



The Relevance  
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# Researching Crime and Criminal Justice

## Week 7: Sentencing, an Empirical Perspective

Jose Pina-Sánchez



## Workshop Goals

- To introduce the sentencing process
  - Arguably the most important stage of the Criminal Justice system
  - With a focus on the jurisdiction of England and Wales, which has introduced recently sentencing guidelines
- To discuss the role of empirical research on sentencing
  - A field traditionally dominated by doctrinal, normative and theoretical research
  - Currently in a process of transformation, providing great opportunities to empirical researchers
  - The crucial role of the Sentencing Council, user and producer of empirical evidence on sentencing

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# The Relevance of Sentencing

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Recap

- Every single stage in the CJ process is important
  - It could be argued that any other stage is more resource and time intensive
  - crime reporting/detection → arrest → prosecution → sentencing → prison/probation → parole



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Recap

- Every single stage in the CJ process is important
  - It could be argued that any other stage is more resource and time intensive
  - crime reporting/detection → arrest → prosecution → sentencing → prison/probation → parole
- Sentencing is the most visible and symbolic stage
  - The institutionalised representation of how we deal with wrongdoing
  - At the core of two crucial concepts, *punishment* and *justice*
  - With vast ramifications to the legitimacy and trust of the Criminal Justice system, the public budget, victim and offender well-being, and future crime rates



# The Complexity of Sentencing

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Recap

- Sentencing is a complex process
- Seeking to achieve competing goals
  - Retributive
  - Incapacitating
  - Deterring
  - Rehabilitative
  - Restorative
  - Question: Can you think of specific instances where the above goals might become mutually exclusive?



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Recap

- Governed by rather elusive (and often competing) principles
  - Consistency
  - No discrimination
  - Individualisation
  - Proportionality
  - Equity
  - Question: Can you define these principles?



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Recap

- Governed by rather elusive (and often competing) principles
  - Consistency
  - No discrimination
  - Individualisation
  - Proportionality
  - Equity
  - Question: Can you define these principles?  
Can you identify tensions between some of them?  
What could be the implications of promoting a more consistent approach to sentencing?  
What if we sought to strengthen equity?



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Recap

- The consensus amongst practitioners and most academics is that sentencing is an art, not a science
  - The sentencing process cannot be expressed mathematically (Freiberg, 2016)
  - *“There could never be a ‘right’ sentence in the same way as there can never be a ‘right’ work of art or a ‘right’ poem.”* (see Sir Anthony Hooper 2015)
  - Refers to 13<sup>th</sup> Thomas of Aquino view of the sentencer as an architect who determines in what style a house should be built, subject to various constraints
  - Question: What’s your view? Can you identify any elements of the sentencing process that can be objectively evaluated?





## Research Implications

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- I believe the view of ‘sentencing as an art’ has been instrumentalised
  - To maintain the status/prestige of the judiciary
  - To preserve their autonomy
  - And to avoid accountability
- Some of the above can be demonstrated by the traditional hostility shown towards empirical research
  - Very difficult for researchers to ‘break into court’
  - All research with members of the judiciary needs to be previously approved by the Judicial Office
  - Several examples of official data been censored
  - The French ban on data analytics



## Research Implications

- Sentencing research dominated by normative, theoretical, historical and doctrinal approaches
  - Useful to provide perspective

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## Research Implications

- Sentencing research dominated by normative, theoretical, historical and doctrinal approaches
  - Useful to provide perspective
- However, the absence of empirical research gives rise to circular discussions, commonly based on untested claims
  - E.g. the E&W sentencing scheme being ‘gender neutral’
  - governed by the principle of proportionality
  - guidelines improve consistency
  - but they hinder individualisation, which in turn affects sentencing severity
  - the importance of personal mitigating factors has been relegated in favour of aggravating factors
  - judges in E&W have got more discretion than in the US

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  - Useful to provide perspective
- However, the absence of empirical research gives rise to circular discussions, commonly based on untested claims
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  - governed by the principle of proportionality
  - guidelines improve consistency
  - but they hinder individualisation, which in turn affects sentencing severity
  - the importance of personal mitigating factors has been relegated in favour of aggravating factors
  - judges in E&W have got more discretion than in the US
- Which hinders progress in the discipline
  - while “*sentencing policy evolves in a vacuum*” (Roberts and Hough, 2015)

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Recap

- The sentencing landscape in E&W has changed importantly over the last couple of decades
  - Sentencing guidelines have been progressively issued
  - The first jurisdiction outside the US to issue guidelines
  - Seeking to structure the sentencing process
  - As a strategy to foster a common approach and promote consistency in sentencing



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Recap

- The ‘2003 Criminal and Justice Act’ founded the Sentencing Guidelines Council
  - Charged with the mission of issuing definitive guidelines in E&W
  - At that time courts were only required to “*have regard to*” sentencing guidelines
- The process shifted up a gear with the ‘2009 Coroners and Justice Act’
  - Founded the new Sentencing Council (in 2011)
  - Guidelines became more binding
  - “*Every court must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offenders case [...] unless the court is satisfied that it would be contrary to the interests of justice to do so*”



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Recap

- Currently more than 20 guidelines in force
  - Most of them ‘offence-specific’, i.e. each group of offences structured by different guidelines (e.g. assault, theft, sex, fraud, etc.)
  - A few ‘overarching’ guidelines (e.g. guilty plea, offences taken into consideration and totality, sentencing children and young people)
  - Expected that by the end of 2020 all main offence groups will be structured by guidelines



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Recap

- This process has unquestionably affected judicial discretion
  - Pushed the *art vs science* dichotomy rightwards
  - Facing some resistance from parts of the judiciary
- How then have the guidelines become a reality?





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Recap

- This process has unquestionably affected judicial discretion
  - Pushed the *art vs science* dichotomy rightwards
  - Facing some resistance from parts of the judiciary
- How then have the guidelines become a reality?
  - Most council members at the Sentencing Council also members of the judiciary
  - Clear rejection of US-style grid-based guidelines (see Sentencing Commission Working Group, 2008)
  - I.e. differentiating between *consistency of approach* and *consistency of outcome*



# Judge pledges more consistency in assault sentencing

🕒 9 March 2011 | [UK](#)

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**New guidelines on sentencing offenders guilty of assault should ensure there is greater consistency between courts, a senior judge has told the BBC.**

Lord Justice Leveson, chairman of the Sentencing Council for England and Wales, spoke on BBC Radio 5 Live.

He said there would be more emphasis on the harm caused to the victim, and the culpability of the offender.

The guidelines are expected to be issued next week and come into force in June, after judges have had training.

Sentencing guidelines for assault offences are currently based on a description of the offence.

He said new guidelines should be simpler for people to understand, and result in less inconsistency.

Lord Justice Leveson said: "For judges, the aim is to increase the consistency of approach to sentencing so that offenders receive the same approach whether they're being sentenced in Bristol, Birmingham, Bolton or Basildon. And hopefully therefore, a greater consistency of outcome."



Some 84,000 offenders were sentenced for assaults in 2008

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Recap

- The 2011 assault guidelines established a step-based structure replicated by all other offence-specific 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



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# E&W Guidelines: GBH

## 8 Assault Definitive Guideline

### STEP ONE

#### Determining the offence category

For reference only.

Please refer to the guideline(s) on the Sentencing Council website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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

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

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors 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.

GBH/Wounding s.20

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



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# E&W Guidelines: GBH

## 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 (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	3 years' custody	2 years 6 months' – 4 years' custody
Category 2	1 year 6 months' custody	1 – 3 years' custody
Category 3	High level community order	Low level community order – 51 weeks' custody

For reference only: [Assault Definitive Guideline 9](#)  
Please refer to the guideline(s) on the Sentencing Council website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

The table below contains a **non-exhaustive** list of additional factors, offence and factors relating to the offender. Identify whether any of these factors, should result in an upward or downward adjustment from the identified category range. If considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness	
<b>Statutory aggravating factors:</b>	Exploiting contact arrangements with a child to commit an offence
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	Established evidence of community impact
Offence committed whilst on bail	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
<b>Other aggravating factors include:</b>	Offences taken into consideration (TICs)
Location of the offence	<b>Factors reducing seriousness or reflecting personal mitigation</b>
Timing of the offence	No previous convictions or no relevant/recent convictions
Ongoing effect upon the victim	Single blow
Offence committed against those working in the public sector or providing a service to the public	Remorse
	Good character and/or exemplary conduct



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## 4.A. Sentencing Guidelines Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

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

<sup>1</sup> 12<sup>1</sup>=One year and one day

Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E. for policies regarding those sentences controlled by law.



Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.



## Exercise 1: Sentencing under Alternative Guidelines Schemes

Let's compare the two guidelines schemes by sentencing the following case:

A case of assault (assume the offender was charged with 'grievous bodily harm' in England and Wales, while in Minnesota the charge would be 'assault in the second degree'), which took place in a park following the unplanned encounter between two rival gangs. The offender tried to convince his friends to leave the area but saw himself dragged into the fight. He ended up grabbing a broken bottle and cutting a member of the rival gang in the face causing permanent loss of vision in one eye. The offender has shown genuine remorse however he did not plead guilty even though the fight was recorded by CCTV. The offender has been convicted three times in the past as a result of similar assault offences. The offender is the main carer of two young children.

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## Exercise 1: Sentencing under Alternative Guidelines Schemes

- Use the sentencing guidelines to explore the following questions individually
  - What sentence would you impose if required to use the E&W guidelines?
  - What would be your sentence under the Minnesota scheme?
  - How would your sentences change if the offender does not have relevant previous convictions?
- Discuss your answers in groups of four; also within your groups consider the following
  - Which scheme do you think achieves higher consistency of outcome?
  - Which scheme seems to facilitate a more individualised approach to sentencing?

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## Exercise 1: Sentencing under Alternative Guidelines Schemes

- Use the sentencing guidelines to explore the following questions individually
  - What sentence would you impose if required to use the E&W guidelines?
  - What would be your sentence under the Minnesota scheme?
  - How would your sentences change if the offender does not have relevant previous convictions?
- Discuss your answers in groups of four; also within your groups consider the following
  - Which scheme do you think achieves higher consistency of outcome?
  - Which scheme seems to facilitate a more individualised approach to sentencing?
- If you want to know more see
  - Marder and Pina-Sánchez (2018) Nudge the judge? Theorising the interaction between heuristics, sentencing guidelines and sentence clustering, *Criminology and Criminal Justice*
  - Roberts et al. (2018) Individualisation at sentencing: The effects of guidelines and preferred numbers, *Criminal Law Review*

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- In the last six years the sentencing research landscape has changed dramatically
  - Empirical methods (quanti and quali) have irrupted and now dominate the field
- The Sentencing Council for E&W has played a key role



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Recap

- In the last six years the sentencing research landscape has changed dramatically
  - Empirical methods (quanti and quali) have irrupted and now dominate the field
- The Sentencing Council for E&W has played a key role
  - In charge of the design of ‘sentencing guidelines’
  - Also in charge of evaluating the impact of their guidelines
  - Employing a team of 7 social researchers and statisticians
  - Generating important resources (the CCSS)
  - While also commissioning external research
  - Its success has influenced the creation of the Scottish Sentencing Council, and others



## An 'Impact' Gold Mine

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- 'Impact': The demonstrable contribution that excellent research makes to society and the economy (ESRC)
- The Research Excellence Framework places 'impact' at the centre of its strategy
  - Used to assess the 'Excellence' of research departments
  - Also key to obtain competitive research funding and PhD scholarships
- Sentencing research in the UK is now a field where the possibility of achieving wide-reaching impact is very real



## An 'Impact' Gold Mine

- The sentencing guidelines, designed through an iterative process
  - As opposed to the 'one-off' approach followed in the US Federal and State guidelines
  - In E&W most guidelines are offence specific and all of them subject to empirical evaluations
  - Those identified as problematic are given priority to be reformulated
- A genuine commitment to 'evidence-based policy' from the Council
  - Consultations about their guidelines at different stages (pre-design stage, definition of terms, impact evaluations)
  - Commissioning empirical research
  - Organising and participating in academic conferences
  - It is possible to influence policy; it is likely such influence will be well documented

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## Examples of 'Impact'

- Examples of impact achieved by sentencing researchers recently
  - Martin Waseek's impact case on the adoption of proportionality as the anchoring principle for the development of sentencing guidelines, plus the rejection of numerical US-style grids-based guidelines in favour of a more narrative format
  - Shona Minson's ESRC impact prize based on putting children's right at the forefront of sentencing parents
  - Carly Lightowler's clarification of the aggravating factor 'offence committed under the influence of alcohol or drugs'
  - Identification of guideline factors double counted (e.g. 'remorse', 'previous convictions')
  - New analytical framework to evaluate the effect of the guidelines on sentence severity
  - New analytical framework to evaluate the effect of the guidelines on sentence consistency

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# Empirical Methods in Sentencing

- Imagine that your group is tendering for a research project commissioned by the Sentencing Council
- You are asked to prepare a presentation on how to evaluate the effect of their guidelines on the sentencing practice
  - You are required first to identify the main research designs/methods that have been used in the sentencing literature, their pros and cons
  - To be followed by a a specific methodology to explore:
    - The relative weight of different guideline factors on the final sentence outcome
    - The extent to which sentencing is consistent
    - The extent to which sentencing is individualised
    - The extent to which sentencers comply with the guidelines
    - Whether the introduction of guidelines affects sentence severity
    - The prevalence of the principle of proportionality

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## Empirical Methods in Sentencing

- Method1: Experiments based on simulated cases
  - Pros: High internal validity from the experimental design
  - Cons: Ecological validity, small samples, participant fatigue
- Method2: Qualitative interviews with judges
  - Pros: key to explore heuristics in the decision-making process, and for exploratory research in general
  - Cons: Social desirability, prone to self-justification, unable to explore subconscious biases
- Method3: Analysis of official sentencing statistics
  - Pros: Census like generalisability, unaffected by subjectivity
  - Cons: Normally shallow, capturing only the main features of the case and offender, no information on the judge
- Method4: Analysis of court records (e.g. pre-sentence reports, sentence remarks)
  - Pros: Provide more detail than official statistics
  - Cons: Time-consuming, often not a complete census
- Method5: Court observations
  - Pros: Allows full control to the researcher on what is it to be captured (emotions, body language, offender's ethnicity, etc.)
  - Cons: Very time-consuming, hence commonly based on small samples

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## Weight of Guideline Factors

- Can we estimate the weight attributed to different factors?
  - This is key to understand how the guidelines are applied (e.g. Step One factors ought to be more important than Step Two factors)
  - *“Judges are not required to provide details of their calculations but simply to list those factors which they have taken into account. It will therefore be impossible to find out the degree of influence which any individual factor had on the judicial assessment of seriousness.”* (Hutton, 2013)

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## Weight of Guideline Factors

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  - *“Judges are not required to provide details of their calculations but simply to list those factors which they have taken into account. It will therefore be impossible to find out the degree of influence which any individual factor had on the judicial assessment of seriousness.”* (Hutton, 2013)
- Potential research designs
  - Experimental designs: Asking judges to sentence one of two identical cases with the exception of one of the factors being present/omitted
  - Great internal validity but limited to a few judges and factors
  - Multivariate models: Using official statistics, court records, or court observations
  - $Y = \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \dots + \beta_K X_K + \epsilon$
  - Great external validity, questionable internal validity (confounding effects?)

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# Consistency in Sentencing

- Can we estimate the degree of consistency in sentencing?

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# Consistency in Sentencing

- Can we estimate the degree of consistency in sentencing?
  - Traditionally measured using experimental designs, assessing the variability of sentences imposed to a simulated case (see Tarling 2006)
  - How representative are those few cases used in an experimental design?

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# Consistency in Sentencing

- Can we estimate the degree of consistency in sentencing?
  - Traditionally measured using experimental designs, assessing the variability of sentences imposed to a simulated case (see Tarling 2006)

How representative are those few cases used in an experimental design?
  - Alternatively we could use official stats to measure the variability across courts in sentences to similar cases, e.g. GBH (see Reid and MacAlister 2018)

Some of that variability will reflect differences in the case-mix sentenced in different courts (e.g. offenders with more previous convictions in one particular court)

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Some of that variability will reflect differences in the case-mix sentenced in different courts (e.g. offenders with more previous convictions in one particular court)

- Using multivariate models to differentiate between legitimate and illegitimate disparities

$$Y = \underbrace{\beta_K X_K}_{\text{legitimate}} + \underbrace{\epsilon}_{\text{illegitimate}}$$

80.8% of custodial sentences imposed in the Crown Court can be predicted accurately (Pina-Sánchez and Grech 2018)

4% of the residuals in sentence length could be attributed to between court disparities (Pina-Sánchez and Linacre 2013)

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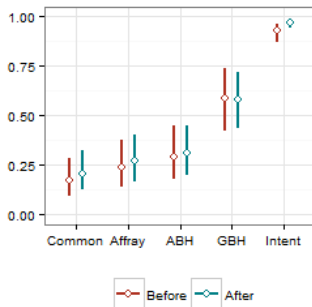
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# Consistency: Findings & Impact

Fig1. Probability of custody in the Crown Court before and after the introduction of the assault guideline (95% confidence intervals representing between court disparities)



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# Individualisation

- Can we estimate the degree of individualisation in sentencing?

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# Individualisation

- Can we estimate the degree of individualisation in sentencing?
  - Court observations and the analysis of sentence remarks offer great opportunities  
Could be used to count the number of factors taken into account, and the number of conditions imposed to the sentence (unpaid work, curfew, alcohol treatment)

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# Individualisation

- Can we estimate the degree of individualisation in sentencing?
  - Court observations and the analysis of sentence remarks offer great opportunities
    - Could be used to count the number of factors taken into account, and the number of conditions imposed to the sentence (unpaid work, curfew, alcohol treatment)
  - Using official statistics on custodial sentence length
    - Roberts et al. (2018) have suggested observing the concentration of cases receiving the same sentence
    - If ‘no two cases are the same’, why do we see so many cases receiving the same sentence?
    - 56% of the custodial sentences in the Crown Court are concentrated within ten common outcomes, but that proportion dropped following the introduction of guidelines

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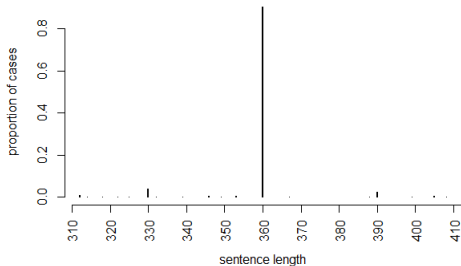
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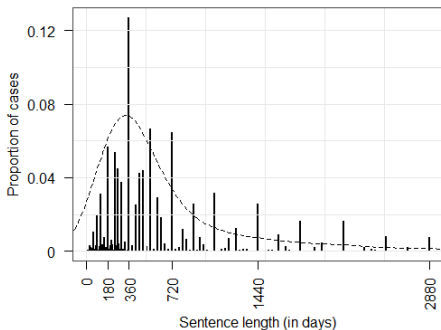
## Individualisation: Findings

Fig3b. Observed sentence length distributions for offences of assault sentenced in the Crown Court in 2011 (range restricted to 310 - 410 days)



# Individualisation: Findings

Fig3a. Observed (vertical bars) and hypothetical (dashed line) sentence length distributions for offences of assault sentenced in the Crown Court in 2011



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# Compliance with the Guidelines

- How can we determine the extent to which judges comply with the guidelines?

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## Compliance with the Guidelines

- How can we determine the extent to which judges comply with the guidelines?

- Probably the most effective approach is qualitative interviews with judges

Generally judges are quite willing to speak their minds regarding problems with the guidelines

Hard to generalise the extent to which identified issues are shared by all members of the judiciary

Further limitations from the heuristics and biases that they are less willing to share or even unaware of them

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## Compliance with the Guidelines

- How can we determine the extent to which judges comply with the guidelines?
  - Probably the most effective approach is qualitative interviews with judges  
Generally judges are quite willing to speak their minds regarding problems with the guidelines  
Hard to generalise the extent to which identified issues are shared by all members of the judiciary  
Further limitations from the heuristics and biases that they are less willing to share or even unaware of them
  - Using sentencing statistics we can look at rates of compliance with those parts of the guidelines that are more prescriptive  
Roberts (2013) looks at the % of sentences that fall within the sentencing ranges  
Roberts and Bradford (2015) look at the extent to which guilty plea reductions are determined by the stage of the plea  
Pina-Sánchez et al. (2018) look at the use of guideline factors in the wrong ‘step’

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	Step One: Assessed Seriousness	Step Four: Guilty Plea Reduction	Final Sentence
Assessed seriousness			
Guilty plea reduction			
<i>Step One Factors</i>			
Deliberate harm			
Intent, serious harm			
Leading role gang			
Hostility <i>age/gender</i>			
Premeditation			
Racially motivated			
Hostility orientation			
Targeting vulnerable			
Use of a weapon			
Serious injury			
Sustained assault			
Vulnerable victim			
Lack premeditation			
Mental disorder			
Provocation			
Self-defence			
Subordinate role			
Injury less serious			
<i>Step Two Factors</i>			
Previous convictions (1-3)			
Previous convictions (4-9)			
Abuse of trust			
Against public			
On bail			
Dispose of evidence			
Victim forced leave			
Community impact			
Failure warnings			
Failure court orders			
Gratuitous degradation			
Location			
Whilst on licence			
Ongoing effect			
Presence of others			
Previous violence			
Timing of offence			
Under drugs/alcohol			
Address addiction			
Lack of maturity			
Good character			
Isolated incident			
Lapse of time			
Medical condition			
Mental disability			
No relevant convictions			
Primary carer			
Genuine remorse			
Single blow			
<i>Step Four Factors</i>			
First opportunity			
At magistrates			
Prior to PCMH			
At PCMH			
After PCMH			





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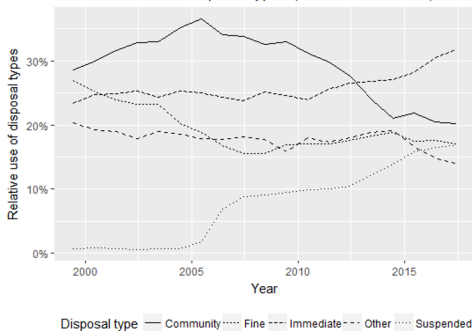
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# Sentence Severity

Fig3. Relative use of disposal types (indictable offences)





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- Can an index of sentence severity be estimated?
  - Direct ratings (Hindelang, et al., 1975)  
arbitrary; unreplicable
  - Magnitude escalation (Leclerc and Tremblay, 2016)  
assumes numeracy of subjects; vast variability in responses
  - Thurstone pair-comparisons (Buchner, 1979)  
requires large samples of subjects comparing multiple  
combinations of sentences



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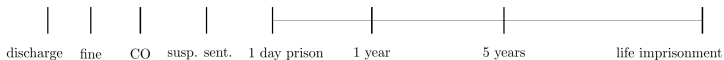
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(a)





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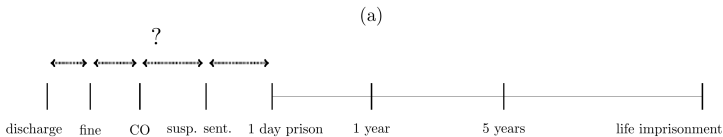
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# Estimating Overlaps in Severity

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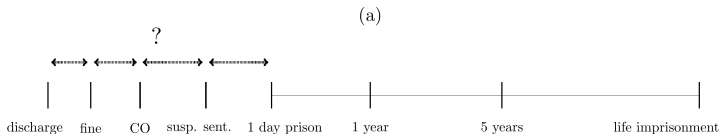
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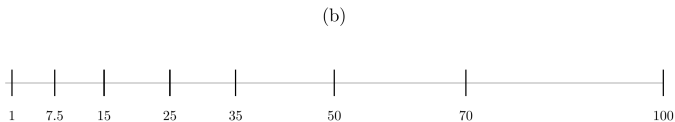
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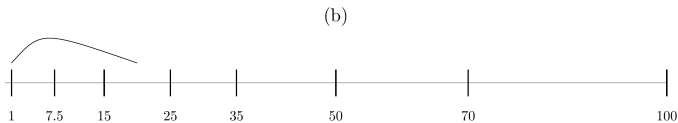
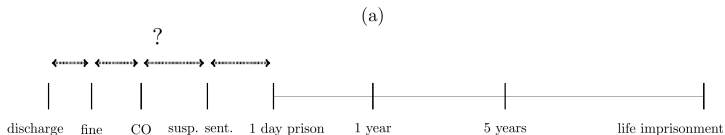
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Research Impact

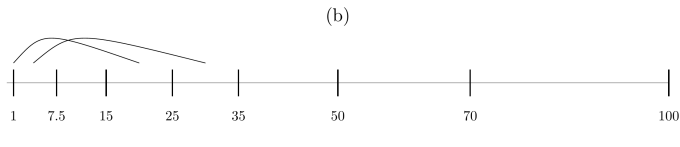
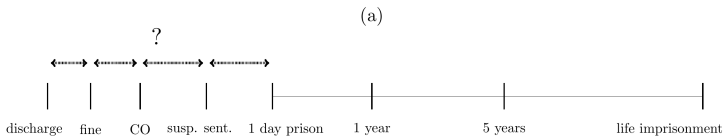
Exercise 2: Empirical Methods

Weight of Guideline Factors Consistency

Individualisation Compliance with the Guidelines

Severity Proportionality

Recap





# Estimating Overlaps in Severity

## The Relevance and Complexity of Sentencing

Sentencing as an Art

Research Implications

## The Sentencing Guidelines

E&W Guidelines

Minnesota Guidelines

Exercise 1: Sentencing Guidelines

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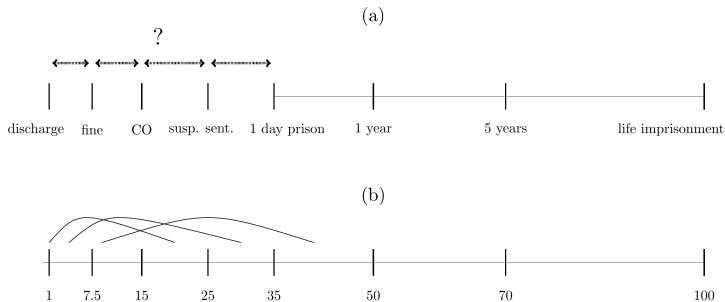
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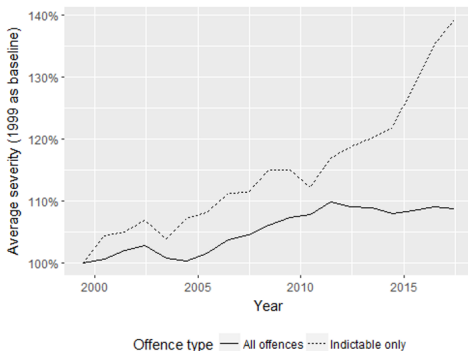
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Fig5. Trends in sentence severity in E&W





# Proportionality

- Can the principle of proportionality be estimated?

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# Proportionality

- Can the principle of proportionality be estimated?
    - Probably the hardest principle to operationalise because of its subjectivity
- Yet, arguably, the most important principle of them all  
Said to be the bedrock of the sentencing practice/guidelines in England & Wales

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**Proportionality**

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- Can the principle of proportionality be estimated?
  - Probably the hardest principle to operationalise because of its subjectivity
    - Yet, arguably, the most important principle of them all
    - Said to be the bedrock of the sentencing practice/guidelines in England & Wales
  - Estimating a scale of crime seriousness/harm and assessing how it correlates with sentence severity
  - Estimating the share of the weight of harm and culpability factors on the final sentence



## Recap

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### Recap

- We have discussed the main goals and principles driving the sentencing process
- Explored the sentencing practice in England and Wales under the new sentencing guidelines
- Discussed how the introduction of guidelines has transformed the practice but also the type of research undertaken in England and Wales
- We have discussed various approaches for the empirical exploration of sentencing



## If you Want to Go Further

- These are important sentencing datasets
  - Official sentencing statistics from the MoJ
  - One-off data release capturing defendant's ethnicity
  - The Crown Court Sentencing Survey
- These are useful repositories of sentencing records
  - Judgements from the Courts and Tribunals Judiciary
  - Sentencing remarks from The Law Pages
- The field is growing steadily, still only a few researchers outside the US using empirical methods
  - If you want to keep up to date with the latest research on the field you are welcome to join our research network ERoS

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