

“Judicial debate behind closed doors? – Comparing how English judges and Danish judges influence each other when sentencing theft in the lower Courts.”

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Aims of the research:

- 1.) To compare the historical development and socio-legal research conclusions regarding judicial discretion in theft sentencing in Denmark and England.
- **Relevant objectives from main PhD thesis:
- 2.) To identify and critically compare the perceptions of 12 Danish and 12 English lower Court judges about their theft sentencing approach in 2008 and 2009.
- 3.) To identify and justify new directions for how both Danish and English lower Court judges can be better guided and regulated when sentencing theft.

Research Methodology:

- 1) Literature Review – What to compare and why... (Nelkin 97) This involves history developments and past socio-legal research on judicial discretion. This revealed same judge types in lower Courts, similar theft definition and good level of English language in UK and Denmark.
- 2) Develop Qualitative interview guide
- 3) Sample selection: 6 legally qualified District Judges and 6 lay Magistrates in 3 rural and 3 urban areas within England compared to their Danish equivalents.
- 4) Area selection was quantitative and based on ONS Population density statistics for urban or rural designation.
- 5) Liaison with Court administrations who selected judges by voluntary interest (ethical permission) and longest length of experience.
- 6) Interviews were recorded and lasted on average nearly 2 hours.
- 7) Idiomatic transcription of recorded data.
- 8) Problems faced with methodology: Language ambiguity, recording and transcribing errors. McNamara, C. (1999). *General Guidelines for conducting interviews*: <http://www.managementhelp.org/evaluatn/intrview.htm> [accessed Jan 2010]

Regional comparison considerations:

- The **England** - **Denmark** area linkages selected were:
 - **Wisbech Magistrates' Court** - **Hjørring District Court** (Rural)
 - **Stratford upon avon Magistrates Court** - **Holbæk District Court** (Rural)
 - **Totnes Magistrates' Court** - **Svendborg District Court** (Rural)
 - **Liverpool Magistrates Court** - **Copenhagen District Court** (Urban)
 - **Southampton Magistrates Court** - **Aarhus District Court** (Urban)
 - **Kingston upon Hull Magistrates Court** - **Odense District Court** (Urban)
- There are 24 District Courts and 2 High Courts in Denmark who deal with theft cases. This corresponds to 652 Magistrates Courts and 77 Crown Courts in England and Wales who deal with theft cases. There are 25 sub-areas within 6 main regions in England. This corresponds to 21 sub-areas within 6 main regions within Denmark.^[1]
- ^[1] This information is correct as of 1 January 2008. Further more detailed and up to date information on Magistrates' Court and District Court (retskreds) structure is kept online for England at: www.hmcourts-service.gov.uk and for Denmark at: www.domstol.dk

Analysis:

- **The interview structure generated a significant amount of information in the form of:**
 - 1) Common meanings.
 - 2) Spontaneous sentencer responses.
 - 3) Researcher prompted sentencer responses.
 - 4) *Ad verbatim* sentencer quotations.
- **Quantitative analysis of judicial profile only.**
- **The raw data was qualitatively analyzed in three stages: (Kvale 2007)**
 - 1) Firstly, common meanings were identified and condensed to reduce the *ad verbatim* data volume.
 - 2) Secondly, judicial perceptions were analysed by *ad hoc* meaning generation approach.
 - 3) Thirdly, the researcher then added his own subjective critical analysis.

Judicial Profile: (English in blue)
(Danish in red)

1) Gender: Males: 9 9 Females: 3 3

2) Age: 40 – 50 = 1 3 50 – 60 = 6 8
60 – 70 = 5 1

3) Average Time on Bench (years): 15.3 11.1

4) Ethnic Background: White British = 12
White Danish = 12

What does the sentencing deliberation process involve?:

- **Is the defendant guilty or not guilty? (Subjective focus)**
- **What is the most appropriate sentence choice? (Objective focus)**
- **Content focus:**
 - **Case facts (seriousness)**
 - **Defendant's demeanour in Court**
 - **Sentencing guidance (guidelines, cases, statutes)**
 - **Probation/Kriminalforsogen**
- **Judicial interaction focus:**
 - **Frequency**
 - **Relevance of content**
 - **Current working practice norms**

The question focus.

- To what extent do you feel influenced by the theft sentencing advice of your judicial peers?
- (The following two judicial peer research prompts below will be posed to interviewees, if the interviewees themselves do NOT spontaneously mention it.)
- **S denotes spontaneity of English response which is indicative of influence levels.**
- **S denotes spontaneity of Danish response which is indicative of influence levels.**
- A) Generally your judicial bench fraternity **S = 4** **S = 4**
- B) Specifically, the opinions of other Panel members when deciding the theft sentence **S = 6** **S = 9****

GENERAL Judicial fraternity impact – Lay Judges

- In Denmark all 6 lay judges say low influence.
- Why? – outside working panels there is little social contact with other judges.
- In England only 3 lay judges agreed to above.
- The remaining 3 lay judges refer to some influence from regular sentencing training sessions. These are run by professional judges where informal regular contact CAN be sought re: theft sentencing approach guidance.

GENERAL Judicial fraternity impact – Professional Judges

- In England, judicial fraternity contact for all 6 District judges was low and they consider this to have a negative impact.
- Why? – Less networking opportunities, esp in rural areas. Sentencing experience negates the need for judicial fraternity contact.
- In Denmark, all 6 District Judges reported judicial fraternity contact was moderate and they consider this to have a positive impact.
- Why? – Frequent seminars and social support network is well organised.

SPECIFIC Danish sentencing panel interactions.

- Approach = 2 lays and 1 professional together in a panel.
- High influence – **S = 9 (6 lay, 3 professional)**
- Why? – 6 Lays judges consider their professional counterparts to be the authoritative legal knowledge source for theft case law and sentence choice, but NOT for decisions of guilt.
- All 6 Danish professionals agree.
- Positive negotiation approach – Consensus and Conformity emphasis supported by all 12 Danish judges.
- Professional judges better off alone to make sentence choice decisions. Better trained, legal knowledge, higher₁₁ confidence. (applies to English professionals too)

SPECIFIC English sentencing panel interactions

- Approach = 1 sole professional (High criticism from lays) and 3 lay panels with a lay Chair person. Moderate impact – S = 6
- Why? – There is NO lay and professional interaction in sentencing. The SGC guidelines are the authoritative knowledge source for sentence choice and decisions of guilt.
- 4 Lay judges feel they don't need to rely on professional help in making sentence choices. 2 lay judges feel they should focus on decisions of guilt only and need the professional judges' support for the sentence choice, especially where similar fact case law analysis is required.
- Positive negotiation approach – Consensus and Conformity emphasis supported by only 4 lay judges.
- The remaining 2 lays and 6 professionals focus on SGC guidelines as EITHER 1) negatively limiting the diversity of sentencing factors that are routinely considered 5 P
- 2) positively increasing the predictability of sentencing deliberations. 1P
2L

Future Policy directions for sentence deliberations

More concern in England than Denmark?

There appears to be...so what reforms could be pursued using the Danish comparison?

- 1) More training seminars which encourage professional and lay interaction. English judges (lay) need more case law support rather than a SGC guidelines focus.
- 2) *Integrate* English professional and lay judges together in panels as is done in Denmark. More democratic accountability, esp for sole professional judges. Less concern in England and more frequent lay and professional judge communication in Magistrates Courts.
- 3) Reduce the English (lay esp) reliance on SGC guidelines to develop national consistency by making them non-binding. **Sections 172 and 174, Criminal Justice Act (2003)**
- 4) Support JSB Judge led Judicial Training Colleges over SGC guideline formation process. Why? 1) Lower cost due to less consultation. 2) reduced political ability to influence. 3) more academic research on supporting judge led judicial training.

THANK YOU FOR LISTENING!

QUESTIONS AND YOUR VIEWS.



Summarised Discussion Points –

- The focal areas to discuss further are:
 - A) judicial discretion
 - B) judicial regulation
 - C) sentencing approach guidance structures
- Wider questions to debate are:
 - 1) -What do we want from our judges?
 - 2) -Whose ultimately in control of sentencing policy and why?
 - 3) -What is the best future sentencing guidance source mix for the most effective and workable judicial discretionary approach?
 - 4) -Constitutional law significance and impact on judicial regulation?
 - 5) –What are your favoured sentencing theories, policies and practices?