

Sentencing Cultures, Consistency and Individualised Justice in Ireland

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Sentencing in Ireland

- ▶ Individualised system of sentencing
- ▶ Practically unchanged since foundation of State
- ▶ Ireland missed wave of reform in 1980's
- ▶ Principle of proportionality: sentence must be proportionate to the offence *and* the offender
- ▶ Judges exercise a very broad sentencing discretion, limited guidance from legislature and from courts
- ▶ Relevant guidance from CCA: approach to sentencing 'structured' two step approach and not 'instinctual synthesis'

Aims of Study and Methodology

Main Claim: Inconsistency in sentencing is widespread due to failure to adopt coherent sentencing policy

Aims

- ▶ Explore judicial views on sentencing and consistency
- ▶ Explore degree of consistency in sentencing between individual judges
- ▶ Explore reasons for inconsistency,

Methodology

- ▶ Qualitative methodological approach
- ▶ Semi-structured interviews
- ▶ Sentencing vignettes
- ▶ Participation: 28% of District and Circuit Court Judges

Findings on Consistency District and Circuit Courts

Similarities

- ▶ High levels of inconsistency and consistency
- ▶ Degree of inconsistency varied according to seriousness of case
 - Consistency highest in least serious case
 - Consistency lowest in most serious case
- ▶ Inconsistency most pronounced in relation to type of penalty (especially non-custodial penalties)
- ▶ Same penalty-also inconsistency in severity

Findings on Consistency in District and Circuit Courts

- ▶ BUT Evidence of consistency
 - General approaches discernible
 - Drug addicted offenders, persistent offenders

Differences

- ▶ Inconsistency much more pronounced in District Court than in the Circuit Court

District and Circuit Courts: Most inconsistent in least serious cases

District Court: Assault Case (n=15)

- ▶ 13 different sentencing outcomes
- ▶ 7 different penalties
- ▶ Range in severity-PO to prison sentence
- ▶ Same penalty-considerable variability in quantum
- ▶ 3 discernible overall approaches

Circuit Court: Burglary Five (n=8)

- ▶ 6 different sentencing outcomes
- ▶ 5 different penalties
- ▶ Range in severity-CSO to prison sentence
- ▶ Same penalty-some variability in quantum
- ▶ 4 discernible overall approaches

District and Circuit Court: Most consistent in most serious cases

District Court: Road Traffic Case (n=15)

- ▶ 5 different sentencing outcomes
- ▶ 5 different penalties
- ▶ Range in severity-probation order to prison sentence
- ▶ Same penalty-variability in quantum
- ▶ 3 discernible overall approaches

Circuit Court: Burglary Two (n=8)

- ▶ 4 different sentencing outcomes
- ▶ 2 different penalties
- ▶ Range in severity-suspended sentence to prison sentence
- ▶ Same penalty-Little variability in quantum
- ▶ 2 discernible overall approaches

Reasons for Inconsistency in Sentencing Outcomes

- ▶ Differences in how judges viewed the **seriousness** of the case
- ▶ Differences in **weight** attached to factors that aggravated and mitigated seriousness and factors that mitigated sentence
- ▶ Differences in **judicial views regarding efficacy** of and circumstances in which various penalties should be used

Key: The role played by these differences was much more evident in the District Court rather than the Circuit Court.

Reasons for Differences in levels of Consistency and Inconsistency

1. Methodological differences
1. Differences in the seriousness of the cases judges were asked to sentence
1. Differences in severity of penalties imposed (3 out of 5 cases CCJs only used prison and suspended sentence)
1. **Differences in the sentencing cultures in the District and Circuit Courts?**

Sentencing cultures in the District and Circuit Court

- 1. Views on Sentencing
- 1. Approach to Sentencing
- 1. Guidance
- 1. Views on Consistency

Views on Sentencing

District Court

- ▶ Uniqueness of each case
- ▶ Discretion essential to achieve justice
- ▶ Individual sentencing policies

Circuit Court

- ▶ Uniqueness of each case
- ▶ Discretion essential to a achieve justice
- ▶ Aware of CCA guidance

Uniqueness of case reflects legal position in Ireland under constitutional principle of proportionality

Approach to Sentencing and Guidance

District Court

- ▶ ‘Instinctual Synthesis’
- ▶ No guidance other than Probation Service
- ▶ Individual policies widely adopted



Circuit Court

- ▶ Structured two step approach approach
- ▶ Aware of general guidance from CCA regarding steps in sentencing decision and relevant factors to be considered.



Views on Consistency in Sentencing

District Court

- ▶ Consistency not valued
- ▶ Consistency not possible
- ▶ Justice in each case prioritised over consistency
- ▶ No reference to guidance of CCA
- ▶ No references to reviewability of decisions

Circuit Court

- ▶ Consistency valued
- ▶ Consistency possible
- ▶ Consistency understood as 'within acceptable ranges'
- ▶ Highly aware of CCA guidance and corrective influence
- ▶ Highly aware decisions are subject to review

Summary:

Similarities

- ▶ Each case is unique, approach to drug addicted offenders and to persistence and imprisonment

Differences

Circuit Court

- ▶ Belief in value and possibility of consistency; awareness of and adoption of CCA guidance on structure and factors to be considered in sentencing; awareness of review

District Court

- ▶ Consistency not valued and not possible; no awareness of CCA guidance; development of own individual sentencing approaches/policies

Explaining Differences in Judicial Cultures?

- ▶ Recruitment and Training
- ▶ Workload
- ▶ Mode of Trial
- ▶ **Appellate review**
- ▶ **Relevance of CCA guidance**

Behavioral and Adjudicative Discretion

- ▶ Need to acknowledge difference between adjudicative and behavioral discretion (Lempert 1992)
- ▶ Adjudicative discretion:
 - ‘legal discretion is authorized choice’ (Lempert 1992)
 - ‘the power to choose between two or more courses of action each of which is thought of as permissible’ (Hart and Sacks 1958)
 - Dworking (1977) discretion ‘like the hole in a doughnut, does not exist except as an area left open by the surrounding belt of restriction’

Behavioral and Adjudicative Discretion

▶ Behavioral discretion

- ‘as a property of of behavior, discretion need not reflect the leeway that discretion-conferring rules allow. If law is no guide, other social forces may be, and they may give rise to patterns of behavior that look, and in a sociological sense are, more rule-bound than behavior that is in theory rigorously structured by the law’ (Lempert 1992).
- ‘legal actors always have discretion to ignore rules that deny them discretion. Whether this discretion is exercised depends both on the actor’s role conception and on the degree to which the actor’s conduct is visible and vulnerable to sanctions or reversal’ (Lempert 1992)

District and Circuit Courts?

- ▶ Behavioral discretion more obvious in District Court than Circuit
 - DC judges adopted 'rules of thumb', individual sentencing policies and had discretion to avoid or ignore certain legal rules-evidence of resisting attempts to structure
- ▶ Weak 'belt of constraint' weaker around discretionary powers of District Court compared with Circuit Court
- ▶ Law is less of a guide, other social forces

Judicial Cultures and Consistency

- ▶ Judicial culture also plays a role
- ▶ Despite lack of training and limited opportunities for socialisation, judges have remarkably similar views on uniqueness of case, persistent offenders and drug addicted offenders
- ▶ Need to understand how certain values/approaches become embedded in judicial culture!

Enhancing Consistency?

- ▶ Inconsistency related to lack of coherent sentencing policy but also to judicial variability
- ▶ Increasing coherency (guidance, appellate review for DC) will help achieve consistency of approach
- ▶ BUT only to a point: judicial variability will still undermine consistency of outcomes
- ▶ Degree to which judiciary variability will undermine consistency of approach and outcomes depends on extent to which increased coherency leads to culture change whereby possibility of consistency as an aspect of the 'just' sentence is embraced