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Generalization of the international experience of the defendant's belonging to the indigenous population to the verdict

Oleg A. Smirnov

PhD in Physics and Mathematics, Associate Professor,
Department of Applied Mathematics and Computer Science,
Russian State University named after A.N. Kosygin,
115035, 52/45, Sadovnicheskaya str., Moscow, Russian Federation;
e-mail: smirnovoleg1952@mail.ru

Natal'ya A. Nozdrina

PhD in Pedagogy, Associate Professor,
Associate Professor of the Department of Humanities and Social Sciences,
Bryansk State Technical University,
241035, 7 bul. 50 let Oktyabrya, Bryansk, Russian Federation;
e-mail: nozdrina.natalye@mail.ru

Abstract

Based on the generalization of international experience, it is shown that in developed countries there is a clear link between the status of the indigenous population and the likelihood of imprisonment, while indigenous offenders are treated more leniently. The article shows that indigenous Australians brought to court are less likely to receive a prison sentence compared to non-indigenous Australians in a similar situation. The study shows that the application of the "therapeutic" court model for indigenous peoples can reduce the dependence of judges on stereotypes and the likelihood of unfair sentences against minorities. Further research is needed to fully understand the impact of minority status on the likelihood of incarceration. At the same time, lighter sentences may be imposed in higher courts due to the political consequences of the overrepresentation of indigenous peoples in prisons and the associated marginal position of this group in society. In conditions of limited time, decisions may be based on stereotypes that are widespread in society.

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Keywords

Indigenous population, criminal prosecution, court verdict, Australian judicial system, social stereotypes.

Introduction

This article is devoted to the study of the impact of social factors, in particular, belonging to an ethnic group of the indigenous population, on the severity of sentences. In the United States, where the vast majority of sentencing research is conducted, the fairness of court sentences is currently the most significant cause of political trials. The issue of disparity in sentencing outcomes is the subject of a significant amount of research. However, by concentrating the research focus only on the level of the social context, this approach can lead to contradictory conclusions.

Main content

The main problem of culpability is focused on judicial assessments of the defendant's guilt and the degree of harm caused by their offense, and is conditioned by the philosophy of retribution in sentencing. Thus, it is obvious that justice requires that the severity of the crime be balanced by the imposition of a punishment proportional to the criminal damage caused. Judicial guilt assessments focus on the defendants' current and past criminality, including: the seriousness of the crimes currently committed, the previous criminal history, the criminal past. Speaking about the court decision, it can be argued that it is based on the following factors: the culpability of the offender, the risks of the defendant's lack of isolation (protection of the community) and issues of his social significance for his environment.

In addition, a conviction for multiple crimes probably affects the court's perception of the seriousness of the crime. The criminal background of the offenders may affect the assessment of guilt (for example, the perception of guilt may probably be overestimated due to repeated violations). The health status of offenders, a history of substance abuse and victimization may also be affected. For example, guilt can be reduced in those who are offended in response to being a victim themselves, have substance abuse problems, or poor mental health. As a rule, the seriousness of the offense is assessed using the statutory classifications of offenses and prescribed penalties.

The need to protect the community is linked to judicial projections relating to the offender's future danger, so it is linked to the offender's upcoming behavior. Judicial officials predict the relative risk that offenders pose to society based on factors such as the severity of the crime and criminal history. In addition, characteristics of the offender such as marital status, employment status and substance abuse may be taken into account. For example, the risk may be reduced for offenders who are employed and/or have stable family relationships/responsibilities, as these factors indicate an increased level of informal social control. Although drug abuse can reduce the perception of guilt, it can also serve as an indicator of the risk of reoffending. Substance abuse has a criminal past, which increases the risk of future offenses and, consequently, harm to society. Taking into account the risk of being left at large (or protecting the community) is based on factors similar to the assessment of guilt. However, a number of sources claim that this basic problem differs from the admission of guilt, since the concepts of risk are supported by the philosophy of sentencing incapacity and deterrence, the ultimate goal of which is to protect the community.

Public or political expectations that may affect the social standing of the court and social constraints include consideration of a number of limitations and costs of the offender, such as the offender's ability to correct in the penal system, violation of family care responsibilities.

Sentencing decisions are often made under tight time constraints. This may lead to a lack of comprehensive and reliable information about aspects of the circumstances in which the accused are

located, provided to court officials. On the other hand, contradictory or overly detailed information may be difficult to use to make a decision, given the time constraints of the decision-making process. These conditions can lead to reliance on "perceptual contractions" that allow court officials to manage information and uncertainty in the decision-making process. First of all, this approach allows, based on stereotypes and perceptions related to the characteristics of the offender, such as race, gender and age; participation in the decision-making process through attribution, that is, assessment of the defendant's belonging to certain groups, more dangerous than more criminal or risky than others. This tendency to make racial, gender and age assumptions in response to a lack of time in the judicial environment, according to some experts, has led courts in the United States to treat "a young black/Latino man" as a symbol of a propensity for crime and danger. Problems related to judicial issues are further shaped by organizational constraints in the judicial environment.

Conclusions about the disparity in the treatment of racial/ethnic minority defendants have led sentencing scholars in the United States to conclude that these statuses carry with them criminal stereotypes that are subconsciously used by courts to impose sentences. Empirical research conducted since the beginning of the 21st century shows that racial/ethnic minorities are more severely punished than others. For example, Hispanic and African-American criminal defendants are more likely than "whites" to be sentenced to prison.

In the last ten years, only a few studies have been conducted on the indigenous peoples of the Northern Hemisphere and sentencing. Overall, based on these several studies, there is evidence of negative discrimination in the decision to incarcerate Native American offenders in the United States. In contrast to the extensive literature on racial/ethnic sentencing inequalities in the United States, studies on the relationship between indigenous status and sentencing are less common.

Research conducted in Canada on the impact of legislative reforms in the late 20th century on sentencing of Aboriginal offenders has shown the equality of sentences between indigenous and non-indigenous Canadians. However, this finding reflects the sentencing by a Canadian higher court (and therefore an increase in available time), rather than the decision-making by a lower court (i.e., the province). Compared with the United States and Canada, a multidimensional statistical analysis of the impact of indigenous status on sentencing in Australia was conducted based on a complete sample of data on court sentencing of indigenous people. Being classified as an ethnic group of an African American and a Latino, being a Native American may also cause the perception of a greater propensity for criminal behavior.

Based on current scientific knowledge, there is little evidence of negative discrimination against Indigenous defendants sentenced to prison in Australia. In addition, there is a problem of imposing excessively "lenient" sentences, taking into account the social inequality of indigenous peoples. However, this does not apply to repeated violations, when prison terms are set significantly higher than for representatives of other peoples. The reason for this, according to the researchers, is that sentencing decisions in lower courts in Australia are often made within minutes, taking into account information about the defendants and their circumstances, limited to brief statements made by a defense lawyer, the offender or police prosecutors. On the contrary, defense and prosecution lawyers often submit extended statements of aggravating circumstances and mitigation of punishment to judges of higher courts, they are provided with written or oral reports before sentencing and statements on the impact on victims, and they can postpone the proceedings for more thorough consideration. Faced with constraints such as the lack of time for magistrates in lower courts, "perceptual contractions" (i.e. community-based stereotypes) can be grounds for sentencing. Unlike Australia, in the United States, parliamentary reforms of the Canadian Criminal Code, which more broadly created a set of guidelines for sentencing

all offenders, also contained a specific provision recognizing the unique circumstances of indigenous defendants: "all available sanctions, other than imprisonment, which are reasonable in the circumstances, must be considered for all offenders, with particular attention to the circumstances of indigenous offenders."

Indigenous communities are viewed as "disturbing," "unreliable," "dysfunctional," "disintegrating," and "prone to criminal behavior." The perception of indigenous peoples as people prone to deviant behavior is characteristic of Australian society, as the results of opinion polls show.

While higher courts may impose too lenient sentences due to the need to take into account the political consequences of the overrepresentation of indigenous peoples in prisons and the associated marginal position of this group in Australian society, in a limited time at the micro-level of the lower court, decisions may be based on stereotypes prevalent in society.

Conclusion

The application of the model of a "therapeutic" indigenous court in the Australian judicial system reduces the dependence of judges on perceptual reductions, and with it the likelihood of negative sentencing in relation to discrimination against minority groups. Further research is needed to better examine the impact of the status of minority groups on the likelihood of receiving prison sentences.

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Обобщение международного опыта принадлежности подсудимого к коренному населению на приговор

Смирнов Олег Аркадьевич

Кандидат физико-математических наук,
доцент, кафедра прикладной математики и информатики,
Российский государственный университет им. А.Н. Косыгина,
115035, Российская Федерация, Москва, ул. Садовническая, 52/45;
e-mail: smirnovoleg1952@mail.ru

Ноздрина Наталья Александровна

Кандидат педагогических наук, доцент,
доцент кафедры гуманитарных и социальных дисциплин,
Брянский государственный технический университет,
241035, Российская Федерация, Брянск, бул. 50 лет Октября, 7;
e-mail: nozdrina.natalye@mail.ru

Аннотация

На обобщении международного опыта показано, что в развитых странах наблюдается явная связь между статусом коренного населения и вероятностью тюремного заключения, при этом к коренным правонарушителям относятся снисходительнее. В статье показано, что коренные австралийцы, привлеченные к суду, реже получают тюремный срок по сравнению с некоренными австралийцами в аналогичной ситуации. Исследование показывает, что применение модели "терапевтического" суда для коренных народов может уменьшить зависимость судей от стереотипов и вероятность вынесения несправедливых приговоров в отношении меньшинств. Требуются дальнейшие исследования для полного понимания влияния статуса меньшинств на вероятность тюремного заключения. В то же время, в высших судах могут назначаться более мягкие приговоры из-за политических последствий избыточной представленности коренных народов в тюрьмах и связанного с этим маргинального положения этой группы в обществе. В условиях ограниченного времени принимаемые решения могут быть основаны на распространенных в обществе стереотипах.

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Ключевые слова

Коренное население, уголовное преследование, приговор суда, судебная система Австралии, социальные стереотипы

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