

CCJS602: COURTS AND SENTENCING
SPRING 2019

PROFESSOR

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OFFICE HOURS

Wednesday 1:00 – 4:00; By Appointment

MEETING TIME

Wednesday 4:00 – 6:45; Classroom: LEF 2165E

COURSE DESCRIPTION

This graduate seminar focuses on the role criminal courts play in meting out punishment in society. It examines courtroom decision making from an interdisciplinary perspective, drawing on research and theory from sociological, criminological and organizational perspectives. Specific topics examined include empirical research and theorizing on prosecutorial discretion, plea-bargaining practices, sentencing guidelines, mandatory minimums and truth-in-sentencing reforms. Particular attention will be devoted to the study of racial, gender and class disparities in criminal punishment.

COURSE EXPECTATIONS

The primary goal of this course is to provide a general overview of criminal court sentencing systems. Students should become familiar with the different decision-making points in the sanctioning process and should gain a nuanced understanding of contemporary theoretical perspectives and empirical research in the field. Students will be expected to attend class ready to discuss assigned readings. The course will rely heavily on student participation in addition to class lectures, and ultimately the success of the course will depend on student contributions.

TEXTBOOKS

- Eisenstein, James and Herbert Jacob. 1977. *Felony Justice: An Organizational Analysis of Criminal Courts*. Little Brown.
- Stith, Kate and Jose Cabranes. 1998. *Fear of Judging: Sentencing Guidelines in the Federal Courts*. University of Chicago Press.
- Lynch, Mona. 2016. *Hard Bargains: The Coercive Power of Drug Laws in Federal Court*. Russel Sage Foundation.
- Pfaff, John. 2017. *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform*. Basic Books.
- Bogira, Steve. 2005. *Courtroom 302*. Vintage Books. New York, New York.

Recommended:

- Frankel, Marvin. 1973. *Criminal Sentences: Law without Order*. Hill and Wang.
- Tonry, Michael. 1998. *Sentencing Matters*. Oxford University Press.
- Spohn, Cassia. 2002. *How Do Judges Decide?* 2nd Edition. Sage Publications.

COURSE ASSIGNMENTS AND GRADING

Your grade in this course will be determined by a variety of assignments designed to further your understanding of the criminal sentencing process. These include 1) leading classroom discussion, 2) writing a final research paper, 3) an in-class final examination, and 4) class participation.

1) Each student will be expected to lead class discussions for two weeks, presenting an in-depth look at several aspects of that week's topic. These presentations should include the most relevant empirical research to provide answers to questions posed for that week. The class presentations are intended to serve as a focus for classroom discussion, to bring additional materials into the classroom discussion, and to help you improve your ability to evaluate empirical research. Class presenters should be the local "experts" for that week and should work to stimulate interesting discussion among the group. Presenters should make copies of their class presentation materials available to other class members. Grades for the classroom presentations will be based on a 20-point scale with 50% of the grade made by the instructor and 50% from the students in class. I will pass out "score sheets" for this purpose early in the class.

2) Each student will be expected to write a final research paper in the area of courts and sentencing. This paper should provide the foundation for writing a professional research paper or grant proposal. Students should choose the specific form of the proposal that is most appropriate for their own career trajectory. The goal of this assignment is for students to produce a proposal that can (with modification) later be submitted to an MA or PhD committee for review, or serve as the basis of an empirical research paper for later publication. The proposal should include: 1) an introduction and problem statement, 2) literature review, 3) data and methods, and 4) preliminary and/or expected findings. Research papers should be 15-20 double-spaced pages including references (use *Criminology* as a guide for references). *Proposals will be due on Wednesday, April 24th.*

3) The final part of your grade will consist of a 3-hour, in-class, closed-book, final examination. It will be designed to simulate the courts and sentencing portion of the general comprehensive qualifying examination in the Criminology Department at the University of Maryland. *This exam will be given on the last day of class, Wednesday, May 8th.*

4) A graduate seminar cannot succeed without the active participation of its students. Therefore, your class attendance, participation and effort will be reflected in your final grade.

GRADING BREAKDOWN

PARTICIPATION	15%
LEADING DISCUSSIONS	25%
RESEARCH PAPER	30%
FINAL EXAMINATION	30%

FINAL GRADE DISTRIBUTION

Over 92.5%	= A
89.5% to 92.5%	= A-
87% to 89.5%	= B+
83% to 87%	= B
79.5% to 83%	= B-
70% to 79.5%	= C
60% to 69.9%	= D

COURSE SCHEDULE: (SUBJECT TO CHANGE AS NECESSARY)

Week 1: INTRODUCTION (1/30)

The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.

~Winston Churchill~

TOPICS/READINGS

SYLLABUS

WEEKLY DISCUSSION/SNACK SIGN UP

OVERVIEW OF THE CRIMINAL COURT SYSTEM

WEEK 2 LECTURE

Week 2: NO CLASS – WESTERN SOCIETY OF CRIMINOLOGY MEETINGS

THE CHANGING CRIMINAL COURT SYSTEM (2/6)

Thirty years ago...the word “sentencing” generally signified a slightly mysterious process which...involved individualized decisions that judges were uniquely qualified to make. The situation today is much more complex...

~Cassia Spohn~

HISTORICAL DEVELOPMENTS

Doris MacKenzie. 2001. “Corrections and Sentencing in the 21st Century: Evidence-based Corrections and Sentencing.” *The Prison Journal*, 81(3): 299-313.

Kate Stith and Jose Cabranes. 1998. *Fear of Judging*. Chpt 1, 9-37.

Cassia Spohn. 2002. How do Judges Decide? Chpt 6, pgs 219-239. (*recommended*)

Michael Tonry. 1998. *Sentencing Matters*. Chpt 1, pgs 3-24. (*recommended*)

CRIMINAL COURTS IN THE REAL WORLD

James Eisenstein and Herbert Jacob. 1977. *Felony Justice*. Chpts 1-3, pgs 1-64.

Steve Bogira. 2005. *Courtroom 302*. pgs 3-150.

Discussion Questions: Systematically outline the most important insights you can draw about how American courts operate “in the real world” based on *Courtroom 302 and Felony Justice*. How are these different from typical conceptions of the American justice system?

Week 3: THE ROLE OF THE PROSECUTOR (2/13)

Most extant and proposed determinant sentencing systems have ignored prosecutorial discretion in charging and plea-bargaining practices.

~Terance Miethe~

OVERVIEWS:

James Eisenstein and Herbert Jacob. 1977. *Felony Justice*. Chpts 4-6, pgs 65-172.

Johnson, King, and Spohn. 2016. "Socio-Legal Approaches to the Study of Prosecutorial Discretion and Plea Bargaining." *Annual Review of Law and Social Science, Vol 12*.

RESEARCH:

Celesta Albonetti. 1987. "Prosecutorial Discretion: The Effects of Uncertainty." *Law and Society Review, 21(2)*: 291-314.

Shermer and Johnson. 2010. "Criminal Prosecutions: Prosecutorial Discretion and Charge Reductions in U.S. Federal District Courts." *Justice Quarterly, 27(3)*: 394-430.

Kutateladze. 2017. "Tracing Charge Trajectories." *Criminology, 56(1)*: 123-153.

Metcalfe and Chiricos. 2018. "Race, Plea, and Charge Reduction: An Assessment of Racial Disparities in the Plea Process." *Justice Quarterly, 35(2)*: 223-253.

Johnson and Larroulet. 2019. "The 'Distance Traveled': Investigating the Downstream Consequences of Charge Reductions for Disparities in Incarceration." *Justice Quarterly*.

Stemen and Escobar. 2019. "Whither the Prosecutor? Prosecutor and County Effects on Guilty Plea Outcomes in Wisconsin." *Justice Quarterly, 1-29. (recommended)*

Discussion Questions: Assess the current state of research on plea-bargaining and prosecutorial discretion in the United States. What are the strengths and weaknesses of this research? What do we know for sure about prosecutor and guilty pleas? What theoretical perspectives (if any) have been useful for understanding prosecutorial decision making? What needs to be done next in terms of research in this area? What are some of the key challenges to completing this research? What are the key policy issues with regard to the role of the prosecutor in the US criminal justice system?

Additional Readings:

Forst. 2002. "Prosecution" in J.Q. Wilson and J. Petersilia. *Crime* 509-36.

Friedman. 1979. "Plea Bargaining in Historical Perspective." *L & SR 13(2)*: 247-259.

Albonetti and Hepburn. 1996. "Prosecutorial Discretion to Defer Criminalization." *JQC 12(1)*: 63-81.

Frohmann. 1997. "Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decisionmaking." *Law & Society Review 31(3)*: 531-556.

Hagan. 1975. "Parameters of Criminal Prosecution." *Criminal Law & Criminology 65*: 536-544.

Miethe. 1987. "Charging and Plea Bargaining under Determinate Sentencing." *CL & C 78*: 155.

Wooldredge and Griffin. 2005. "Displaced Discretion under Ohio Sentencing Guidelines" *JCJ 33(4)*: 301.

Kutateladze et al. 2012. Do Race and Ethnicity Matter in Prosecution? Vera Institute of Justice Report.

Spears and Spohn. 1997. "The effect of Evidence Factors and Victim Characteristics on Prosecutors' Charging Decisions in Sexual Assault Cases." *Justice Quarterly 14(3)*: 501-524.

Piehl and Bushway 2007. "Measuring and Explaining Charge Bargaining." *JQC 23*: 105-125.

Kutateladze, Andiloro, and Johnson. 2016. "Opening Pandora's Box: How Does Defendant Race Influence Plea Bargaining?" *Justice Quarterly 3(3)*: 398-426.

Week 4: CRIMINAL TRIALS AND THE JURY (2/20)

If criminals wanted to grind justice to a halt, they could do it by banding together and all pleading not guilty.

~Dorothy Wright Wilson~

OVERVIEWS:

James Eisenstein and Herbert Jacob. 1977. *Felony Justice*. Chpts 8-9, pgs 190-262.

Valerie Hans, Neil Vidmar and Hans Zeisel. 1986. *Judging the Jury*. Plenum Chpts 2, 3.

JURY SENTENCING:

Nancy King and Rosevelt Noble. 2005. "Jury Sentencing in Noncapital Cases: Comparing Severity and Variance in Two States." *Empirical Legal Studies*, 2(2): 331.

James Frank and Brandon Applegate. 1998. "Assessing Juror Understanding of Capital-Sentencing Instructions." *Crime and Delinquency*, 44(3): 412-433.

THE TRIAL PENALTY

Celesta Albonetti. 1990. "Race and the Probability of Pleading Guilty." *JQC*, 6(3): 315.

Gary LaFree. 1985. "Adversarial and Nonadversarial Justice: A Comparison of Guilty Pleas and Trials." *Criminology*, 23(2): 289-312.

Shawn Bushway, Allison Redlich, and Robert Norris. 2014. "An Explicit Test of Plea Bargaining in the "Shadow of the Trial"." *Criminology*, 52(4): 723-754.

Brian D. Johnson. 2019. "Trials and Tribulations: The Trial Tax and the Process of Punishment." *Crime and Justice*, Vol 48(1) University of Chicago Press: Chicago, IL.

Class discussion: Assess the current state of research on jury sentencing and trial penalties in the United States. What are the strengths and weaknesses of this research? What do we know for sure about how juries make decisions? Why don't more states have jury sentencing? What theoretical perspectives (if any) have been useful for understanding jury decision making? What role do trial penalties play in the function of the US criminal justice system? What needs to be done next in terms of research in this area? What are some of the key challenges to doing research on jury sentencing and trial penalties? What are the key policy issues with regard to each? Should jury sentencing be abolished or expanded?

Additional Readings:

Sudnow. 1965. "Normal Crimes: Sociological Features of the Penal Code." *SP* 12(4): 255-276.

Blankenship et al. 1997. "Jurors' Comprehension of Sentencing Instructions: A Test of the Death Penalty Process in Tennessee." *Justice Quarterly* 14(2): 325-351.

King and Noble. 2004. "Felony Jury Sentencing in Practice: A Three State Study." *Vanderbilt LR* 57.

Smith. 1986. "The Plea Bargaining Controversy." *J. of Crim Law and Crim* 77(3): 949-968.

Johnson. 2003. "Racial and Ethnic Disparities in Sentencing Departures Across Modes of Conviction." *Criminology* 41(2): 501-542.

Kalven et al. 1966. *The American Jury*. Boston, Little Brown.

Lynch and Haney. 2011. "Mapping the Racial Bias of the White Male Capital Juror: Jury Composition and the 'Empathic Divide'." *Law & Society Review* 45(1): 69-101.

Bruce Smith. 2005. "Plea Bargaining and the Eclipse of the Jury." *ARLSS* 1: 131-149.

Douglas Smith. 1986. "The Plea Bargaining Controversy." *J. of Crim Law and Crim* 77(3): 949-968.

Week 5: GOALS AND THEORIES OF SENTENCING (2/27)

Theory is not some kind of flight from reality...Theoretical work seeks to change the way we think about an issue and ultimately change the practical ways we deal with it.

~David Garland

Deciding how much to punish is an agonizing process in which conflicting aspirations compete.

~Andrew von Hirsch~

OVERVIEW:

Thomas Bernard and Robin Engel. 2001. "Conceptualizing Criminal Justice Theory." *Justice Quarterly*, 18(1): 1-30.

Cassia Spohn. 2002. *How Do Judges Decide?* Chpts 1-2, pgs 1-78 (recommended)

THEORETICAL PERSPECTIVES:

James Eisenstein and Herbert Jacob. 1977. *Felony Justice*. Chpts 10-11, pgs 263-312.

Jo Dixon. 1995. "The Organizational Context of Criminal Sentencing." *American Journal of Sociology*, 100(5): 1157-1198.

Celesta Albonetti. 1991. "An Integration of Theories to Explain Judicial Discretion." *Social Problems*, 38(2): 247-266.

George Bridges and Sara Steen. 1998. "Racial Disparities in Official Assessments of Juvenile Offenders: Attributional Stereotypes as a Mediating Mechanism." *American Sociological Review*, 63(4): 554-570.

Darrell Steffensmeier, Jeffery Ulmer, and John Kramer. 1998. "The Interaction of Race, Gender, and Age in Criminal Sentencing: The Punishment Cost of Being Young, Black, and Male." *Criminology*, 36(4): 763-798.

Matthew Clair and Alix Winter. 2016. "How Judges Think about Racial Disparities: Situational Decision-Making in the Criminal Justice System." *Criminology*, 54: 332-359.

Class discussion: Identify the different philosophies of punishment utilized in the United States. What are the strengths and weaknesses of different philosophical approaches? What are the primary goals of sentencing? How do these goals complement or contradict one another? What are the major theoretical perspectives used to explain criminal sentencing? How do they differ from one another? How are they similar? How might these perspectives be integrated into one collective theory of sentencing? What might such a theory look like? What needs to be done next in terms of theoretical development in research on sentencing? What are some of the key challenges to doing research in this area?

Additional Readings:

Eisenstein et al. 1988. *The Contours of Justice: Communities and Their Courts*. Boston: Little, Brown.

Flemming et al. 1993. *The Craft of Justice. Politics and Work in Criminal Court Communities*. Penn.

Albonetti. 1986. "Criminality, Prosecutorial Screening, and Uncertainty: Toward a Theory of Discretionary Decision-making in Felony Case Processings." *Criminology*, 24(4): 623-644.

Hogarth. 1971. *Sentencing as a Human Process*. University of Toronto Press.

Week 6: SENTENCING GUIDELINES (3/6)

Guidelines promulgated by commissions have altered sentencing patterns and practices, have reduced sentencing disparities...and have shown that sentencing policies can be linked to correctional resources.

~Michael Tonry~

THE SENTENCING COMMISSION

Marvin Frankel. 1972. "Lawlessness in Sentencing." *University of Cincinnati Law Review*, 41: 1-79. (OR: Frankel. 1973. *Criminal Sentences*)

Michael Tonry. 2014. "Remodeling American Sentencing." *C & PP*, 13(4): 503-533.

STATE SENTENCING GUIDELINES

Neal Kauder and Brian Ostrom. 2008. "State Sentencing Guidelines: Profiles and Continuum". NCSC Report.

Richard Frase. 2000. "Is Guided Discretion Sufficient? Overview of State Sentencing Guidelines." *St. Louis Law Review*, 44: 425-449.

Shawn Bushway and Anne Piehl. 2007. "Social Science Research and the Legal Threat to Presumptive Sentencing Guidelines." *Criminology and Public Policy*, 6(3): 461-482.

John Wooldredge and Timothy Griffin. 2005. "Displaced Discretion under Ohio Sentencing Guidelines" *Journal of Criminal Justice*, 33(4): 301-316.

Don Stemen and Rengifo. 2011. "Policies and Imprisonment: The Impact of Structured Sentencing and Determinant Sentencing on State Incarceration Rates." *JQ*, 23: 174-201.

Class discussion: Assess the current state of research on state sentencing guidelines in the United States. What are the strengths and weaknesses of this research? What do we know for sure about sentencing guidelines and their effect on criminal justice decision making in the United States? How do state guidelines differ from one another? How are they the same? What are the different qualities or characteristics of different guideline systems? What needs to be done next in terms of research on sentencing guidelines? What are some of the key challenges to doing this research? What are the key policy issues with regard to the role of sentencing guidelines in the US criminal justice system? Should sentencing guidelines be abolished? Should they be expanded?

Additional Readings:

Stolzenberg and D'Alessio. 1994. "Sentencing and Unwarranted Disparity: An Empirical Assessment of the Long-Term Impact in Minnesota." *Criminology* 32: 301-310.

Kramer, Lubitz, and Kempinen. 1985. "Pennsylvania's Sentencing Reform: The Impact of Commission-Established Guidelines." *Crime and Delinquency* 31(4): 481-500.

Kramer. 1989. "Sentencing Guidelines: A Quantitative Comparison of Sentencing Policies in Minnesota, Pennsylvania and Washington." *Justice Quarterly* Vol. 6, pg. 565.

Kramer and Ulmer. 2009. *Sentencing Guidelines: Lessons from PA*. Lynne Rienner.

D'Alessio and Stolzenburg. 1995. "The Impact of Sentencing Guidelines on Jail Incarceration in Minnesota." *Criminology* 33(2): 283-302.

Miethe and Moore. 1985. "Socioeconomic Disparities under Determinate Sentencing Systems: A Comparison of Preguideline and Postguideline Practices in Minnesota." *Crim* 23(2): 337-363.

WEEK 7: FEDERAL SENTENCING GUIDELINES (3/13)

The federal judge merely functions as an automaton by mechanistically applying the stark formulae set by a distant Sentencing Commission.

~Stith and Cabranes

OVERVIEWS:

Kate Stith and Jose Cabranes. 1998. *Fear of Judging*. Chpts 2-4, pgs. 38-142.

Mona Lynch. 2016. *Hard Bargains*. All Chapters.

RESEARCH:

Darrell Steffensmeier and Stephen DeMuth. 2000. "Ethnicity and Sentencing Outcomes in U.S. Federal Courts: Who is Punished more Harshly?" *ASR*, 65:705-729.

Eric Sevigny. 2009. "Excessive Uniformity in Federal Drug Sentencing." *JQC*, 25:155.

Cassia Spohn and Robert Fornango. 2009. "US Attorneys and Substantial Assistance Departures: Testing for Interprosecutor Disparity." *Criminology*, 47(3): 813-846.

Paul Hofer. 2007. "*United States v. Booker* as a Natural Experiment." *Criminology and Public Policy*, 6(3): 433-460.

Jeffery Ulmer, Michael Light, and John Kramer. 2011. "The "Liberation" of Federal Judges' Discretion in the Wake of the Booker/Fanfan Decision." *Justice Quarterly*, 28(6): 799-837. (optional)

Class discussion: Assess the current state of research on the federal sentencing guidelines. What are the strengths and weaknesses of this research? What do we know for sure about federal sentencing practices? How do the federal guidelines differ from state sentencing guidelines? Describe and discuss the background and influence of the recent Supreme Court decisions in Blakely, Booker and Fanfan. What impact have these decisions had on federal sentencing practices? What does future research need to do to better study the impact of these decisions? What are some of the key challenges to implementing this research? What are the key policy issues with regard to the role of the federal guidelines in the US criminal justice system? Should they be mandatory? Should they be abolished?

Additional Readings:

Albonetti. 1997. "Sentencing under the Federal Sentencing Guidelines...." *L & SR* 31: 601-634.

Mustard. 2001. "Racial, Ethnic, and Gender Disparities in Sentencing: Evidence from U.S. Federal Courts." *Journal of Law and Economics* 44: 285-314. (recommended)

Nagel and Schulhofer. 1992. "A Tale of Three Cities: An Empirical Study of Charging and Bargaining Practices Under Federal Guidelines." *S. Cal. Law Review* 66: 501-566.

Frase. 2007. "The *Apprendi-Blakely* Cases." *Criminology and Public Policy* 6(3): 403-432.

Hartley et al. 2007. "Prosecutorial discretion: An Examination of Substantial Assistance Departures in *Federal Crack-cocaine and Powder-cocaine Cases*." *Justice Quarterly* 24(3): 382-407.

Johnson et al. 2008. "The Social Context of Guidelines Circumvention." *Criminology* 46(3): 737-783.

Fischman and Schanzenbach. 2012. "Racial Disparities under the Federal Sentencing Guidelines: Judicial Discretion and Mandatory Minimums." *Journal of Empirical Legal Studies* 9(4): 729-764.

WEEK 8: NO CLASS – SPRING BREAK (3/20)

WEEK 9: RACIAL/ETHNIC DISPARITIES (3/27)

Racism goes beyond prejudicial discrimination and bigotry. It arises from outlooks, stereotypes, and fears of which we are vastly unaware.

~Judge Clyde Cahill~

OVERVIEWS:

Marjorie Zatz. 1987. "The Changing Forms of Racial/Ethnic Bias in Sentencing." *Journal of Research in Crime and Delinquency*, 24(1): 69-92.

Ojmarrh J. Mitchell. 2005. "A Meta-analysis of Race and Sentencing Research: Explaining the Inconsistencies." *Journal of Quantitative Criminology*, 21(4): 439-466.

Jeffery T. Ulmer. 2012. "Recent Developments and New Directions in Sentencing Research." *Justice Quarterly*, 29(1): 1-40.

Eric Baumer. 2013. "Reassessing and Redirecting Research on Race and Sentencing." *Justice Quarterly*, 30(2): 231-261. (Recommended)

RESEARCH:

Bales and Piquero. 2012. "Racial Differentials in Sentencing to Incarceration." *JQ*, 29(5).

Ulmer et al. 2014. "Disproportionate Imprisonment of Black and Hispanic Males." *JQ*.

Kutateladze et al. 2014. "Cumulative Disadvantage: Examining Racial And Ethnic Disparity in Prosecution and Sentencing." *Criminology*, 52(3): 514.

Ryan King and Brian D. Johnson. 2016. "A Punishing Look: Skin Tone and Afrocentric Features in the Halls of Justice." *AJS* 122(1): 90-124.

Class discussion: Assess the current state of research on courtroom discrimination based on gender, race or class in the United States. What are the strengths and weaknesses of this research? What do we know for sure about gender/race/class discrimination? How have our conclusions on these issues changed over time? What theoretical perspectives (if any) have been useful for understanding discrimination in sentencing? What needs to be done next in terms of research on discrimination in sentencing? What are some key challenges to doing this research? What are the key policy issues? How are disparity and discrimination qualitatively different?

Additional Readings:

Bushway and Piehl. 2001. "Judging Judicial Discretion..." *Law Society Rev* 35: 733-764. (recommended)

Kramer and Steffensmeier. 1993. "Race and Imprisonment Decisions." *Sociological Quarterly* 34: 357-376.

Demuth. 2003. "Racial and Ethnic Difference in Pretrial Release Decisions and Outcomes." *Crim* 41:873.

Wooldredge. 2012. "Distinguishing Race Effects on Pre-Trial Release and Sentencing Decisions." *JQ* 29.

Steffensmeier et al. 1993. "Gender and Imprisonment Decisions." *Criminology* 31(3): 411-446.

Spohn. 2000. *Criminal Justice 2000*, Volume 3: 503-552.

Spohn and Holleran. 2000. "The Imprisonment Penalty Paid by Young Unemployed Black and Hispanic Male Offenders." *Criminology* 38: 281-306.

Johnson and Betsinger. 2009. "Punishing the "Model Minority:" Asian-American Criminal Sentencing Outcomes in Federal District Courts." *Criminology* 47(4): 1045-1090.

WEEK 10: DEPARTURES AND CONTEXTUAL VARIATIONS IN PUNISHMENT (4/3)

The evidence is conclusive that judges of widely varying attitudes on sentencing ... mete out widely divergent sentences...
~Marvin Frankel~

GUIDELINES DEPARTURES

Joachim Savelsberg. 1992. "Law that Does not Fit Society: Sentencing Guidelines as a Neoclassical Reaction to the Dilemmas of Substantivized Law." *AJS*, 97(5): 1346-1381.

John Kramer and Jeffery T. Ulmer. 2002. "Downward Departures for Serious Violent Offenders" *Criminology*, 40(4): 601-636. (*recommended*)

Johnson, Ulmer, and Kramer. 2008. "The Social Context of Guidelines Circumvention: The Case of US Federal District Courts" *Criminology*, 46(3): 737-782.

CONTEXTUAL DISPARITY

Jeffery Ulmer and Brian D. Johnson. 2004. "Sentencing in Context: A Multilevel Analysis." *Criminology*, 41(1): 137-178. (*recommended*)

Brian D. Johnson. 2006. "The Multilevel Context of Criminal Sentencing: Integrating Judge and County Level Influences." *Criminology*, 44(2): 259-298.

Gregory A. Huber and Sanford Gordon. 2004. "Accountability and Coercion: Is Justice Blind when It Runs for Office?" *American Journal of Political Science*, 48(2): 247-263.

Haynes, Ruback, and Ruth. 2010. "Courtroom Workgroups and Sentencing: The Effects of Similarity, Proximity, and Stability." *Crime and Delinquency*, 56(1): 126-161.

Rhys Hester. 2017. "Judicial Rotation as Centripetal Force: Sentencing in the Court Communities of South Carolina." *Criminology*, 55(1): 205-235.

Class discussion: Assess the state of research on departures and contextual disparity in sentencing. What are its strengths and weaknesses? What do we know for sure about disparities in departures and across contexts? What theoretical perspectives have been useful for understanding these sources of sentencing disparity? What needs to be done next in terms of research in these two areas? What are some of the key challenges to conducting this research? What are the key policy issues and how effective are current U.S. sentencing policies in addressing each of these contemporary social problems?

Additional Readings:

Wooldredge and Thistlethwaite. 2004. "Bi-Level Disparities in Court Dispositions..." *Criminology* 42(2).

Britt. 2000. "Social Context and Racial Disparities in Punishment Decisions." *JQ* 17(4): 707-732.

Helms and Jacobs. 2002. "The Political Context of Sentencing..." *Social Forces* 81(2): 577-604.

Johnson. 2005. "Contextual Disparities in Guidelines Departures" *Criminology* 43(3): 761-797.

Wooldredge. 2007. "Neighborhood Effects on Felony Sentencing." *JRCD* 44(2): 238-263.

Engen et al. 2003. "Discretion and Disparity under Sentencing Guidelines." *Criminology* 41(1): 99-130.

Wang and Mears. 2010. "A Multilevel Test of Minority Threat Effects on Sentencing." *JQC* 26: 191-215.

King et al. 2010. "Demography of the Legal Profession and Racial Disparities." *L & SR* 44(1): 1-32.

Pina-Sánchez and Grech. 2017. "Location and sentencing..." *BJC* 58(3): 529-549.

Johnson et al. 2011. "Ethnic Threat and Social Control: Examining Public Support for Judicial Use of Ethnicity in Punishment." *Criminology* 49(2): 401-441.

WEEK 11: MANDATORY PENALTIES AND THREE STRIKES LAWS (4/10)

Inflexible rules in fact considerably increase the scope for arbitrariness of decision.
~Jeremy Bentham~

MANDATORY MINIMUM SENTENCING

Crawford, Chiricos, and Kleck. 1998. "Race, Racial Threat, and Sentencing of Habitual Offenders" *Criminology*, 36(3): 481-511.

Ulmer, Kurlychek, and Kramer. 2007. "Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences." *JRCD*, 44(4): 427-458.

Marit Rehavi and Sonja Starr. 2014. "Racial Disparity in Federal Criminal Sentences." *Journal of Political Economy*, 122(6): 1320-1354. (*recommended*)

THREE-STRIKES LAWS

Lisa Stolzenberg and Stewart J. D'Alessio. 1997. "Three Strikes and You're Out": The impact of California's New Mandatory Sentencing Law on Serious Crime Rates." *Crime and Delinquency*, 43: 467-469.

Kovandzic et al. 2004. "Striking Out as Crime Reduction Policy: The Impact of 3 Strikes Laws on Crime Rates in U.S. Cities" *Justice Quarterly*, 21(2): 207-239.

Thomas Marvell and Carlisle Moody. 2001. "The Lethal Effects of Three-Strikes Laws." *Journal of Legal Studies*, 30(1): 89-106. (*recommended*)

John Sutton. 2012. "Symbol and Substance: Effects of California's Three Strikes Law on Felony Sentencing." *Law and Society Review*, 47(1): 37-72. (*recommended*)

Class discussion: Assess the current state of research on mandatory penalties (including three strikes laws) in the United States. What are the strengths and weaknesses of this research? What do we know for sure about mandatory penalties and their effect on criminal justice decision making in the United States? What theoretical perspectives (if any) have been useful for understanding mandatory penalties and their role in the US criminal justice system? What needs to be done next in terms of research on mandatory penalties? What are some of the key challenges to doing this research? What are the key policy issues? Should mandatory penalties be abolished? Why or why not?

Additional Readings:

Schmertmann, Amankwaa, and Long. 1998. "Three Strikes and You're Out. Demographic Analysis of Mandatory Prison Sentencing." *Demography* 35(4): 445-463.

Dhichor and Sechrest. 1996. *Three Strikes and You're Out: Vengeance as Public Policy*. Sage Pub.

Turner, Sundt and Applegate. 1995. "Three Strikes and You're Out" Legislation: A National Assessment." *Federal Probation* 59: 16-35.

Hawkins, Zimring and Kamin. 2001. *Punishment and Democracy*. Chpts 1-8, pgs 3-147. (skim 31-84)

Caravelis, Chiricos, and Bale. 2011. "Static and Dynamic Indicators of Minority Threat in Sentencing Outcomes: A Multi-Level Analysis." *Journal of Quant Criminology* 27(4): 405-425.

Auherhahn. 2008. "Using simulation modeling to evaluate sentencing reform in California." *Journal of Experimental Criminology* 4(3): 241-266.

Merrit et al. 2006. "Oregon's Get Tough Sentencing Reform..." *Crim and Public Policy* 5: 5-36.

WEEK 12: INTERESTING AND INNOVATIVE APPROACHES TO SENTENCING RESEARCH (4/17)

MEET AT GOLF COURSE

There are notable conceptual and methodological problems inherent in the modal [sentencing] research strategy that limit its overall utility.

~Eric Baumer~

RACIAL DISPARITY

Eberhardt et al. 2006. "Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes." *Psychological Science*, 17: 383-386.

Rachlinski et al. 2009. "Does Unconscious Racial Bias Affect Trial Judges?" *Notre Dame Law Review*, 84(3): 1195-1246.

Bielen et al. 2018. "Racial Bias and In-Group Bias in Judicial Decisions: Evidence from Virtual Reality Courtrooms." NBER Working Paper.

ADDITIONAL RESEARCH OF INTEREST

Danzinger et al. 2011. "Extraneous Factors in Judicial Decisions." *PNAS*, 108(17): 6889.

Gazal-Ayal and Sulitzeanu-Kenan. 2010. "Let My People Go: Ethnic In-Group Bias in Judicial Decisions—Evidence from a Randomized Natural Experiment." *JELS*, 7: 403-428. (*recommended*)

Johnson and King. 2017. "Facial Profiling." *Criminology*, 55(3): 50-547.

*Each student should find one additional "new and innovative" study to share and discuss with the rest of the class.

Class discussion: Assess the current state of sentencing research in terms of the theoretical, conceptual and methodological advances that have been made in the past two to three decades. Where has the most progress been made? Where has the least? What are the most important issues that need to be addressed by sentencing scholars in coming decades? What are the major hurdles to accomplishing these goals and how might they be overcome?

Additional Readings:

Baumer. 2013. "Reassessing and Redirecting Research on Race and Sentencing." *JQ* 30(2): 231-261.

Uggen et al. 2005. "Criminal Disenfranchisement." *Annual Review of Law and Social Science* 1: 307-322.

Wang and Mears. 2010. "A Multilevel Test of Minority Threat Effects on Sentencing." *JQC* 26: 191-215.

Huber and Gordon. 2004. "Accountability and Coercion: Is Justice Blind when It Runs for Office?" *American Journal of Political Science* 48(2): 247-263.

Fischman and Schanzenbach. 2012. "Racial Disparities under the Federal Sentencing Guidelines: Judicial Discretion and Mandatory Minimums." *Journal of Empirical Legal Studies* 9(4): 729-764.

Sutton. 2013. "Structural Bias in the Sentencing of Felony Defendants." *SSR* 42(5): 1207-1221.

Mears. 1998. "The Sociology of Sentencing..." *Law and Society Review* 32: 667-724.

Kurlycheck and Johnson. 2010. "Juvenility and Punishment: Sentencing Juveniles in Adult Criminal Court." *Criminology* 48(3): 725-758.

WEEK 13: RESTORATIVE JUSTICE AND ALTERNATIVE SENTENCES (4/24)

Intermediate sanctions are the greatest challenge to the empirical study of sentencing.
~Charles Ostrum~

Insanity is doing the same thing over and over again and expecting different results.
~Anonymous~

ALTERNATIVE SANCTIONS

Morris and Tonry. 1990. *Between Prison and Probation*. Oxford Press, pgs 3-33.

Wood and May. 2003. "Racial Differences in Perceptions of the Severity of Sanctions." *Justice Quarterly*, 20(3): 605-631.

Johnson and DiPietro. 2012. "The Power of Diversion: Judicial Use of Intermediate Sanctions under Sentencing Guidelines." *Criminology*, 50(3): 811-850.

Kleiman et al. 2007. "Using Risk Assessment to Inform Sentencing Decisions for Nonviolent Offenders in Virginia." *Crime and Delinquency*, 53(1): 106-132.

PROBLEM SOLVING AND RESTORATIVE JUSTICE APPROACHES

Doris MacKenzie. 2006. *What Works in Corrections*. Chpt 11, pgs 221-241.

Mitchell et al. 2012. "Assessing the Effectiveness of Drug Courts on Recidivism: A Meta-Analytic Review of Traditional and Non-Traditional Drug Courts." *JCJ*, 40: 60-71.

Sherman et al. 2015. "Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review." *JQC*, 31(1): 1-24.

Anderson, Buenaventura, and Heaton. 2019. "The Effects of Holistic Defense on Criminal Justice Outcomes." *Harvard Law Review*, 123(3): 821-887.

Class discussion: Assess the current state of research on alternatives to incarceration in the United States. What are the strengths and weaknesses of this research? What do we know for sure about sentencing alternatives and restorative justice approaches to punishment? What needs to be done next in terms of research in these areas? What are some of the key challenges to doing research on intermediate sanctions and restorative justice? What are the key policy issues with regard to the role that prison diversion plays in the US criminal justice system? Should the role of intermediate sanctions be increased or reduced in the US system? Is it feasible for the justice system to be based on restorative justice? Is this a promising alternative?

Additional Readings:

Gainey et al. 2005. "Exercising Options: An Assessment of the Use of Alternative Sanctions for Drug Offenders." *Justice Quarterly* 22(4): 488-520.

Braithwaite. 1999. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts." *CJ* 25: 1-127.

Slate. 2004. *Mental Health Courts*. Chpt 23. In *Courts and Justice*.

MacKenzie et al. 1995. "Boot Camp Prisons and Recidivism in Eight States." *Criminology* 33: 327-358.

Braithwaite. 2003. *Principles of Restorative Justice*. pgs 1-20 in *Restorative Justice and Criminal Justice*. Eds. Von Hirsch et al.

Week 14: SENTENCING AND CORRECTIONS (5/1)

The reason to support the death penalty is because it saves other peoples lives. It's the only reason to be for it.
~George W. Bush~

I have inquired for...studies that might show that the death penalty is a deterrent, and I have not seen any research that would substantiate that point.

~Janet Reno~

ASSESSING PUNISHMENTS

Malcolm Feeley and Jonathan Simon. 1992. "The New Penology: Notes on the Emerging Strategy of Corrections and its Implications." *Criminology*, 30(4): 449-474.

Cassia Spohn and David Holleran. 2002. "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders." *Criminology*, 40(2): 329-358.

Donald Green and Daniel Winik. 2010. "Using Random Judge Assignment to Estimate the Effect of Incarceration and Probation on Recidivism." *Criminology*, 48(2): 357-387.

Lin et al. 2010. "Back-end Sentencing and Reimprisonment." *Criminology*, 48: 759-795.

Uggen, Behrens, and Manza. 2005. "Criminal Disenfranchisement." *Annual Review of Law and Social Science*, 1: 307-322. (recommended)

DEATH PENALTY

Raymond Paternoster and Robert Brame. 2008. "Reassessing Race Disparities in MD Capital Cases." *Criminology*, 46(4): 971-1008.

John Donohue and Justin Wolfers. 2006. "The Death Penalty: No Evidence for Deterrence." *The Economists Voice*, 3(5).

Class discussion: Assess the state of research on the effectiveness of different philosophies of punishment. How have philosophies of punishment changed in recent decades and what are promising directions for the future? How effective is the death penalty as a sentencing option? Should the death penalty be abolished? What are the various collateral consequences that accompany felony conviction and what should be done to address them? What are next steps that need to be taken to advance research on punishment? What future directions are most promising?

Additional Readings:

Andrews et al. 1990. "Does Correctional Treatment Work?" *Criminology* 28(3): 369-404.

Miles and Ludwig. 2007. "Silence of the Lambdas: Deterring Incapacitation Research." *JQC* 23: 287-301.

Gendreau et al. 1996. "A Meta-Analysis of the Predictors of Adult Offender Recidivism: What Works!" *Criminology* 34(4): 575-608.

Levitt. 1996. "The Effect of Prison Population Size on Crime Rates." *Quart J of Econ* 111(2): 319-351.

Spelman. 2009. "Crime, Cash, and Limited Options: Explaining the Prison Boom." *C & PP* 1: 29-77.

Harmon. 2012. "Fixed" Sentencing: The Effect on Imprisonment Over Time." *JQC* 29(3): 396-397.

Blumstein and Wallman. 2006. *The Crime Drop in America*. Cambridge University Press. Chpt 4.

Mauer and Chesney-Lind. 2002. *Invisible Punishments*. New York: New Press. pgs 1-36.

Week 15: FINAL IN-CLASS EXAMINATION (5/8)