pina-Sánchez, J., Grech, D., Brunton-Smith, I., and Sferopoulos, D. (2019). 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



Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

Informacion del Juez

THELAWPAGES.COM

TRUSTED LEGAL RESOURCES

Ad closed by Google

Stop seeing this ad

Why this ad? ↗

ABOUT SEARCH CASES ADVANCED SEARCH CRIMINAL OFFENCES CASE LISTS PROSECUTION PRISONS POLICE CRIME MAPS MAXIMUM SENTENCES

Search Again | Results: 20044

1 2 3 4 5 6 7 ... 1002 1003 Next »

DATE	COURT	JUDGE	DEFENDANT	GENDER	AGE	INDICTMENT / OFFENCE	SENTENCE
27-10-2017	Central Criminal Court (Old Bailey)	Judge Rebecca Poulet QC	Shobidul Islam	Male	26 Years	Making and possessing indecent images of children Possessing an article/s for a purpose connected with terrorism Communicating false information with intent / Bomb hoaxes Encouragement of terrorism, directly or indirectly, inciting or encouraging others to commit acts of terrorism [2 counts]	Custodial immediate Custodial immediate Custodial immediate Custodial immediate
27-10-2017	Leicester Crown Court	Judge Nicholas Dean QC	Ezekiel Braithwaite	Male	20 Years	Murder	Custodial immediate
27-10-2017	Central Criminal Court (Old Bailey)	Judge Mark Lucraft QC	Mark Loveridge	Male	37 Years	Manslaughter due to diminished responsibility Unlawfully and maliciously wounding or causing grievous bodily harm (GBH) with intent	Custodial immediate Custodial immediate
26-10-2017	Blackfriars Crown Court	Mr Justice Alan Wilkie	Terence Barry	Male	44 Years	Conspiracy to murder	Custodial immediate
26-10-2017	Central Criminal Court (Old Bailey)	Judge Philip Alec Jackson Katz QC	Hong Chin	Male	46 Years	Acquisition, use or possession of criminal property Conspiracy to control prostitution / Causing or inciting prostitution for gain / Controlling prostitution for gain [2 counts] Trafficking in persons for the purposes of prostitution / Trafficking within the UK for sexual exploitation [2 counts]	Custodial immediate Custodial immediate Custodial immediate Custodial immediate
26-10-2017	Central Criminal Court (Old Bailey)	Judge Christopher Moss QC	Sabah Khan	Female	27 Years	Murder	Custodial immediate



Modelos Multinivel: Incluyendo Jueces

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

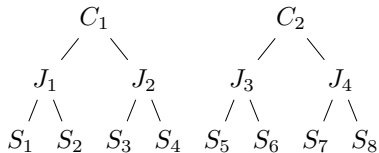
Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica





Modelos Multinivel: Cross-Clasificados

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

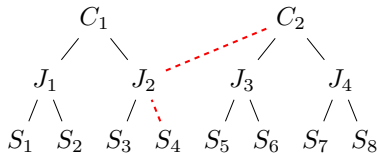
Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica





Rotacion en la ‘Crown Court’

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Jueces de distrito rotan por varios juzgados de una region, el resto se mantienen en el mismo juzgado



Rotacion en la ‘Crown Court’

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Jueces de distrito rotan por varios juzgados de una region, el resto se mantienen en el mismo juzgado
- Los primeros sentencian un mix de casos mas heterogeneos
 - Su rango de sentencias es aproximadamente 10% mayor

Rotacion en la ‘Crown Court’

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas
Investigacion
Empirica

- Jueces de distrito rotan por varios juzgados de una region, el resto se mantienen en el mismo juzgado
- Los primeros sentencian un mix de casos mas heterogeneos
 - Su rango de sentencias es aproximadamente 10% mayor
- Pero lo hacen de manera mas consistente
 - Sus disparidades injustificadas son un 10% mas bajas
- Pregunta: Que otras estrategias creéis que podrían fomentar la consistencia sin socavar la individualización?



La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Datos de la Republica Checa (Jakub Drápal)
 - 102,905 casos
 - procesados por 189 jueces
 - durante una decada (2008-2017)



La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Datos de la Republica Checa (Jakub Drápal)
 - 102,905 casos
 - procesados por 189 jueces
 - durante una decada (2008-2017)
- Exploramos trayectorias individuales en los patrones de sentencing
 - Jueces atipicos convergen hacia el patron medio durante su carrera
 - Lo aducimos a su creciente familiaridad con las pautas sancionadoras de otros jueces
 - Drápal, J., & Pina-Sánchez, J. (2023). What is the Value of Judicial Experience? Exploring Judge Trajectories Using Longitudinal Data. *Justice Quarterly*, 40(2), 211-240.



La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

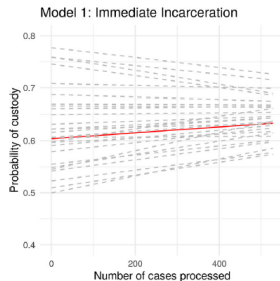
Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica





La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

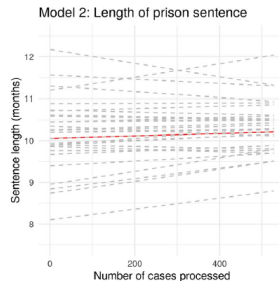
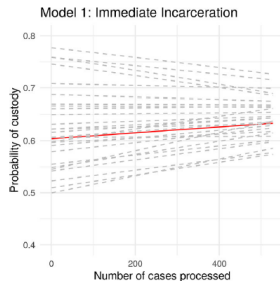
Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica





La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

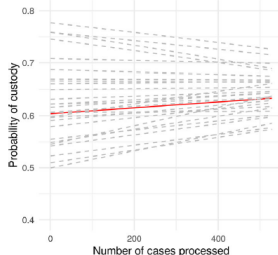
Ganar Experiencia

Conclusion

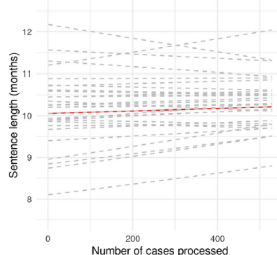
Reformas Creativas

Investigacion
Empirica

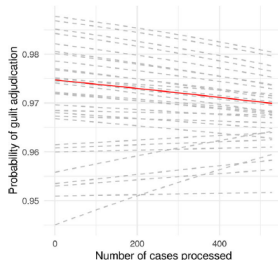
Model 1: Immediate Incarceration



Model 2: Length of prison sentence



Model 3: Guilt





La Experiencia Cuenta

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

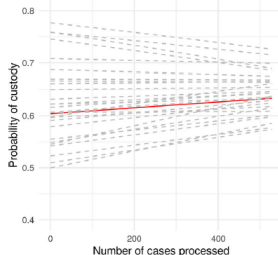
Ganar Experiencia

Conclusion

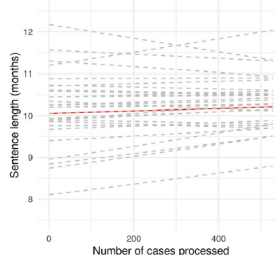
Reformas Creativas

Investigacion
Empirica

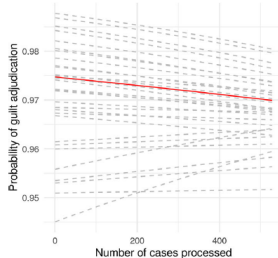
Model 1: Immediate Incarceration



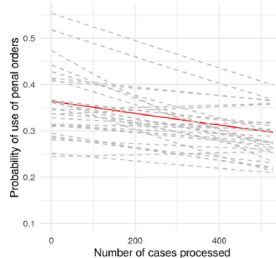
Model 2: Length of prison sentence



Model 3: Guilt



Model 4: Penal order





La Complejidad de la Sentencia

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion

Empirica

- Se busca lograr multiples objetivos simultaneamente
 - Castigar, incapacitar, disuadir, rehabilitar, restaurar
- Decisiones regidas bajo diferentes principios
 - Igualdad, equidad, proporcionalidad, individualidad, consistencia
- Muchos de estos objetivos y principios pueden aparecer en conflicto
 - Hemos tratado el conflicto individualizacion - consistencia
 - Pero existen muchos otros, e.g. retribucion - rehabilitacion

Simplificacion del Debate

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces

Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Estos conflictos suelen ser superados mediante cierto nivel de abstraccion, lo cual puede ser util para facilitar el debate
- Pueden convertirse en un problema cuando se toman como dogma
 - Convierten el proceso de imposicion de sentencias en un juego de suma zero
 - Dan lugar a conclusiones erroneas
 - Inhiben reformas necesarias
- Podemos llevar a cabo reformas efectivas si pensamos de manera creativa
 - El ejemplo de sentencia por pasos en Inglaterra
 - Fomentar el contacto entre jueces



Investigacion Empirica Es Clave

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Un campo de investigacion hostil al estudio empirico
 - Las dificultades para acceder a los juzgados ('break into court')
 - Bases de datos oficiales censuradas
 - La prohibicion de llevar a cabo analisis de datos en Francia
 - Dominado por tradiciones de investigacion doctrinal

Investigacion Empirica Es Clave

Introduccion

Sentencing
Guidelines

Inglaterra y Gales

Fomentar la
Comunicacion

Rotacion de Jueces
Ganar Experiencia

Conclusion

Reformas Creativas

Investigacion
Empirica

- Un campo de investigacion hostile al estudio empirico
 - Las dificultades para acceder a los juzgados ('break into court')
 - Bases de datos oficiales censuradas
 - La prohibicion de llevar a cabo analisis de datos en Francia
 - Dominado por tradiciones de investigacion doctrinal
- Sin evidencia empirica los mitos se perpetuan
 - Las 'guidelines' socavan la individualizacion de las penas
 - El principio hegemonico es el de proporcionalidad
 - Los jueces en Inglaterra no consideran el genero del delincuente
 - En Inglaterra hay mas discrecion judicial que en Europa continental
 - "[...] *sentencing policy evolves in a vacuum*" (Roberts and Hough, 2015)
 - Mientras tanto, la duracion media de las penas de prision en Inglaterra se ha doblado en dos decadas y no sabemos por que