Background
Case Studies
Unobserved Case Characteristics
Measurement Error
Selection Bias
Conclusion

Ethnic Disparities in Sentencing: Can You Trust the "Evidence"?

Jose Pina-Sánchez

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- Sentencing is the most consequential criminal justice process
  - Certainly the most visible and symbolic

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- Sentencing is the most consequential criminal justice process
  - Certainly the most visible and symbolic
- If perceived as discriminatory, important implications follow
  - Affecting individuals subject to discrimination
  - but also members of the same demographic group
  - Undermining trust with the criminal justice system
  - and other political and social institutions too

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- Hundreds of studies exploring ethnic disparities in sentencing
  - Most document harsher sentences on ethnic minority offenders
  - However, the evidence remains largely contested
  - Many point at ethnic disparities due to 'differential involvement'

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- Hundreds of studies exploring ethnic disparities in sentencing
  - Most document harsher sentences on ethnic minority offenders
  - However, the evidence remains largely contested
  - Many point at ethnic disparities due to 'differential involvement'
- Are those disparities 'warranted' or unwarranted?
  - Is that a question we can even answer?
  - In our project we try to do so by exploring the main forms of bias affecting the evidence

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Two Case Studies

- Hopkins et al. (2016), from the Ministry of Justice
  - 21,639 cases, covering all offence types processed in the Crown Court
  - Controls for offender demographics, offence type, previous convictions and guilty plea
  - Estimates 20% higher probability of incarceration for Blacks
  - Question: Is this evidence of discrimination?

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Two Case Studies

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- Isaac (2020), from the Sentencing Council
  - 14,000 cases of three drug offences sentenced in the Crown Court
  - Controls for offender demographics, and practically all factors listed in the sentencing guidelines
  - Estimates 21% higher probability of incarceration for Blacks
  - Question: Is this evidence of discrimination?

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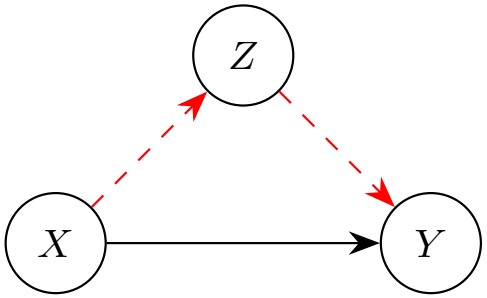
Unobserved Case Characteristics



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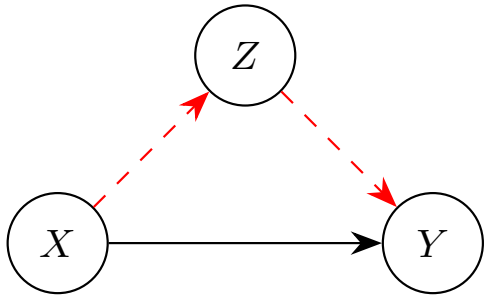

- We rule out this being a problem in Isaac (2020), but it is likely present in Hopkins (2016)
- We use simulations to assess how strong those unobserved case characteristics need to be in Hopkins to explain away the reported disparities

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Simulations: Results

- Six congruous scenarios with an overestimated ethnicity effect on incarceration
  - None of them explained it away entirely, only halved it
- For that to be the case, the unobserved characteristics has to...
  - be much more prevalent in Blacks than White offenders
  - and have a strong effect on the probability of incarceration

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Simulations: Results

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Congruous scenarios where the ethnic disparities reported in Hopkins could be overestimated as a result of unobserved case characteristics

prevalence of the unobserved in Whites	relative prevalence of the unobserved in minorities compared to Whites	effect of the unobserved on incarceration, $OR_{U \to Y}$ ($RR_{U \to Y}$)	direct effect, $OR_{X \to Y}$ ($RR_{X \to Y}$)
0.2	2	1.93 (1.41)	1.25 (1.10)
0.3	1.75	2.12 (1.46)	1.25 (1.10)
0.3	2	2.12 (1.46)	1.25 (1.10)
0.3	2	1.58 (1.25)	1.25 (1.10)
0.5	1.5	1.91 (1.36)	1.25 (1.10)
0.5	1.75	1.91 (1.36)	1.25 (1.10)

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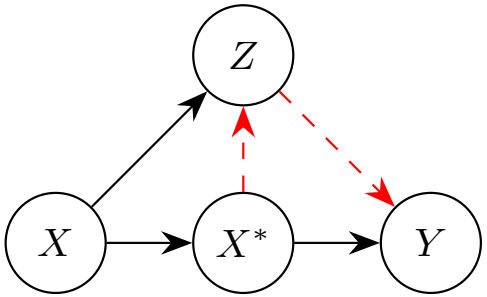

- Racially-determined case characteristics
  - E.g. dangerousness, remorse, 'good character', but also previous convictions and many others
  - Controlling for these will bias ethnic disparities estimates downwards

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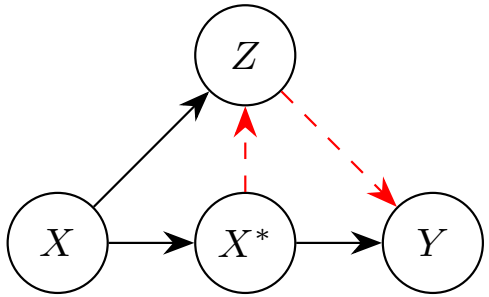

- Racially-determined case characteristics
  - E.g. dangerousness, remorse, 'good character', but also previous convictions and many others
  - Controlling for these will bias ethnic disparities estimates downwards
- Misclassification in the White group
  - Question: What do you think the White group is composed of? And, do you think that could affect the reported disparities?

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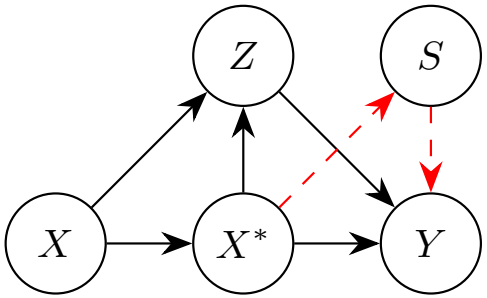

- Upstream disparities
  - Ethnic minority individuals are more likely to being stopped, arrested, charged and found guilty
  - Sentencing cases are therefore not representative of the criminal justice system, another attenuation bias

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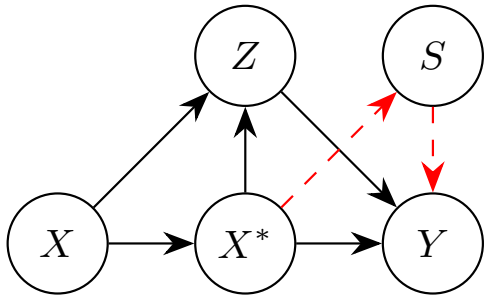

- Upstream disparities
  - Ethnic minority individuals are more likely to being stopped, arrested, charged and found guilty
  - Sentencing cases are therefore not representative of the criminal justice system, another attenuation bias
- Missing data could be as problematic
  - Question: What kind effect would you expect from...
  - (in Hopkins) 12% of cases do not have offenders' ethnicity, which was self-reported
  - (in Isaac) about 40% of questionnaires were not submitted by judges to the Sentencing Council

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- Estimates of ethnic disparities in sentencing are subject to multiple biases
  - Unobserved case characteristics is only one of them
  - By carefully mapping their impact we can potentially test the presence of discrimination in sentencing

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Conclusion

- Estimates of ethnic disparities in sentencing are subject to multiple biases
  - Unobserved case characteristics is only one of them
  - By carefully mapping their impact we can potentially test the presence of discrimination in sentencing
- The England and Wales evidence seems to point at real sentencing discrimination
  - Without a doubt for the case of drug offences
  - This problem needs to be redressed through effective policy
  - Ideally informed by further research exploring the specific mechanisms behind these disparities (class discrimination, legal aid, pre-sentence reports, etc.)
  - And where are those disparities more present