

MACS 302

Problem Set 2

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The paper analysed for this report is the 2015 article *Performing Authority: Communicating Judicial Decisions in Lower Criminal Courts* by Roach Anleu, Sharyn and Mack, Kathy [1]. The authors state their paper is attempting to answer: “*whether sentencing decisions are communicated in distinct ways.*” Although it might be put more specifically as: “*What are the characteristic differences, both verbal and non-verbal communications, of sentencing decisions beyond those required by the legal process from other judicial decisions.*”

The paper used data from a long running observational study and this data has been used before in at least two other papers [2] [3]. The specifics of the dataset are not given and the link (<http://ehlt.flinders.edu.au/law/magistrates/>) provided by one of the other papers [3] to the dataset appears dead. What we can gather is the data were on site standardised transcriptions of matters from the criminal list. The survey covered a total of 1,287 matters across all of Australia and 27 magistrates. It is unclear if the reported measurements, such as ‘*looking at defendant during sentencing*’ were precoded or were derived in some way from another field. The data were also supplemented with the information the court possesses about the individual, e.g. demographics or type of offence.

The paper was presented as using Max Weber’s theory of authority, specifically legal authority. They quote Weber to describe it:

‘*a belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands (legal authority)*’ [4] [1]

They also note the conventional theory of “*social settings constituted by professional and lay actors and driven by institutional and everyday imperatives*” as requiring impartial adjudication to be embodied as “impersonal, unemotional detachment” [5] [6]. As their results show this model is not complete they also rely

on some more contemporary descriptive results describing how doctors communicate with patients [7] as a partial model for the magistrate attempting to show empathy in a formal setting.

Since the data used by the paper are not well described or accessible classifying the type of study is difficult. If the described relationships were directly removed from the data then the paper is descriptive, if they are interpolations or more complex analysis then the paper could be considered identification. As no complex analysis were described this is likely a *descriptive study*.

The study looked at a variety of counts binned across different metrics. These relationships then had basic statistical techniques applied, such as χ^2 tests of significance. Techniques of this kind were likely done with a computer, but at the scale ($n = 1,287$) of the paper, this analysis could also have been done completely by hand with a slide rule and some lookup tables. Even the manuscript could have been constructed and submitted without computational aid, only to be typeset by the editors.

When fully computed the results of the paper are that: *sentencing decisions are communicated in a distinct way*. The analysis shows that magistrates looked at and spoke to the defendants directly more often when sentencing than compared to other decisions. They also showed that the structure of sentencing decision are unique as they tend to state the magistrates' reasoning much more often than other decisions.

We have a couple of suggestions for the authors regarding improvements in their methodology. Primarily they appear to be ignoring a significant trove of information, the demographics. It could be enlightening to see a breakdown beyond the type of representation the defendant has. The authors reference other work looking at young defendants [8], but neglect to examine age as a factor in the magistrates communications. Additionally gender and socio-economic status could be very important. Ethnicity is fourth division and since the data are from Australia of particular concern is the treatment of Aboriginals, if the coverage is as complete as the authors claim, there should be some number of them in the sample. If one group is being treated with a less impartial feeling court, their perceptions of the court may be different than a group that is.

Under Weber's theory the authority of the court is derived, in part, from its perceived impartiality and professionalism. Thus it could be a useful to look at the outcomes of the matters as a function of the type of treatment the defendant receives. The simplest analysis of this would be to look at the rates of payment for the fines issued by the court. More complex measurements could also be undertaken be it surveys or long term outcome measures.

References

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