

The Harm of a Label

*The effect of Party Affiliation upon
Criminal Sentencing in the United States*

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Declaration

This work is substantially my own, and where any part of this work is not my own, I have indicated this by acknowledging the source of that part or those parts of the work.

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Abstract

This thesis examines why sentencing disparity between partisan elected and non-partisan elected judiciaries exists. I contend that partisan elected judiciaries produce harsher sentences. The theoretical reasoning provided, is that political parties converge to the mean on politically popular issues, in this case a perceived “toughness on crime”. Therefore party affiliation and party primary selection causes judicial officers to conform their sentencing practices to party demands in order to gain selection, election and retention. I conducted a quantitative analysis of the conviction and imprisonment data from circuit courts in geographically and demographically similar counties of Illinois (partisan election) and Michigan (non-partisan election) to test this theory. In my case study this severity of sentence is measured by the number of criminal convictions that result in imprisonment. The partisan elected judiciary produced significantly higher rates of imprisonment, suggesting that party affiliation is a contributing factor to sentencing disparity between judicial selection systems.

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Introduction

From the 15th century, the sculpture of Lady Justice is often depicted wearing a blindfold. The blindfold represents objectivity, suggesting justice should be provided dispassionately, without fear or favour, without regard for identity, power, money, or weakness; blind justice is independent and impartial. It is for these very reasons that any form of sentencing disparity must be called into question, and reasoning must be investigated. Understanding behavioural motivations of the judiciary is important because an individual judge has a large amount of power over the individual, as stated by Matthew Streb in his 2007 publication,

“While a member of Congress is just one of 535, a judge may be one of a few people and, indeed, may often be the sole person- responsible for a decision. Even in cases where a jury is ultimately responsible for a verdict, the judge has great discretion in terms of ruling on the procedural aspects of the case, and, in many states it is the judge who is responsible for the sentencing.”¹

Although a Judge is an individual, the judiciary is a normative system operating under sentencing guidelines and thus, why should significant sentencing differences exist between states in the United States? It is this question that I seek to address in my study. By examining the geographically and demographically similar states of Illinois and Michigan that use different judicial electoral processes, Illinois partisan and Michigan non-partisan, I have been able to eliminate other variables and look at how judicial party affiliation and partisan labelling affects sentencing. By collating data on Illinois and Michigan county circuit court case dispositions, conviction rates and imprisonment rates I have conducted a quantitative analysis to try to determine whether partisan elected judiciaries have significantly higher sentencing than non-partisan elected judiciaries.

¹ Streb, M. (2007). “Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections”. New York University Press. Ch 1. Pp3

In the first chapter of my study I review the current literature of judicial elections. Within this review I look at the current strands of theory on this subject, partisan effect, election effect and judicial integrity. I also reflect upon gaps in the research and position my own research within the literature. The literature review will be followed by my examination of the history of judicial elections in the United States and current affairs and developments in this area. Both Illinois and Michigan started from a British style appointment system however differing waves of popular reform swept these states and ultimately led to differing forms of judicial selection. Many legal scholars, former justices, Bar Associations and justice advocates are currently campaigning for further judicial reforms in relation to fund raising and selection process.

In the second chapter I use the literature review, and history and current developments to help construct my own theoretical framework in relation to this case study; sentencing differences between partisan and non-partisan elected judiciaries. My primary argument being that partisan labelling and party affiliation is the main cause of sentencing disparity between the two states. Furthermore I discuss partisan electoral policy, the argument for the middle ground- a perception of toughness on crime desired from both parties, and how this results in more severe sentences. The nature of partisan elections will also be examined, particularly fund raising and how this could affect judicial independence and integrity. I will further discuss the possibility of partisan differences within states of partisan elected judiciaries and the possible effect of elections on sentencing in both states.

In the second part of the chapter two I will outline the methodology of my study, looking at how and why the particular counties were selected. I then discuss how I will control external causal factors such as racial, geographic and other demographics including median income, high school completion and university attainment. Following this I outline my hypothesis, that partisan elected judiciaries produce higher sentences than non-partisan elected judiciaries, and I discuss the dependent and independent variables. The dependent variable is the number of

people entering the prison system, whilst the independent variable is the type of judicial selection which determines the number of people entering the prison system.

The third chapter commences with my results, the first being the collation of Illinois and Michigan county conviction and imprisonment rates and I test for significant difference in both conviction and imprisonment rates. These results do not produce significant differences between the two states for conviction rates, however they do for imprisonment rates [p-value < 0.05, p = 0.00 (2008), p = 0.00 (2009), p = 0.03 (2010)]. These results conclude that the selected Illinois counties have significantly higher imprisonment rates than Michigan. I then test for the impact of any external causal factors by testing the conviction and imprisonment rates of Illinois and Michigan counties with 10% or greater black population, less than 80% white population against their respective state data. This returned only one set of significant differences, that of the Illinois counties with 10% or greater black population. These counties had significantly higher imprisonment rates than their state data [p-value < 0.05, p = 0.00 (2008), p = 0.01 (2009) and p = 0.01 (2010)]. The geographical groupings, metropolitan, regional and rural for Illinois and Michigan also returned no significant difference from their respective total state data. The comparison of similar counties to their interstate counterparts further validated my hypothesis. Finally I tested the within state difference between the groupings of republican and democrat dominated judicial circuits. This produced no significant difference in conviction and imprisonment rates between the two parties.

Chapter three concludes with my discussion of the results, whereupon I reflect on how they are suggestive of evidence for my theory. Firstly I examine the validation of my hypothesis within the bounds of my study and just how partisan affiliation and labelling affects sentencing. In this case the party processes involved in candidate selection place expectations and obligations on the future judicial officers. The significantly higher imprisonment rates in the Illinois counties with 10% or greater black population are then looked at in context of this study.

Given that Illinois and Michigan have a similar black population percentage, this external causal factor is ruled out. I then look at the geographical and county comparison results making note of outlying data and trends. The significant trend being the generally higher conviction rates in Michigan, yet the (significantly) higher imprisonment rate in Illinois and the larger standard deviations in imprisonment rates in Illinois. This leads me to conclude that Michigan and perhaps non-partisan elected judiciaries generally produce more uniform imprisonment rates. Following this I examine the results from the partisan tests; although not significant the data shows that conviction rates and imprisonment rates tend to be higher in republican dominated judiciaries. In order to test my theory of the effect of competition upon sentencing I compare the results from the bipartisan county in my selection to the state averages. I look at the election year effect in relation to results. As I did not find an election year effect in my results I can dismiss it in relation to my study. I examine how the results and findings of my study may be generalized to other counties and states with similar electoral structures and finally I look at what the results mean to the field of judicial election scholarship and reform.

Chapter four commences with an examination of the limitations of my study and highlight areas of inquiry that my results suggest require further research. Firstly I look at the limited scope of this study and how that may limit inference of my results upon the wider judicial structure. Secondly I reflect on how further study and collation of data from more counties is required before my theory can be further validated. Finally I provide a conclusion to my study and reflect on what this study gives to the field of judicial selection scholarship.

Chapter 1: History, Scholarship and Developments of Judicial Elections

Literature Review

By reviewing the literature on United States judicial elections I was able to distinguish the area of scholarship requiring more investigation and review to provide a more expansive discourse on this topic. By focusing my research on sentencing differences it revealed that there is a lack of comparative analysis between sentencing in partisan judicially elected states and non-partisan judicially elected states. In eight states judges are elected via partisan election, whilst in fifteen states judges are elected via non-partisan election and the remaining states select judges via an appointment system. As reviewed in this section, scholarship is available in regards to election versus selection of judiciary, however there is not literature looking at how type of election may affect sentencing. It is important to conduct a comparative quantitative analysis of sentencing differences between partisan and non-partisan states, as the debate on which method of judicial selection results in a more autonomous and consistent judiciary, is still far from settled.²

My review will be divided into three areas, similar to the debate in the scholarship of judicial elections. The first being the partisan effect on sentencing, this area being most relevant to my research. The second being the alternative explanation to sentencing differences, that of the election effect, and finally the question of integrity. The final part of my review is really at the heart of much of the scholarship undertaken in this field; can the judiciary remain independent if it is elected, what are the positives and negatives of the process and where do we go from here?

² Rottman, D. B., and Schotland, R. A. (2005). Symposium: Aftermath of the 2004 Judicial Elections. *Spectrum: Winter*, 78: 17-19

The Partisan Effect on Sentencing

One of the major points of debate in the discourse on judicial behaviour and sentencing practices is that of the Partisan effect on sentencing, perceived judicial quality and independence of the judiciary.³ As Sobel and Hall (2007) state partisan elections are the primary reason for lower judicial quality, and this lowering of judicial quality and independence is caused by the very nature of partisan election- where money spent on electoral donations, particularly from corporations, industry, single-interest groups and individuals certainly questions judicial independence and integrity.⁴ Very early scholarship in this field discussed sentencing differences due to personal and ideological differences, ideological differences that fell along party lines.⁵

It has been found that there are significant sentencing differences between Republican and Democrat judges which follow ideological lines, e.g. Republican- more conservative being tough on street crime and softer on environmental or white-collar crime and the converse found in Democrat- liberal.⁶ There are Sentencing Guidelines for each state and federal judiciary that prescribes sentences for types of crimes, dependent on circumstance; there is still the opportunity for a judge to use discretion in sentencing.⁷ Schanzenbach and Tiller's (2007) research focused

³ Sobel, R. S. And Hall, J. C. (2007). The Effect of Judicial Selection Processes on Judicial Quality: The Role of Partisan Politics. *Cato Journal*; Winter, 27: 69-82.

Schanzenbach, M., and Tiller, E. H. (2007). Strategic Judging Under the United States Sentencing Guidelines: Positive Political Theory and Evidence. *Journal of Law Economics and Organization*: 23 no. 1: 24-56

⁴ Rottman, D. B., and Schotland, R. A. (2005). Symposium: Aftermath of the 2004 Judicial Elections. *Spectrum: Winter*, 78: 17-19

Streb, M. (2007). "Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections". New York University Press. Ch 1. Pp3

⁵ Everson, G. (1919). The Human Element of Justice. *J. Criminal Law & Criminology*, vol. 10, pp 90.

Haines, C. G. (1922). General Observations on the Effects of Personal Politics and Economic Influences in the Decisions of Judges. *17 Ill. Law Review*. 96, pp 105.

⁶ Schanzenbach, M., and Tiller, E. H. (2007). Strategic Judging Under the United States Sentencing Guidelines: Positive Political Theory and Evidence. *Journal of Law Economics and Organization*: 23 no. 1: 24-56

⁷ The Federal Sentencing Guideline 2010, accessed on 18/3/2012 via http://www.ussc.gov/Guidelines/2010_guidelines/ToC_PDF.cfm

on “fact-based adjustments” and “law-based departures”. Fact-based adjustments are where a judge would move upwards or downwards on the sentencing scale dependent on facts of the crime (severity, personal history of perpetrator, details of victim, remorse, likelihood of re-offending, etc.). Law-based departures from the sentencing guidelines occur when a judge determines the circumstances of the crime do not fit previous sentences, creating new legal precedent. Schanzenbach and Tiller (2007) find significant levels of fact-based adjustment - manipulation of “The Sentencing Guidelines” to determine final offence level, to serve party ideology. However there were no significant findings for upwards law-based departures, this they argue is because the sentence would be an appealed and highly ideological judicial sentencing, and would be upheld. Finally they state that “The Sentencing Guidelines” and Appellate courts have certainly curbed ideological sentencing practices in District courts, but yet they still exist.

There has been evidence found to the contrary to the above findings of Schanzenbach and Tiller (2007), contesting that there is actually no difference in sentencing between Democrat and Republican judges and thus no partisan effect.⁸ Due to the random assignment of cases, Ashenfelter, Eisenberg and Schwab (1995) claim that the structure of the court system results in no significant sentencing differences between conservatives and liberals. However the judges Ashenfelter et al., (1995) used for their study were appointed judges, via Republican or Democrat administrations, and so it could be argued that their findings were because judges were not answerable to their electorate or campaign donors who had expected certain outcomes based on party ideology. Sobel and Hall (2007) argue that although the distribution of democrat and

⁸ Ashenfelter, O., Eisenberg, T., and Schwab, S. J. (1995). Politics and the Judiciary: The Influence of Judicial Background on Case outcomes. *Journal of Legal Studies*, vol. 24: 257-281

Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

republican judges across states is relatively even, averaging out the markedly different outcomes, it does not overcome the fact that significantly different sentences do exist. The above finding is one that I will be addressing in my research – do sentencing differences between Democrat and Republican judges within a partisan state average out? If this theory is correct partisan state sentencing will not be significantly different from non-partisan states, however the within state differences will be significant.

What is notably absent from the discourse on the effect of partisan judicial elections is that of a comparative analysis to non-partisan judicial elections, which is what my study is designed to address. If it is found that sentencing is more consistent in non-partisan states surely that would indicate a lack of integrity, independence and consistency in the judiciary in partisan states. From the role of partisanship upon the judiciary we now focus on the nature of elections themselves.

The Election Effect

The alternative to the theory of partisanship causing sentencing differences is the effect judicial elections themselves have in sentencing differences, whereby judges' behaviour is governed by public opinion. Politicians on both sides of the aisle don't want to be considered "soft on crime" and nor do judges. Mark Warr, 1995, states "As a public issue crime is capable of generating levels of public passion" (p 296).⁹ The effect this social opinion has on sentencing has been looked at extensively in relation to capital punishment, and general criminal cases.¹⁰

⁹ Warr, M. (1995). Poll Trends: Public Opinion on Crime and Punishment. *The Public Opinion Quarterly*, Vol 59, No. 2: 296-310.

¹⁰ Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

Brooks, R. R. W. And Raphael, S. (2002). Life Terms or Death Sentences: The Uneasy Relationship between Judicial Elections and Capital Punishment. *Journal of Criminal Law and Criminology*; Spring: 609

Gordon, S. C., and Huber, G. A. (2007). The Effect of Electoral Competitiveness on Incumbent Behaviour. *Quarterly Journal of Political Science*: 2 no.2: 107-138

Huber, G. A., and Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science* 48, (2): 247-263

The crux of this theory of sentencing differences is that in an election year in order to appear ‘tough on crime’ and be re-elected or promoted sentences are significantly more severe. It is the act of elections not partisan politics that result in sentencing differences between judges, especially those not running for election. This modification in behaviour, reflected through sentencing discrepancy is not a newly discovered phenomenon but was noted in the findings of Gaudet in (1933). He concluded that imminent re-election impacted upon sentencing terms.¹¹

Bright and Keenan (1995), and Brooks and Raphael (2002) both come to the conclusion that during the election year of a sitting judge those found guilty of murder were significantly more likely to receive the death penalty. Brooks and Raphael (2002) state that in instances where the jury reached a verdict and sentence, there is often the opportunity for judges to instruct the jury, in some instances encouraging them to apply the death penalty- with judges in some instances overruling the jury in sentencing and applying the death penalty. It seems also that this trend in significantly harsher punishment during an election year is not limited to the turn of last century, as in Brooks and Raphael’s (2002) study, but as Bright and Keenan (1995) conclude it is still occurring. Judges have the ability, provided it is within sentencing guidelines or legal doctrine to “Tailor punishment to socially desirable outcomes” (p 612).¹² Bright and Keenan (1995) discuss how an unpopular decision may cost a judge their seat on the bench or future promotion. This happens even when the judge has come to a not guilty verdict or lenient sentence due to technical legal doctrine. Bright and Keenan put forward the notion that judges are often elected by populist decision and not legal reason, because much of the electorate do not

Ross, T. M. (1988). Rights at the Ballot Box: The Effect of Judicial Elections on Judges’ Ability to Protect Criminal Defendants’ Rights. *7 Law and Inequality* 111: 127.

¹¹ Gaudet, F. J. (1933). “Individual Differences in the Sentencing Tendencies of Judges”. *Journal of Criminal Law and Criminology*; 23, pp 811

¹² Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

understand technical legal proceedings. I will elaborate on this issue when discussing the third area of scholarship.

Ross (1988) states the election of the judiciary sees judges modify their behaviour to comply with public desires. Judges are not offered the facility out of court to discuss their decisions and often these decisions are reached through legal doctrine, which is not understood by the lay person. Posner's (1993) paper's focus is primarily on this fact, modification of behaviour due to economic rational choice, sentencing designed to further ones career, or to keep ones job.¹³ Huber and Gordon (2004) state "voters are largely uninformed about judicial behaviour so even the outcome of a single publicized case can be decisive in their evaluations" (p 247)¹⁴ highlighting just how one sentencing can damage a career, even if it is considered legally correct.

Throughout this particular theme of judicial election scholarship there is consensus that the significantly harsher sentences are not reserved to judges of a particular political party and ideology but are seen across the spectrum in an election year. The point is also made that this thirst for harsh and hasty sentences applies to politicians also and political pressure upon the judiciary can be witnessed, calling into question the independence of the bench.¹⁵ Gordon and Huber (2004)(2007) also make reference to the fact that judges may discount a preferred

¹³ Posner, R. A. (1993). What do Judges Maximise? (The same thing everybody else does). *John M. Olin Law and Economics Working Paper No.15, 2nd series*: 1-26

¹⁴ Huber, G. A., and Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science* 48, (2): 247-263.

¹⁵ Kubik, J. D. And Moran, J. R. (2001). Lethal Elections: Gubernatorial Politics and the Timing of Executions. *Centre for Policy Research, Syracuse University, Working Paper*.

Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

sentence for a more socially desired one to retain office, reiterating Posner's (1993) argument that judges are not immune to economic rational choice modelling.¹⁶

However there has also been an argument that when there is an absence of serious challengers to an incumbent there may be the witnessing of an “erosion of democratic accountability” (p108)¹⁷, where judges can do as they wish or it is the case that the judge is compliant to community or constituent demands and thus not autonomous.¹⁸ It is also seen in election results, in incumbent defeat, that judges are held accountable for factors outside their control e.g. incumbent judges lose their seat when state crime rates go up, and thus it is understandable they would do what it takes to retain office.¹⁹ Although this stream is not directly related to my line of research, as it does not examine partisan versus non-partisan sentencing differences, it does however build upon my reasoning in explaining sentencing discrepancies'. My theoretical framework is based on the notion that judges adjust sentencing in order to comply with party desires to retain office and therefore power. In regards to justice this sees parties revert to the perceived median voter desire “tough on crime”.

Question of Integrity

In my own research I am not looking at merit-based appointment sentencing and whether it is significantly different, however it is important to understand the debate as to why judges are elected at all and where my research will contribute to this scholarship.

¹⁶ Posner, R. A. (1993). What do Judges Maximise? (The same thing everybody else does). *John M. Olin Law and Economics Working Paper No.15, 2nd series*: 1-26

¹⁷ Gordon, S. C., and Huber, G. A. (2007). The Effect of Electoral Competitiveness on Incumbent Behaviour. *Quarterly Journal of Political Science*: 2 no.2: 107-138

¹⁸ Streb, M. J., and Frederick, B. (2009). Conditions for competition in low-information judicial elections: The case of intermediate appellate court elections. *Political Research Quarterly* 62: 523-537

¹⁹ Huber, G. A., and Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science* 48, (2): 247-263

Given the nature of the office many non-American citizens find it hard to understand why judges are elected. In Sobel and Hall's (2007) paper they discuss that the very nature of campaigning impinges judicial integrity. Polls conducted by Geyh (2003) in the states of Texas and Ohio suggest that 80% of citizens believe that campaign contributions would have a significant influence on subsequent judgements.²⁰ As the above results show, citizens still cling to their right to vote, their right to hold an officer to account, in the face of overwhelming evidence that the process of election creates integrity issues, e.g. in South Dakota appointment of judges via merit-based legislative selection passed through the legislature unanimously, but was rejected by 62% of voters.²¹

The degradation of judicial integrity, independence and impartiality can also be witnessed when judges campaign, advertising their credentials for being pro-business or pro-labour.²⁷ A further example of this behaviour was seen during the 2004 Ohio judicial elections (non-partisan) where a candidate for the Supreme Court announced his views on disputed legal cases, revealing where he would stand on controversial issues and his party affiliation.²² To respond to the negative effects of judicial elections Streb and Frederick (2009) point out that by holding judicial elections there is public accountability and indeed facility to participate in an otherwise closed section of governance.²³ It has also been noted that contested elections should lead to better candidates.²⁴

²⁰ Geyh, C. G. (2003). Judicial independence, judicial accountability, and the role of constitutional norms in congressional regulation of the courts. *Indiana Law Journal*: 78, no.1: 153-221

²¹ Sobel, R. S., and Hall, J. C. (2007). The Effect of Judicial Selection Processes on Judicial Quality: The Role of Partisan Politics. *Cato Journal*; Winter, 27: 69-82.

²² Rottman, D. B., and Schotland, R. A. (2005). Symposium: Aftermath of the 2004 Judicial Elections. *Spectrum: Winter*, 78: 17-19

²³ Streb, M. J., and Frederick, B. (2009). Conditions for competition in low-information judicial elections: The case of intermediate appellate court elections. *Political Research Quarterly* 62: 523-537

²⁴ Huber, G. A., and Gordon, S. C. (2004). Accountability and coercion: Is justice blind when it runs for office? *American Journal of Political Science* 48, (2): 247-263

Yet in contrast to these concepts one of the original scholars in judicial theory, Pound (1963), claimed that the placement of the judiciary into the political sphere in many jurisdictions has diminished the integrity of the bench.²⁵ Pound's (1963) argument was witnessed in both the 2000 and 2004 elections when private interest groups spent millions on judicial campaigns, either through donation or advertising. As Rottman and Schotland (2005) stated these actions have led to a decrease in integrity.²⁶ Tabbarok and Helland (1999) find significant differences in the awarding of tort awards to in-state plaintiffs (constituents) to the detriment of out-of-state businesses, further highlighting the questionable independence of an elected judiciary.²⁷ Yet, as seen with the referendum results, there is still reluctance by the United States public to give up the right to elect their judges.²⁸

It has been exhibited in much of the previous research and examined in this paper, whether it is partisan factors or popular factors, when there are significant sentencing differences continually occurring, the question remains, is the judiciary independent? It is this question that fuels further research.

Conclusion

In closing I will briefly outline where my research fits into the spectrum of scholarship upon judicial elections and sentencing differences, what current problem it is addressing and why it is important to the discourse. My research will fit into the current partisan effect paradigm where there is currently an absence of scholarship comparing the sentence lengths in partisan judicially elected states to those in non-partisan judicially elected states. I hope the results will address the current problem in determining which form of judicial electoral system is

²⁵ Pound, R. (1963). Policing and Justice- Administration and Adjudication. *Virginia Law Review*: 49, 4: 744-758

²⁶ Rottman, D. B., and Schotland, R. A. (2005). Symposium: Aftermath of the 2004 Judicial Elections. *Spectrum: Winter*, 78: 17-19

²⁷ Tabbarok, A., and Helland, E. (1999). Court Politics: The Political Economy of Tort Awards. *Journal of Law and Economics*: 42: 157-188

²⁸ Sobel, R. S., and Hall, J. C. (2007). The Effect of Judicial Selection Processes on Judicial Quality: The Role of Partisan Politics. *Cato Journal*; Winter, 27: 69-82.

more consistent and independent. This will then allow me to make recommendations for reform and guidelines to improve the current structure.

Then and Now: History and Reform Developments

In the following I section I will look at the history surrounding judicial selection in the United States broadly and then focus upon the history of the Illinois and Michigan judicial selection systems and their current form. Following this I will look at unsuccessful reforms in both states and current criticisms of the differing forms of judicial election process.

History

In order to account for the any significant differences in sentencing that occur between partisan and non-partisan judicially elected states I will examine when and how these processes came about in order to isolate causal effects. Federal Judicial selection is straight forward, as it is laid out in the constitution, the President is to nominate all federal judicial candidates and then they must be confirmed by the senate. However the selection process in the states is wide ranging due to federalism. Broadly, there are two types of judicial selection being practiced in the United States, election or appointment.

Originally the judges in all thirteen of the first states were appointed in a similar system to England. However, since independence there has been an ongoing debate about the process of selection. Jefferson originally led the debate, proclaiming that in the English system judges were only accountable to King George rather than the people and this should not be the case in this great experiment of democracy, the United States. Accordingly it was argued that the United

States should have a democratic system where judges are accountable to the people.²⁹ In 1832 Mississippi became the first state to amend its constitution to allow for the election of judges. By the Civil War 24 of the 34 states had judicial elections and subsequently every state that joined the Union, until Alaska's 1959 admission, has the election of some of its judges, particularly the circuit court or trial court judges. The Jacksonian era saw an expansion in suffrage and popular control of elected officials. It was felt that this measure would result in an increased sense of responsibility on behalf of elected officials to their communities.³⁰ It was also believed that by standing from a party platform communities would have a better idea of the judicial candidates' values. Thus the first judicial elections were partisan and subsequently dominated by the early machine politics, leading to cronyism and corruption.^{31 32} Thus partisan judicial elections exacerbated the problem they were implemented to improve.

Early Reform

As touched upon in the literature review early scholars, members of the American Bar Association and progressives prompted a push for judicial selection reform. One of the leading reforms was non-partisan elections. This reform was popular as it was designed to reduce the influence of divisive national partisan issues on local elections. Further to this it was hoped it would lessen the control of the large city political machines over the nomination process. This reform was seen as a way to keep judges "above politics" whilst remaining accountable to the people. Judges first ran in non-partisan elections in Cook County, Illinois, in 1873, following this 12 states used non-partisan judicial elections as their method of judicial selection by 1927.²⁹

²⁹ Streb, M. (2007). "Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections". New York University Press. Ch 1. Pp 9

³⁰ Aldrich, J. H. (2011). "*Why Parties: A Second Look*". University of Chicago Press. Chicago, IL. Ch 4, Pp109

³¹ Croley, S. (1995). Majoritarian Difficulty: Elective Judiciaries and the rule of Law. *University of Chicago Law Review*. Pp722

³² Pound, R (1906). "Causes of Popular Disaffection with the Administration of Justice". Speech presented at the *Annual convention of the American Bar Association* in 1906.

However non-partisan elections were not without their problems and critics. As judges still had to campaign for election and re-election, political parties were still involved as their involvement had not yet been reformed. The second major concern was that the quality of justices would suffer if the partisan cue was not supplied to voters. It was believed that the partisan cue would inform voters, in the most basic way, as to whether a judicial candidate shared their ‘values’.

Illinois and Michigan

Illinois and Michigan have been chosen for this case study as they have differing methods of judicial election, Illinois being partisan judicial election and Michigan non-partisan judicial election at the circuit court level. Furthermore in order to isolate causal effects of sentencing disparity these states were chosen because of their demographic and geographic similarity. From 1818 to 1848 Illinois’ judiciary was elected for life by the general assembly. An amendment in 1848 saw partisan elections introduced, with Supreme Court justices to serve 9 year terms and Circuit Court judges to serve 6 year terms. During the late 19th century and early 20th several counties opted for non-partisan elections but the Constitution of 1964 saw the unification of counties and courts to a partisan method of judicial election. Although Cook County may have been the first to embrace non-partisan judicial elections it was also one of the first to discard them, by 1927 Cook County moved back to partisan judicial elections. There were however still efforts to reform the judicial electoral system. In 1962 voters ratified the implementation of retention elections (where a judicial officer runs unopposed and must receive over 65% of the ‘yes’ vote), rather than re-election. This push for reform was similar to the wave of support for non-partisan elections, as it combined the concept of judicial independence (do not have to run against opponent) and judicial accountability (face the possibility of loss of office if their constituents are not happy with their performance).³³ The Judicial Amendment in 1964 of the

³³ American Judicature Society website. <http://www.judicialselection.us/>

Illinois constitution states that judicial officials shall be nominated by party convention or primary and then elected at general election. Section 11 states judges can opt to retain office via retention election.³⁴

Michigan, like all other states in the early 19th century did not have an elected judiciary but rather from 1836 to 1850 judges were appointed by the Governor and confirmed by the senate. Reforms of 1850 saw judges elected by the people in partisan elections with the Supreme Court justices serving 8 year terms and Circuit Court judges six year terms. In 1939 a constitutional amendment was passed in Michigan which saw the legislating of non-partisan judicial elections for circuit courts, this was formalised in the Michigan Constitution in 1964.³⁵ After their 6 year term circuit court Judges in Michigan have to run for re-election, not a retention election as in Illinois.

Having examined both the history of the changing judicial selection in both Illinois and Michigan the following conclusions can be reached. The different methods of judicial selection were not put into place to amend sentencing problems or high crime rates but to resolve criticism. A correlation can be seen with popular reform sentiment of the times.

Changes and Attempts to Change

Since the mid-twentieth century there have been no major changes to either the Illinois partisan judicial elections or the Michigan non-partisan judicial elections. This however does not mean the critics or the criticism of judicial elections has ceased. It must be noted that there has been far more activity on reform of the judicial process in Illinois than in Michigan, as presented below.

³⁴ Constitution of the State of Illinois. (1964). Article IV. Accessed via <http://www.ilga.gov/commission/lrb/con6.htm>

³⁵ Constitution of the State of Michigan. (1964).Article IV. From <http://www.legislature.mi.gov/documents/publications/Constitution.pdf>

There has only been one successful reform on judicial selection in Michigan. This reform was the constitutional amendment of 1996 that requires judicial candidates to have practiced law for at least 5 years. Since 2000 there have been no amendments proposed. Illinois on the other hand has had 2 successful reforms but has also had far more failed reforms. In 1992 the legislature established the Cook County sub-circuit to promote more diversity on the bench. Secondly in 2009 SB 1466 was passed in which limits were imposed on judicial campaign contributions, \$125 000 in the 1st judicial district and \$75 000 in the other judicial districts. Campaign finance, which will be discussed further below, has remained a “hot” topic surrounding judicial elections. In the 1970 Constitutional Convention a proposal was put forward regarding judicial selection, proposing partisan elections or merit selection. The merit selection proposal carried in many counties including Cook but was defeated state-wide by 146 000 votes. In 1973 a similar push for judicial merit selection on the floor of the state congress failed. In 1988 after several judicial corruption scandals Governor Thompson appointed a taskforce to reform the selection process, however none of the proposals put forward ever made it through the congressional committee. Finally in 1996 a bill proposing Gubernatorial appointment with senate confirmation for Supreme Court judges and merit selection for Cook County Circuit judges, and merit selection for all circuit court and appellate court judges, was defeated on the senate floor. Also in that year a requirement that circuit court judges be at least 35 years of age and have 10 years legal experience failed in the house.³⁶

Recent incidences in both Michigan and Illinois further prompt me to question the partisan role and the effect of party affiliation in the judicial system. In Michigan Supreme Court justices are nominated at party conventions, unlike the Circuit Court, but run in a non-partisan general election. The 2008 general election saw what has been described as one of the “dirtiest” campaigns out of all the Supreme Court contests over several states that year.³⁶ The Republican incumbent came under attack from the Democratic challenger and the “Justice at Stake

³⁶ American Judicature Society website. <http://www.judicialselection.us/>

Campaign”. The challenger’s campaign consisted of television advertisements describing the incumbent as “soft on terrorists”, “soft on sexual predators”, “soft on big business” and “sleeping on the job”. However over three quarters of these ads were paid for by special interest groups.³⁷ The most expensive judicial election campaign in history was witnessed in Illinois in 2004. The district-based seat on the Supreme Court saw the two candidates raising \$9.3 million. This figure is more than what was raised by 18 of the 34 U.S. Senate races that same year. This particular Supreme Court district seat gives the justice the authority to fill vacancies in the Circuit Court between elections. Furthermore it has a widely recognized reputation for large tort awards. Therefore major contributors to the candidates included the American Tort Reform Association, labour leaders, trial lawyers, and the U.S. Chamber of Commerce.¹⁴ All of these campaign contributors had a vested interest in the outcome. This high spending on judicial elections as well as campaign contributions continues to concern advocates for judicial independence as Justice Sandra Day O’Connor states, "In too many states, judicial elections are becoming political prize fights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution."³⁸

Although it is not easy to change the constitution in either Illinois or Michigan the fact that many proposals never made it through the general assembly in Illinois demonstrates that the political parties do not wish to relinquish their stake in judicial elections. Proposals can be initiated by the general public in Michigan and Illinois via petition signed by voters. Illinois requires at least 8% of the total votes cast for Governor in the last election, then 6 months after the legislative passage of the proposed amendment it is put to voters at the next general election. In order to be ratified it requires either a majority of votes in the election or 3/5^{ths} of those voting on the question. Similarly in Michigan a proposal petition must be signed by registered electors

³⁷ Hall, C. (2008). “2008 Supreme Court Elections: More Money, More Nastiness”. Report published on Justice is at Stake Campaign. From <http://www.justiceatstake.org/>

³⁸ Day O’Connor, S. (2010, May 22nd). Take Justice off the Ballot. *New York Times*. From http://www.nytimes.com/2010/05/23/opinion/23oconnor.html?_r=1

equal in number to at least 10% of the total votes cast for governor in the most recent gubernatorial election.³⁹ Following this the amendments proposed must then be ratified by a majority of voters at the next general election. In order to enact change it requires mass interest, which usually requires a high amount of funding from interest groups, once again prompting the question as to whether justice can be purchased. As stated previously Illinois has had more reform proposals put forward by the Illinois and Chicago Bar Associations suggesting that legal professionals feel the system of judicial election through partisan method is flawed. This lingering question of the role that partisanship can play in justice and the role of interest groups as donors or fund raisers leads me to my own theory regarding election type and sentencing disparity.

³⁹ American Judicature Society. From <http://www.judicialselection.us/>

Chapter 2: Why do Sentencing Differences exist and How to test them?

Theoretical Framework

By placing partisan labels on judges we are creating yet another arena in which partisan politics involves itself in a civil machine that should be independent and impartial. As Anthony Downs states the political party is “a team seeking to control the governing apparatus by gaining office in a duly constituted election” (p 25).⁴⁰ My theory is formed from what partisan labelling does. In this study I hypothesize that partisan labelling creates sentencing disparity between judicial systems. This partisan label effect causes greater sentencing difference than either the label of Democrat or Republican. Following on from this the nature of partisan elections and party selection processes further exacerbates and encourages this issue.

Introduction

Following on from the literature review and the history and current state of judicial elections I will apply the above strands of scholarship and issues, partisan effect and election effect, in constructing my own theory. My study examines the annual state imprisonment numbers per county versus criminal case disposition numbers per county, of selected counties in Illinois and Michigan. Method of selection is discussed in further detail in the methodology section below. In this section I set out to explain why there might be a significant sentencing disparity between states that have partisan judicial elections and states that have non-partisan judicial elections. Furthermore my theory will also address any sentencing differences within states, e.g. counties of a particular partisan persuasion versus another county of differing partisan persuasion.

Both the Illinois and Michigan Circuit and Trial Court Judiciary are guided by their respective Sentencing Guidelines, which are very similar on criminal matters. However as

⁴⁰ Downs, A. (1957). *“An Economic Theory of Democracy”*. Harper and Row. New York. Pp25.

Schanzenbach and Tiller (2007) state the judiciary still has flexibility within these guidelines, and can depart from them, sentencing upwards or downwards of the guidelines.⁴¹ Given this, why are there differences between partisan and non-partisan states when it comes to sentencing, and secondly which method of judicial election would produce the more severe sentences?

In the first section of my theory I will discuss party affiliation and how it could affect sentencing. Following this I will look at the possible effect of electoral competition and campaign contributions upon sentencing. In the next section I will discuss the within state sentencing differences caused by partisanship and finally I will look at the election effect.

The problem with Labels

Sentencing differences between partisan elected judiciaries and non-partisan judiciaries stems from the nature of partisanship, that being party selection processes and partisan election expectations. This partisan expectation is created when a candidate runs under a particular political party and that party desires to create a particular perception. In regards to justice it is probably a perception of being tough on crime. This perception is something that both parties may desire, it is the middle ground. In order to become the party's candidate one is required to act in such a manner. Furthermore the party will then proclaim to the electorate that they are tough on crime, thus creating an expectation, of the candidate from the party and the party from the electorate. This expectation and obligation affects sentencing more so than any perceived ideological partisan differences. By discussing the nature of partisanship I am addressing how party labelling and party affiliation may affect judicial behaviour by transforming expectations of the judicial officers behaviour by the electorate and the party.

As Aldrich (2011) discusses, a political party must stand for something to be successful and for both parties to remain major parties the contest will be for the middle ground, and politically popular conceptions of governance.

⁴¹ Schanzenbach, M., and Tiller, E. H. (2007). Strategic Judging Under the United States Sentencing Guidelines: Positive Political Theory and Evidence. *Journal of Law Economics and Organization*: 23 no. 1: 24-56

(a political party) “...is in equilibrium when its label conveys something to voters, and it is sufficiently attractive to enough voters so as, in turn, to attract ambitious politicians to affiliate with it and its label”. (pp 25)⁴²

The middle ground when looking at politics and justice is the perception that the party is “tough on crime”, or “tough on criminals”. This battle for the middle ground is known as Median Voter Theorem, an intuitive theory regarding political behaviour and formulation of policy.⁴³ Briefly, the Median Voter Theorem explains a few of the phenomena that occur in majoritarian voting systems. Firstly, in my study it may explain why judicial candidates and parties more broadly, adopt similar platforms and campaign rhetoric. In order to win a majority, parties or judicial candidates must tailor their platforms to the median voter.⁴⁴ For example, in my study, the Democratic and Republican candidates typically move their campaign platforms towards the middle ground, “tough on crime” during general elections campaigns. Just as the private market companies try to win over their competitor’s customers by making slight changes to better their products, so, too, do politicians deviate slightly from their opponent’s platform so as to gain votes.

However it may be assumed that to be considered tough on law and order is a title non-partisan judicial candidates would also desire. So why then do I not expect to see similar sentencing in non-partisan judicially elected states? Why would a judicial candidate without a partisan label not be as susceptible to this battle for the median? The reason for this is the process partisan candidates have to go through to be elected, e.g. party primaries, and this process places greater expectation of sentencing behaviour upon candidates. When a judicial candidate must be affiliated with a party, expectations of performance and actual performance fall back on the party rather than just the candidate, and the candidate feels they need to fulfil

⁴² Aldrich, J. H. (2011). “Why Parties: A Second Look”. Chicago University Press. Chicago, IL. Ch 1, pp 25.

⁴³ Downs, A. (1957). “An Economic Theory of Political Action in a Democracy”. *Journal of Political Economy* **65**: 135–150.

⁴⁴ Hotelling, H. (1929). “Stability in Competition”. *The Economic Journal* **39**: 41–57.

these expectations in order to retain office otherwise they may not make it through party nomination for a retention election.

Members of the judiciary are supposed to be indifferent to public opinion but how could they be if they have to campaign to be elected, re-elected or retained?

Competition

Expanding on my previous concept of the battle for the “middle ground” or Median Voter Theorem, I will look at how the more competitive the race the more a candidate will use party affiliation and that is when voters rely upon partisan expectations. Thus in the case of a judicial election the party requires their existing members of the judiciary, or incumbent candidates to fulfil these expectations, in this case the perceived “toughness on crime”. As highlighted in the previous section discussing current developments in judicial elections in the campaign for the Michigan Supreme Court, party stereotypes were used to cast credibility questions over the incumbent and candidate, therefore candidates are obligated to their party to conform to desired expectations.

The next step on this point might be to assume that in counties with more competitive races we should see harsher sentencing. However I believe even in strongly dominated counties and circuits there will still be similar sentencing to bipartisan counties. This is because although the race in the general election may not be as competitive as a bipartisan circuit, the primary battle within the party is competitive and obligation to the party, once in office remains strong, as that party affiliation is the reason a candidate has taken office in a partisan dominated circuit. This further endorses the point of the role party primary’s play in effecting sentencing. Further to this, if a circuit is strongly dominated by one or another party, this circuit’s sentencing rates can be used as an example of a party’s response to crime, in future and varying electoral races, either by the party or the opposition. I refer to this as a partisan stronghold effect. This sort of action is

what Joseph Schumpeter (referenced in Aldrich, 2011) describes as an ‘electoral machine’, the electoral machine being the party. He further states that partisan candidates will embrace the electoral machine, and allow partisan issues to mobilize the electorate, but only if competition forces them to do so.⁴⁵

Although the battle for office in this instance may be as tight as a bipartisan circuit battle for the middle ground is always on a party’s agenda, and party affiliates and office holders must demonstrate this obligation. As Aldrich (2011) states incumbents fear losing the next election and we should see a need for incumbents to fulfil party expectation so that the party will endorse and support the candidate in order to prevent losing the next election. Partisan affiliated judges are required to fulfil party and voter expectations on which they campaigned on, such as being tough on crime. This popular position of “tough on crime”, or median in this study are the imprisonment rates, which should if significantly higher in a state with a partisan elected judiciary suggest evidence for this theory.

My primary argument is that sentencing is significantly affected by partisan labelling and party affiliation, not one party or another, but the creation of an arena in which one area (justice) of partisan policy is debated and contested. As Streb (2007) states partisan elections allow national and larger political debates into the courtroom. As stated in the work of Bright and Keenan (1995) both political parties like to be considered “tough on crime”, this combined with party nomination processes and expectations translates into partisan elected judges sentencing more severely than those judges who do not wear a partisan label. Judges elected through partisan method are not only accountable to their constituents but also to their party and their donors. Due to this I expect to find significant differences favouring harsher sentencing in partisan elected judiciaries than non-partisan elected judiciaries.

⁴⁵ Aldrich, J. H. (2011). “Why Parties: A Second Look”. University of Chicago Press. Chicago, IL. Ch 4, Pp109

Can justice be purchased?

Another area in which the judiciary in a state that has partisan judicial elections struggles to remain independent and impartial is that of campaign donations. This point builds upon above paragraphs that have discussed party expectations of a candidate. Once elected Circuit court judges, the focus of my study, serve a 6 year term then face retention election (in Illinois) or re-election (in Michigan). Thus, in the case of partisan judges they are continually required to fundraise in order to keep their position and to gather donations typically sourced through their party.⁴⁶ Although non-partisan judges must also run for re-election (incumbency is designated on the ballot), they are held accountable by their constituents and do not require any form of party endorsement or party fundraising. This leads me to propose that their judicial behaviour is more independent than their partisan elected peers. A candidate should not have to argue for the popular badge of “tough on crime”, but rather the judiciary should campaign on independence and impartiality, values of which are suppose to be inherent in this office.

This is a particularly contentious topic as discussed in Julie Archer’s (2012) article arguing that independence and impartiality can certainly be called into question with increased campaign donations from special interest groups. As she states, unlike a legislator who can legitimately favour certain views and policies, respond to voter concerns, promise to enact legislation and meet with donors to discuss legislation, the judiciary must be impartial, indifferent to public opinion and certainly not promise to rule in a particular way.⁴⁷ In 2010 the US Supreme Court in the Citizen's United v. Federal Election Commission case ruled in favour of Citizen’s United. This ended restrictions on campaign donations by unions, corporations, and interest groups and

⁴⁶ Streb, M. (2007). “Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections”. New York University Press. Ch 1

⁴⁷ Archer, J. (2012, August 16th). “Fund-raising sullies Judicial Candidates”. *Charleston Daily Mail*. From <http://www.dailymail.com/Opinion/Commentary/201208150237>

has subsequently seen the increase in campaign spending.⁴⁸ As Sobel and Hall (2007) suggest the nature of partisan elections lowers judicial quality because of donations given. These campaign contributions are given with the expectation of certain behaviours cultivated and expected by the party. Furthermore, as discussed by Tabbarok and Helland (1999) judiciaries are significantly more likely to make rulings that favour their constituents.⁴⁹ In my research I am not looking at civil claims but criminal, although the same principle applies, that is to say sentences will favour constituents (putting the criminals behind bars) and favour donors, ensuring the party message is upheld. My argument is that campaign contributions and donations are another contributing factor to why partisan labelling and party affiliation cause significant sentencing differences, compared to a non-partisan elected circuit court.

Difference within state

Firstly when looking at the Partisan effect, as noted in the preceding literature review, results have been produced on either side of this debate. In contrast to the research conducted by Schanzenbach and Tiller (2007), where they found democratic judges tending to be harsher on white-collar and environmental crime and republican judges being tougher on drug and street crime, I do not expect this to be the case with my own findings. I believe that both republican and democrats to be of equal severity in sentencing on crime because of the political requirements in relation to law and order.

As referred to in the Literature Review, Sobel and Hall (2007) state there should be an “averaging out” of sentencing within the state due to reasonably even distribution of Democrat and Republican judges.⁵⁰ However I do not propose any significant differences between

⁴⁸ Judges tackle the rise in Election spending. (2011, October 28th). *Thompson Reuters News and Insight*. From http://newsandinsight.thomsonreuters.com/Legal/News/2011/10_-_October/Judges_tackle_the_rise_in_election_spending/

⁴⁹ Tabbarok, A., and Helland, E. (1999). Court Politics: The Political Economy of Tort Awards. *Journal of Law and Economics*: 42: 157-188

⁵⁰ Sobel, R. S. And Hall, J. C. (2007). The Effect of Judicial Selection Processes on Judicial Quality: The Role of Partisan Politics. *Cato Journal*; Winter, 27: 69-82.

Republican or Democratic counties but rather significant difference between counties due to the partisan stronghold effect. As stated above it is in the interest of both parties to converge to the median on law and order issues. Democrats are generally perceived as softer, on many issues, not just law and order, they sometimes go further than median expectation to de-bunk this perception.⁵¹ An example of this was Bill Clinton, as Governor of Arkansas, in his 1992 Presidential election signing off on the execution of Rickey Ray Rector, a man of questionable mental health, and attending the execution. Presumably Republicans would then want to match this “toughness” exhibited by the Democrats rather than lose argument for the middle ground. If there was a significant difference between counties of a particular partisan persuasion it would allow one party or another to justifiably boost their credentials on law and order issues. Unlike contentious sentencing issues such as the death penalty, imprisonment does not contain the same stigma, on the surface is associated with a perceived toughness of crime and is welcomed, or at least accepted, by a significant majority in the community.

Another theory brought forward by Schanzenbach and Tiller (2007) is that in a county or circuit dominated by a particular party, where their respective appellate district is of similar partisanship, one should see upwards law-based departures from the sentencing guidelines. Any appeal should be denied as both circuit court and appellate judges are of the same party. If this is the case we should see higher sentencing (imprisonment rates) in counties of high partisan domination, and likewise in districts of the same high rate of partisan domination. For the partisan county and district ratings in this study please refer to Table 3. In contrast to the above findings Ashenfelter, Eisenberg and Schwab (1995) contested that due to court structure and the nature of criminal cases there would not be any significant difference in imprisonment between democratic or republican counties.⁵² In my study I am only examining criminal cases and as

⁵¹ Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

⁵² Ashenfelter, O., Eisenberg, T., and Schwab, S. J. (1995). Politics and the Judiciary: The Influence of Judicial Background on Case outcomes. *Journal of Legal Studies*, vol. 24: 257-281

previously stated both parties wish to be considered tough on crime. The results will be disproportionately higher than the non-partisan elected judiciary of Michigan. As stated above I do not expect to find significant differences between parties.

In this study I have also collected conviction rate data from each of the counties. For the same reason I do not expect to find sentencing disparity between counties, I do not expect to find significant differences between democratic or republican counties. I also expect to find similarities in the convictions rates between the states. The reason there would be such a disparity between states in conviction to sentence is because as Streb (2007) states, this is one area where a judicial officer has a lot of influence and there is a tendency in partisan labelled judiciaries to fall back on party expectations.⁵³

An Election Year Effect?

Bright and Keenan (1995) found in their research that sentences were significantly harsher during election years. However with both Illinois and Michigan their Circuit or trial courts have staggered 6 year terms, for example one third of the bench may be facing election in a given election year, whilst another third will not face election for another two or another four years. Furthermore this effect is not the primary motivation for this case study; however one can not discount this theory on causes of sentencing disparity. Both Michigan and Illinois use elections to select their judiciary, and accordingly if this theory is to hold there should not be a significant difference between the states, but rather significant differences between the different years, election year or not. I do not believe this to be the case as there are elections within such a short space of time and there is always someone up for election. Bright and Keenan (1995) make the point that a perception of toughness on criminals is popular with voters and hence severity of

Bright, S. B., and Keenan, P. J. (1995). Judges and the Politic of Death: Deciding between the Bill of Rights and the next Election in Capital Cases. *Boston University Law Review*, vol. 73: 759

⁵³ Streb, M. (2007). "Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections". New York University Press. Ch 1

sentences is greater in election years. However for the above reason I do not believe this will create significant differences between election and non-election years. Their point on perception is similar to my theory as to why there are sentencing differences between states of differing judicial election type. As stated above these differences are due to the partisan labelling of the judicial candidates and their obligations back to their party rather than a judge's own popular perception during election years.

Conclusion

In summary my theory centres on the very nature of partisan elections and party affiliation. Partisan elections at all levels of governance see a battle for the middle ground, so when focussed on the arena of justice this features the popular perception of "tough on crime". Furthermore party affiliation means judicial candidates have an obligation to their party and their donors. Once elected this obligation extends to their constituents who it can be argued voted for them because of their party's reputation on crime. In order for an incumbent to keep their position they require the support and endorsement from their party and their donor's even in a retention election. It is for these reasons that there are significant sentencing differences between partisan and non-partisan elected judiciaries and also why there are no significant differences within states between differing parties, and no significant effect due to the election cycle.

Methodology

Selection and Data collection

In order to determine whether there are sentencing differences between partisan and non-partisan elected judiciaries I firstly had to choose two similar (demographically and geographically) states that used either the partisan or non-partisan judicial selection. The 2010 US census data led me to focus my study on Illinois (partisan) and Michigan (non-partisan). In order to compare sentencing data I needed to focus on similar courts, those being the Circuit

Courts of Illinois and the Trial Courts of Michigan- both of which deal with all level of criminal case. I have conducted a quantitative study of Circuit Court (Illinois) and Trial Court (Michigan) criminal sentencing imprisonment rates and conviction rates per county over three consecutive years- 2008, 2009, 2010. I have focused on caseload data (total dispositions and convictions) and imprisonment rates per county obtained via Illinois Supreme Court Statistical Summary 2008, 2009, 2010 and the Michigan Department of Correction Statistical Report 2008, 2009, 2010 and the Michigan Courts Circuit Caseload Report 2008, 2009, 2010.⁵⁴

County Details

Circuits of Michigan tend to be divided along County lines, whilst in Illinois some Circuits are made up of several counties; however Cook, Dupage, Will and Lake have their own Circuit due to their large population. Refer to Figures 1 – 6 in regards to County and Circuit locations. The data collected pertains exclusively to these counties, not the circuit. I chose counties from Michigan and Illinois that are a broad cross-section of the state; metropolitan, regional and rural. Using data from the United States Census Bureau from the 2010 census I was able to collate the county data. This has allowed me to compare counties of similar demographics, acting as a control in my study, see Tables 1 and 2. Metropolitan counties include Cook, Dupage, Lake and Will in Illinois, and Oakland, St Clair, Washtenaw and Wayne in Michigan. Regional counties include Grundy, Kendall and Sangamon in Illinois and Berrien, Bay and Clinton/Gratiot in

⁵⁴ Supreme Court Statistical Summary 2008, http://www.state.il.us/court/SupremeCourt/AnnualReport/2008/StatsSumm/2008_Ccaseload.pdf
Supreme Court Statistical Summary 2009, http://www.state.il.us/court/SupremeCourt/AnnualReport/2009/StatsSumm/2009_Ccaseload.pdf
Supreme Court Statistical Summary 2010, http://www.state.il.us/court/SupremeCourt/AnnualReport/2010/StatsSumm/2010_Ccaseload.pdf
Michigan department of Corrections 2008, http://www.michigan.gov/documents/corrections/2008_MDOC_STATISTICAL_REPORT_287713_7.pdf
Michigan department of Corrections 2009, http://www.michigan.gov/documents/corrections/2009_MDOC_STATISTICAL_REPORT_319907_7.pdf
Michigan department of Corrections 2010, http://www.michigan.gov/documents/corrections/2011-08-31_-_MDOC_Annual_Stat_Report_-_Vers_1_0_362197_7.pdf
Michigan Courts Circuit Caseload report, 2008, 2009, 2010, <http://courts.michigan.gov/scao/resources/publications/reports/summaries.htm#annual>

Michigan. Rural counties include Fulton, Jefferson and Perry in Illinois and Delta, Hillsdale and Tuscola in Michigan. These classifications have been devised by proximity to major centres combined with population. The demographics I have used are median age, racial demography, median male and female income, and high school and college attainment rates. By choosing these particular demographic breakdowns it has allowed me to limit variables attributable to any significant difference in imprisonment rate between the two states. Furthermore using these demographic factors also allows for generalisation of results to counties of similar demographic make-up.

The data for Clinton and Gratiot Counties (Michigan) was combined as the data from the Michigan Department of Corrections was provided by circuit (unlike Illinois where it is provided by county) and both counties are within the circuit.

Judicial Details and Partisan Classification

In order to conduct the within state differential sentencing testing I had to establish partisan ratings for the Illinois counties. These partisan labels are created through the following method; firstly a list of circuit court judges was obtained from the Illinois Courts website and then each judge's candidate disclosure details were obtained from the Illinois State Board of Elections. From this information I was then able to rate a county as either Democratic or Republican. If over 65% of the judges were of a particular party the County was classified accordingly. These classifications can be seen in Table 3. Unfortunately I was unable to obtain partisan affiliation information for all of the judges in Cook, Grundy and Perry counties. This was sometimes due to them running unopposed in special elections, or being appointed as interim judges by the Supreme Court until the next election, serving on the bench for less than 2 years. However this partisan unaccountability is only relevant to a small percentage of the judges and would not affect the validity of my results.

Another control variable needing to be accounted for is the when and why Illinois and Michigan have differing forms of judicial election. As discussed in the History and Context section above I was able to rule out any significant difference in sentencing being a result of the reason either partisan or non-partisan states have the judicial elections they do, e.g. Partisan elections chosen to combat a high crime rate or weak sentencing. Rather the difference being due to differing support for judicial reform within the states.

Another similarity between the states that acts as a control are the requirements needed to be a judicial candidate. In Illinois candidates are required to be US citizens, a county/circuit resident and have a licence to practice law in Illinois. In Michigan candidates are required to be a qualified elector of the circuit (registered voter in County/circuit), hold a licence to practice law in Michigan, 5 years legal practice and have to be less than 70 years old at time of candidacy.

Controlling for External Causal Factors

One of the major differences between counties of Illinois and Michigan was that of population. Illinois has a population of 12, 830 632 whilst Michigan has a population of 9, 883 635. To avoid problems with population numbers skewing data I used percentages rather than raw numbers, for example Cook County (Illinois) has a population of close to 5.2 million whilst Wayne County (Michigan) has just fewer than 2 million and thus numbers of convicted and imprisoned persons would be much larger in Cook County simply because of population difference.

Once data was collected and collated average percentages were calculated for number of cases to number of convictions per County, and number of convictions to number of imprisonment sentences. Following this a state average percentage was calculated for each year for both conviction percentage and imprisonment percentage.

Research Design

Hypothesis: States with partisan judicial elections will have significantly greater imprisonment rates in comparison to circuit/trial court with a non-partisan elected judiciary, (Illinois average imprisonment % > Michigan average imprisonment %).

Hypothesis (2nd): There are no significant differences within state (Illinois) of sentencing (imprisonment) and conviction rates between counties described as Democrat or Republican.

Null hypothesis: There will be no significant difference in imprisonment rates from circuit courts between partisan elected judiciaries and non-partisan elected judiciaries, (Illinois average imprisonment rate = Michigan imprisonment rate).

The dependent variable in this study is the number of people entering the prison system, whilst the independent variable is the type of judicial selection (partisan or non-partisan election) which determines the number of people entering the prison system.

Testing for Difference

In order to test for any significant difference t-tests were conducted between the state conviction and imprisonment rates for each year. To attend to any difference being due to variables such as racial demographics or geography, data was collated into these respective groups and compared to the overall county data from the selected state. The conviction rate and imprisonment rate from counties of both Illinois and Michigan with a black population of 10% or greater had their data collated and a one-tailed t-test was used to determine whether the conviction rates or imprisonment rates were significantly different from the total of selected counties from the state. Due to the higher population of Hispanics in Illinois I also collated the data from counties with 80% or less white population and conducted a one-tailed t-test comparing this data to the state data. A similar procedure was conducted for the metropolitan, regional and rural counties. Firstly data was collated for each of the regions for both states and then t-tests were conducted comparing this data to the total state data. The final test conducted

was that of comparing counties from Illinois and Michigan that are most similar to each other demographically. By conducting these comparisons I wish to eliminate most of the external causal factors any difference maybe attributable to, and therefore any significant difference between the states is more likely attributable to the difference in judicial election.

To address any within state difference between republican or democratic circuits, data was also collated into percentages, and then standard deviation were calculated and t-tests undertaken. The Bipartisan County in this study was also looked at versus the state average in order to examine the possible competition effect.

In order to ensure any significant results are due to different election processes rather than external causal factors I have tried to account for as many differences as possible. These include demographics, history of electoral process and judicial candidacy requirements. Furthermore extensive testing is to be conducted to test for any the effect of external causal factors.

N.B. When I refer to total state average, or data I am referring to the counties from the state I have selected for this study and the figures collected and collated from them.

Chapter 3: Testing the Theory

Results

In conducting my significant tests I used the significance level of 0.05, the standard measure for most political science and public administration research. If the p-value from a t-test is below 0.05 this indicates the variances between the two data sets are significantly different. Further to note I used one-tailed t-tests to test whether data was significantly different in a particular direction, higher or lower, which is important in determining not only whether data is significantly different but in which direction. When using the term imprisonment rate as stated in my methodology I mean the amount of persons who once convicted are sentenced to prison.

Total State data

Represented in Table 4 are the individual county case dispositions, conviction numbers and rates, and imprisonment numbers and rates. The selected Illinois counties had a case disposition to conviction percentage (conviction rate) of 62.62% (2008), 65.33% (2009) and 61.46% (2010). The selected Michigan counties had conviction rates of 69.49% (2008), 70.67% (2009) and 72.24% (2010). The one-tailed t-tests did not return any significant difference between the selected counties of Illinois and Michigan [$p > 0.05$, $p = 0.15$ (2008), $p = 0.20$ (2009), $p = 0.06$ (2010)].

The second part of Table 4 which represents the rates of imprisonment from conviction shows the following results. Illinois' selected counties had average imprisonment rates of 41.55% (2008), 40.93% (2009) and 37.39% (2010). Michigan's selected counties had average imprisonment rates of 25.73% (2008), 25.62% (2009) and 28.06% (2010). The one-tailed t-tests returned significant results [$p > 0.05$, $p = 0.00$ (2008) and $p = 0.00$ (2009) and $p = 0.04$ (2010)].

Racial factors

Table 5 and 6 represent the rates of conviction and imprisonment for counties with a black (as per 2010 census classification) population of 10% or greater from both Illinois and Michigan. Table 5 returned average conviction rates of 63.51% (2008), 66.86% (2009) and 64.15% (2010). These counties returned average imprisonment rates of 56.80% (2008), 55.33% (2009) and 50.54% (2010). A one-tailed t-test was done with the data from Table 5 and the Illinois data from Table 4. The p-values returned from the conviction rates were not significant in any of the three years [$p < 0.05$, $p = 0.47$ (2008), $p = 0.44$ (2009), $p = 0.42$ (2010)]. The p-values returned from the imprisonment rates were significant for all three years [$p < 0.05$, $p = 0.00$ (2008), $p = 0.01$ (2009), $p = 0.01$ (2010)]. Table 6 had conviction rates of 69.89% (2008), 70.15% (2009) and 71.51% (2010). The average imprisonment rates were 23.44% (2008), 24.79% (2009) and 24.09% (2010). The results from Table 6 and the Michigan data from Tables 4 were used in performing a one-tailed t-test. No significant differences were returned from the conviction rates [$p\text{-value} < 0.05$, $p = 0.49$ (2008), $p = 0.48$ (2009), $p = 0.47$ (2010)], or the imprisonment rates [$p\text{-value} < 0.05$, $p = 0.24$ (2008), $p = 0.41$ (2009), $p = 0.16$ (2010)].

Table 7 represents the conviction and imprisonment rates from Illinois counties with a white (as per 2010 census classification) population of 80% or less. The average conviction rates from these counties were 68.65% (2008), 69.72% (2009) and 68.84% (2010). The average imprisonment rates from these counties were 44.45% (2008), 44.07% (2009) and 40.47% (2010). Results from this table were used with the Illinois results from Table 4 in conducting a one-tailed t-test. The results from the conviction rate were not significant [$p\text{-value} < 0.05$, $p = 0.27$ (2008), $p = 0.33$ (2009), $p = 0.22$ (2010)]. Nor were the results from the imprisonment rate [$p\text{-value} < 0.05$, $p = 0.33$ (2008), $p = 0.31$ (2009), $p = 0.30$ (2010)]. The selected counties in Michigan that fitted the 80% or less white population criteria were the same as those in Table 6 and thus the results are the same as stated in the above paragraph.

Geographical Factors

Table 10 looks at the metropolitan selected counties in the Illinois data. This data is then compared to the Illinois state data from Table 4 using a one-tailed t-test. The average conviction rates for Illinois metropolitan counties were 63.56% (2008), 64.97% (2009) and 64.42% (2010). The average imprisonment rates in Illinois metropolitan counties were 44.09% (2008), 45.98% (2009) and 42.02% (2010). The one-tailed t-test showed no significant difference between the Illinois metropolitan data and the state data for either conviction rates [p-value < 0.05, p = 0.46 (2008), p = 0.49 (2009), p = 0.38 (2010)] or imprisonment rates [p < 0.05, p = 0.37 (2008), p = 0.24 (2009), p = 0.26 (2010)]. Table 11 represents the metropolitan counties of the Michigan data set. This data was compared to the Michigan state data using a one-tailed t-test. The average conviction rates in Michigan metropolitan counties were 68.35% (2008), 69.08% (2009) and 68.15% (2010). The average imprisonment rates in Michigan metropolitan counties were 22.41% (2008), 22.12% (2009) and 21.59% (2010). The one-tailed t-test showed no significant results between Michigan metropolitan counties and the selected county state data conviction rates [p-value < 0.05, p = 0.46 (2008), p = 0.44 (2009) and p = 0.33 (2010)]. The one-tailed t-test also showed no significant difference in the imprisonment rates between the Michigan metropolitan counties and the Michigan state data [p-value < 0.05, p = 0.17 (2008), p = 0.20 (2009) and 0.06 (2010)].

Table 12 and 13 represent the regional county data sets from Illinois and Michigan respectively. The average conviction rates for Illinois regional counties were 66.63% (2008), 70.55% (2009) and 65.31% (2010). The average imprisonment rates for Illinois regional counties were 47.69% (2008), 42.59% (2009) and 37.44% (2010). The one-tail t-test conducted comparing the Illinois regional county data to the state county data was not significant for either the conviction rate [p-value < 0.05, 0.39 (2008), 0.35 (2009) and 0.40 (2010)] or the imprisonment rate [p-value < 0.05, 0.24 (2008), 0.42 (2009), 0.50 (2010)]. The average conviction rates for Michigan regional counties were 75.79% (2008), 75% (2009) and 75.82%

(2010). The average imprisonment rates for Michigan regional counties were 25.50% (2008), 26.69% (2009) and 30.63 (2010). The one-tail t-test showed no significant differences between the Michigan regional counties and the state data in the conviction rate, [p-value < 0.05, p = 0.26 (2008), p = 0.31 (2009) and p = 0.36 (2010)] or the imprisonment rate [p -value < 0.05, p = 0.48 (2008), p = 0.43 (2009) and p = 0.28].

Tables 14 and 15 represent the rural counties from the selected counties in this study in Illinois and Michigan respectively. The average conviction rates in Illinois rural counties were 57.34% (2008), 60.59% (2009) and 53.67% (2010). The average imprisonment rates were 32.02% (2008), 32.53% (2009) and 31.16% (2010). The one-tailed t-test did not show a significant difference between the conviction rates of the rural Illinois counties and the total Illinois county data [p-value < 0.05, p = 0.25 (2008), p = 0.28 (2009) and p = 0.25 (2010)]. Neither did it show a significant difference between the imprisonment rates of Illinois counties and the total Illinois county data [p-value < 0.05, p = 0.11 (2008), p = 0.10 (2009) and p = 0.20 (2010)]. The average conviction rates in Michigan rural counties were 64.71% (2008), 68.47% (2009) and 74.11% (2010). The average imprisonment rates were 30.38% (2008), 29.22% (2009) and 34.11% (2010). The one-tailed t-test did not show a significant difference in the conviction rate between the rural Michigan county data and the total Michigan county data [p-value < 0.05, p = 0.18 (2008), p = 0.34 (2009) and p = 0.38 (2010)] or the imprisonment rate [p-value < 0.05, p = 0.34 (2008), p = 0.38 (2009) and p = 0.33 (2010)].

Table 16 compares individual counties from each state that are most demographically similar. This comparison simply takes the difference between the county's conviction and imprisonment rate for each listed year. The difference between the first pairing of Cook and Wayne showed the following difference in conviction rates; 4.22% (2008), 2.60% (2009) and 1.78% (2010). The imprisonment rates showed the following difference; 37.25% (2008), 39.22% (2009) and 33.48% (2010). The second pairing showed the following differences in conviction

rate; 2.27% (2008), 3.36% (2009) and 3.94 (2010). The imprisonment rate saw the following differences; 5.60% (2008), 8.71% (2009) and 8.96% (2010). The third pairing had the following differences in conviction rate; 10.99% (2008), 5.96% (2009) and 13.50% (2010). The imprisonment rates had the following differences; 10.69% (2008), 14.46% (2009) and 9.81% (2010).The fourth pairing had the following differences in conviction rate; 45.22% (2008), 37.25% (2009) and 48.59% (2010). The imprisonment rate displayed the following difference; 37.45% (2008), 29.36% (2009) and 20.77% (2010).The fifth pairing had the following differences in conviction rate; 3.64% (2008), 8.98% (2009) and 0.36% (2010). The imprisonment rates displayed the following differences; 3.02% (2008), 10.68% (2009) and 6.74% (2010). The sixth pairing had the following differences in conviction rates; 19.40% (2008), 21.52% (2009) and 29.60% (2010). The imprisonment rate had the following differences; 17.73% (2008), 9.30% (2009) and 2.35% (2010). The seventh pairing had the following differences in conviction rate; 6.36% (2008), 11.12% (2009) and 32.09% (2010). The imprisonment rates displayed the following differences; 15.82% (2008), 10.06% (2009) and 13.25% (2010). The eighth pairing had the differences in conviction rate; 18.12% (2008), 20.49% (2009) and 14.90% (2010). The following differences were seen in the imprisonment rates; 15.84% (2008), 1.84% (2009) and 0.94% (2010). The ninth pairing had the following differences in conviction rates; 11.71% (2008), 11.62% (2009) and 14.83% (2010). The following differences were seen in the imprisonment rates; 28.32% (2008), 30.52% (2009) and 18.27% (2010). The final pairing had the following differences in conviction rate; 18.29% (2008), 12.46% (2009) and 11.91% (2010). The following differences were seen in the imprisonment rates; 18.12% (2008), 19.02% (2009) and 11.80% (2010).

Within State Difference

Table 8 represents the conviction and imprisonment data from the Illinois counties determined Democrat or Republican. The average conviction rates for the Democrat counties were 57.05% (2008), 60.22% (2009) and 57.74% (2010). The average conviction rates for the

Republican counties were 69.86% (2008), 72.54% (2009) and 68.82% (2010). A one-tailed t-test showed that the conviction rates were not significantly different [$p < 0.05$, $p = 0.15$ (2008), $p = 0.14$ (2009) and 0.19 (2010)]. The average imprisonment rates for the Democrat counties were 37.87% (2008), 38.73% (2009) and 34.07% (2010). The average imprisonment rates for the Republican counties were 48% (2008), 44.72% (2009) and 40.50% (2010). A one-tailed t-test showed that the imprisonment results were not significant [$p < 0.05$, $p = 0.13$ (2008), $p = 0.23$ (2009) and $p = 0.20$ (2010)].

Table 9 represents the Bipartisan County versus the state averages. The conviction rate for 2008 was 61.48%, the state's average (selected counties from this study, data from Table 4) was 62.62%. The imprisonment rate for 2008 was 34.18% and the state average was 41.55%. In 2009 the conviction rate was 62.03%, Illinois had an average conviction rate of 65.33%. In 2009 the imprisonment rate was 36.73%, the state's imprisonment rate in 2009 was 40.93%. In 2010 the conviction rate was 50.64%, whilst the Illinois average in this study was 61.46%. The imprisonment rate for 2010 was 41.53%, the state average was 37.39. A t-test could not be conducted as there was only one bipartisan county.

Discussion

Following on from the result section I will now discuss how the results from my study validate parts of my theory, in particular my hypothesis; that partisan judicial elections produce significantly higher imprisonment rates. I will also examine how the results looking at external causal factors, race, geography and other demographics, may discredit my theory. By breaking down the counties into different area and racial groupings my results should have the ability to be more widely generalized, either to other counties within the studied states or to other states of similar demographics. Following on from this I will explore the results of the within state partisan difference and then look at the possible election year effect. This will be followed by a

general discussion about the results and the study generally. Finally I will examine the implications of the results on further scholarship and hopeful applications of this study.

The Data and the Theory

Although not significantly different between Michigan and Illinois it is interesting to see that conviction rates for Michigan were consistently higher than Illinois; 6.87% in 2008, 5.34% in 2009 and 10.78% in 2010. The one-tailed t-test from 2010 returned a figure of $p = 0.06$, suggesting evidence of difference however just outside the level of significance for this study. These results are somewhat in contrast to what I expected and stated in my theory, that there would be no, or a limited difference and although the results were not significantly different the non-partisan judiciary of Michigan conviction rates are markedly higher than those of Illinois. These figures are to be kept in mind when looking at the imprisonment rates between the two states because as stated in the theory section and by Streb (2011), sentencing is where a judicially officer can exert greater influence, and party expectation and obligation play their part.⁵⁵

The main theory of my research rests upon whether there are sentencing differences between partisan and non-partisan elected judiciaries, and if there are, whether the partisan elected judiciary is significantly higher than the non-partisan. As I hypothesised the imprisonment rates were significantly higher in Illinois than Michigan [p -value < 0.05 , $p = 0.00$ (2008), $p = 0.00$ (2009) and $p = 0.04$ (2010)]. Illinois' average imprisonment rate was higher than that of Michigan in 2008 by 15.82%, 15.31% in 2009 and 9.33% in 2010. It could be said that generally you are 10% more likely if convicted of a crime in Illinois to be sent to prison than in Michigan. Although I have looked at counties that are similar in order to ensure these significant differences are due to partisan electoral process and not external causal factors, further results testing for external causal factors will be examined.

⁵⁵ Streb, M. (2007). "Running for Judge : The Rising Political, Financial, and Legal Stakes of Judicial Elections". New York University Press. Ch 1

Also of interest in these results are the standard deviations from each state. Illinois returned standard deviations of 12.31% in 2008, 11.05% in 2009 and 10.47% in 2010. Michigan returned standard deviations of 9.19% in 2008, 9.79% in 2009 and 11.18% in 2010. Apart from the figures from 2010 Michigan has tended to return smaller standard deviations and only one outlier (Hillsdale County), thus more uniform results, hinting towards more consistent sentencing across the state. However the partisan elected judiciary of Illinois tends to have larger standard deviation in its results and more outliers are present in the data (Cook County, Sangamon County, Perry County), suggesting greater variation in sentencing across the state. This concern in consistency was an area I did not touch upon in my theory and is worth further research.

The results pertaining to counties that are strongly dominated by Democrats or Republicans, refer to Table 3, further suggest my theory's validity in regards to the role party primaries might play in influencing obligations of a judicial officer back to the party. The imprisonment rate for Cook County is consistently higher than the total of selected Illinois counties for 2008: Cook County 58.16%, state average 41.55%, 2009: Cook County, 60.67%, state average 40.93% and 2010: Cook County 55.92%, state average 37.39%. Given the well documented and acknowledged fact that Cook County is a Democratic Party stronghold, these results perhaps fulfil the notion put forward that democrats actively try to debunk the perception of soft by imposing harsher sentences.⁵⁶ Sangamon County, a republican dominated circuit also had consistently higher imprisonment rates than the state average, 2008- Sangamon 60.31%, state average 41.55%, 2009- Sangamon 56.16%, state average 40.93% and 2010- Sangamon 48.50%, state average 37.39%. The imprisonment rates for Dupage County, considered a Republican stronghold, were below the state average, however within the standard deviation. This result provides evidence counter to my primary competition/party obligation theory.

⁵⁶ Warren, J. (2011, October 8th). "Ready, Set, Grovel; It's Slate-Making Time". *The New York Times*. From http://www.nytimes.com/2011/10/09/us/in-cook-county-political-traditions-remain-intact.html?_r=0
Riopell, M. (2012, September 2nd). "Will Obama repeat suburban success". *Daily Herald*. From <http://www.dailyherald.com/article/20120902/news/709029899/print/>

Racial Factors

In ruling out external causal factors upon any sentencing differences, tests were conducted comparing counties with 10% or greater black population to the total state data, refer to Tables 5 and 6. Illinois has a higher percentage Hispanic and mixed population than Michigan. Therefore to further discount any sentencing disparity due to racial factors counties with less than 80% white population were also compared to the total state data, refer to Table 7. Three Illinois counties had populations of 10% or greater black population, they were Cook, Sangamon and Will. They did not return significantly higher conviction rates to the state data. They did however produce significantly higher imprisonment rate results than the state data [p-value < 0.05, p = 0.00 (2008), p = 0.01 (2009) and 0.00 in (2010)]. The 10% or greater black counties in Michigan included Berrien, Oakland, Washtenaw and Wayne. These counties did not produce significantly higher conviction rates or imprisonment rates when compared to their state data. The counties with less than 80% white population in Illinois were Cook, Dupage, Kendall, Lake and Will. The conviction rates and the imprisonment rates were not significantly higher than the total state data. The results produced by the 10% or greater black population counties in Illinois are concerning for the validity of my theory, however the black population percentage of Illinois is 14.8% and Michigan is 14.3%.⁵⁷ This suggests that significant sentencing difference is not due to a greater black population but it does suggest that there may be some racial concerns in these counties that may be exacerbated by the partisan judicial elections.

Also of interest when looking at these groupings of data were the standard deviation sizes in the imprisonment rates. The four Michigan counties produced much smaller standard deviations, 2.46% (2008), 3.26% (2009) and 2.56% (2010), than their Illinois counterparts. The three Illinois counties produced standard deviations of 4.35% (2008), 5.80% (2009) and 4.70% (2010), close to double the size of those produced by the Michigan data.

⁵⁷ US Census Bureau accessed via <http://quickfacts.census.gov/qfd/index.html>

Geographical Factors

In examining the results from the different area groupings, metropolitan, regional and rural, although there were no significant differences there were some figures worth examining further. The Michigan metropolitan county data in Table 11 has large standard deviations in its conviction rates however it has very close, in comparison to all other standard deviations in this study, imprisonment rates. All of its imprisonment rates, 22.41 (2008), 22.12% (2009) and 21.59% (2010) are lower than the Michigan averages, 25.73% (2008), 25.62% (2009) and 28.06% (2010). The imprisonment rate for Michigan metropolitan counties in 2010 was suggestive of being significantly lower than the state data [p-value < 0.05, p = 0.06]. This data is in contrast to that of the Illinois metropolitan county data. The Illinois metropolitan data imprisonment rates, 44.09% (2008), 45.98% (2009) and 42.02% (2010), presented in Table 10, is consistently higher than the state averages, 41.55% (2008), 40.93% (2009) and 37.39% (2010). However it is not significantly different. Furthermore the standard deviations in the Illinois metropolitan data imprisonment rates are more than double those from the Michigan metropolitan data. The non-partisan judicially elected metropolitan counties present a more unified imprisonment data set than their Illinois counterparts. These results in standard deviation are similar to those presented previously in this discussion.

The data from the regional counties, Table 12 and 13, present no significant results and no results out of the general state trends seen in Table 4.

Also of note was the data from the rural counties compared to its respective state data. The rural Illinois counties trended lower than the state data in both the conviction rate and the imprisonment rate. Although the results were not significantly different in 2009 the rural counties average imprisonment rate was 8.4% lower than the state average [p-value < 0.05, p = 0.10]. Unlike the trend in the metropolitan counties above, the Michigan rural counties have a larger average imprisonment rate than the state average, 30.38% (2008), 29.22% (2009), 34.11%

(2010) vs. 25.73 (2008), 25.62 (2009), 28.06% (2010). However of interest in this set of data is the size of standard deviation in the imprisonment rates, 17.08% (2008), 16.87% (2009) and 19.68% (2010). The outlier in this set of data was the results from Hillsdale County.

From these results I can confirm that in my study no significant difference in sentencing occurring between the two states was due to regional demographic differences. None of the one-tailed t-tests conducted between the area data and the respective state data returned significant results.

The matching up of “like” counties from each state has allowed me to further exclude possible sentencing differences due to external causal factors. When looking at results in Table 16 I would like to note that the final three match ups, Kendall - Clinton/Gratiot, Will – Bay and Grundy – St Clair are not demographically similar enough to make valid comparisons. Thus any differences between these counties would not be able to rule out difference due to external causal factors. Table 16 provides further evidence for my theory suggesting that party affiliation causes higher rates of sentencing. Although these results cannot be tested for significance it is worth noting that large differences are present between “like” counties, Cook and Wayne, Sangamon and Berrien, Tuscola and Jefferson, all of which have Illinois counties with higher imprisonment rates. Also of note in these results is the large difference between Sangamon County and Berrien County’s conviction rates, with Berrien County being more than double that of Sangamon in 2008 and 2010, 45.07% vs. 90.29% (2008) and 43.09% vs. 91.68% (2010). However these results are turned around when comparing imprisonment rates with Sangamon County having more than double that of Berrien County, 60.31% vs. 22.86% (2008) and 56.16% vs. 26.80% (2009). The counties of Jefferson and Tuscola had a similar pattern in results as those above, but not as extreme. This pattern reflects the previous point in regards to partisan elected judiciary’s obligation to their party when exerting influence upon sentencing. Only one of the pairings in this test had a Michigan county with larger imprisonment rates than its Illinois pair, that being

the pairing of Fulton County and Hillsdale County. As I have stated previously in this discussion the imprisonment rate data from Hillsdale County is an outlier and consequently this result is not surprising. The results from this comparison further validate my theory that significantly higher sentencing from partisan elected judiciaries than that of non-partisan elected judiciaries is due to difference in election type, rather than other external causal factors.

Although a linear regression was not conducted impressionistically it does not look like the imprisonment rate difference between Illinois and Michigan is due to racial or geographic factors.

Within State Difference

From the selected counties in Illinois I had five counties that I identified as Democratic (over 65% of the circuit bench was from one particular party- see Table 3), Cook, Grundy, Jefferson, Lake and Perry. Four counties I identified as Republican, Dupage, Kendall, Sangamon and Will, and one county I identified as bipartisan, Fulton.

The comparison of Democratic counties to the Republican counties did not produce significantly different conviction rates. However the Republican counties produced consistently higher conviction rates, 12.81% (2008), 12.32% (2009) and 11.08% (2010). This same trend was also seen in the imprisonment rates with the one-tailed t-test returning no significantly higher results, but the Republican counties had higher rates of imprisonment, 10.13% (2008), 5.99% (2009) and 6.43% (2010). The fact that republican counties did not have significantly higher conviction or imprisonment rates conforms to my theory. That theory being that not one party or another causes sentencing disparity but rather sentencing is affected by the process of partisan candidate selection and Median Voter Theorem. If this trend, that of higher conviction and imprisonment in Republican circuits, was seen across the state it would allow the Republican party machine to claim the middle ground on law on order and the badge as “tougher on crime”.

A greater sample of counties would help to either dispel or confirm the trend seen in these results.

In my theory I discussed the idea of competition and how this might affect sentencing results. I claimed that it was not competition in a general election that would result in a greater obligation of a judicial officer back to the party. Rather it was competition in the party primary that would see harsher sentencing in a county within a circuit of a partisan stronghold. Evidence in favour of this theory is present above (see the results for Cook County and Sangamon County) in favour of that theory. I will now look at the bipartisan county of Fulton County, as seen in Table 9, in order to complete the analysis on within state difference. The figures from Fulton County fall within the standard deviation range for the results from this state for both conviction rates and imprisonment rates. For all results, bar one, Fulton County was below the state average. The one result that was above was the imprisonment rate for 2010, where Fulton County was 4.14% higher than the state average but the state standard deviation was 10.47%. This result presents further evidence in favour of my theory in regards to the effect internal party mechanisms have upon judicial behaviour once in office.

Election Year Effect

As stated previously my study was not focused on this phenomenon as both my data sets are from states which have elections. However if the very act of having elections affected sentencing data upwards as stated by Bright and Keenan (1995), I should see larger imprisonment rates in years 2008 and 2010, in comparison to 2009. The average imprisonment rates for the total selected counties of Illinois were 41.55% in 2008, 40.93% in 2009 and 37.39% in 2010, refer to Table 4. These results are highest in an election year, 2008, but are also lowest in an election year, 2010. The average imprisonment rates for Michigan selected counties was 25.73% in 2008, 25.62% in 2009 and 28.06% in 2010, refer to Table 4. Although the average imprisonment rates are lowest in the non-election year, 2009, they are only lower by 0.11%,

which is not strong evidence for the election effect paradigm. I am not saying that the election year effect does not exist, however my study was not set up to test it alone and my results show very small evidence in favour of it.

General Discussion

Although the counties I have examined and collected data upon have validated my hypothesis suggesting that partisan elected judiciaries result in higher sentencing than non-partisan elected judiciaries, it must be stated that my study reflects the results of only ten counties within each state and not the state as a whole. Further to this, the results looking at within state difference between Republican counties, Democratic counties and the bipartisan county further confirm my theory that it is party mechanisms and selection process that results in harsher sentencing. However although the results between Democratic and Republican counties were not significant the Republican counties tended to have higher conviction and imprisonment rates. However the highest imprisonment rates of all the counties was the heavily Democratic dominated Cook County. The median voter theorem, the battle to be perceived as tough on crime, can be used to explain why when judicial officers have partisan labels they are obligated to sentence in a manner that best reflects their party.

As stated in my theoretical framework, logic would prescribe that we should see a convergence to the mean on this law and order issue of sentencing, with tough sentencing, in partisan and non-partisan elected judiciaries. I have attempted to address this with putting forward the partisan primary process and subsequent obligation a partisan judicial officer has to their party as a reason to why partisan elected judiciaries should produce higher rates of imprisonment when compared to non-partisan elected judiciaries.

By setting up this type of quantitative analysis these results have the ability to be generalised to states of similar circumstance. Nevertheless one must keep in mind differing external causal factors at play in different counties and states.

The concern that taking away the partisan label in judicial elections would result in a misinformed or ill informed voter is flawed, as justice should be independent of political and partisan debate. A justice's ability to conduct impartial and independent judgements should not be influenced by the party he or she is associated with, and a voter should be voting for a candidate because of their judicial ability and not political standing. Campaigns should be about competency and independence and not politics and policy. Currently in Michigan different branches of the Bar Association try overcome this perceived flaw by publishing a review of current judicial candidates and rating their competency.⁵⁸

Where to from here

As was stated in the literature review my study is intended to address the absence of scholarship and analysis regarding comparison between partisan and non-partisan elected judiciaries. Furthermore, my hope was through this ontological study and quantitative analysis I may be able to provide a more informed debate on possible further reforms to the current practices of judicial selection. Given the results of my study; that of the more consistent data and smaller standard deviations produced from the selected Michigan counties, I am inclined to suggest that non-partisan judicial elections are superior to partisan judicial elections. The higher imprisonment rates of the selected Illinois counties, if looked at by a case-by-case basis may be fair and just. The overall trend however towards higher sentences by partisan elected judiciaries over non-partisan elected judiciaries (in this study, rates of imprisonments in Illinois over Michigan) is concerning and certainly raises questions of the levels to which the judiciary is independent. As discussed in my theoretical framework; when a judicial candidate is selected by

⁵⁸ Lundberg, C. (2010, July 29th). DMBA rates Wayne County Judge Candidates. *The Michigan Lawyer, a blog from Michigan Lawyers Weekly*. From <http://michiganlawyerblog.wordpress.com/2010/07/29/dmba-rates-wayne-county-judge-candidates/>

a party primary process and then elected with a partisan label in a general election, rather than an independent judiciary one has a judiciary that is interdependent with their party. This judiciary requires party support to be elected and the party requires a judge to be “tough on crime” in order to maintain the party position on the middle ground.

The area of fundraising and campaign donations, which is discussed in the theory section, has not been included in my data collection and results. The reason for this is that it would require a separate quantitative analysis into campaign donations and fundraising for individual judicial officers and their subsequent sentencing practices. The results of my study allow for questions to be raised into the independence and integrity of a partisan elected judiciary. A follow up to the question of independence would be the aforementioned analysis of campaign donations and fundraising practices. This would then better allow me to provide more detailed reform suggestions into the current practices of judicial elections.

Chapter 4: Looking Forward

Limitations

Following on from the discussion section I shall now discuss the limitations of my study, scrutinize the methodology used and how it may limit inference of my results, suggest methods for further improvement and finally examine how the results gathered have highlighted areas of this field that require further research.

Research Design

The use of general circuit and trial court data such as conviction rates and imprisonment rates allow for the results of my quantitative study to be generalized to other counties of similar demographics. However an in depth series of case studies in the respective states would give a more detailed account of the extent to which severe sentencing discrepancies occur between the two states and whether they are caused by extenuating circumstances not accounted for in this study. The methodology used in this quantitative analysis does not take into account if extenuating circumstances have caused significant differences in imprisonment rates. In defence of the methodology used, the amount of data should compensate for any mitigating circumstances for severity of sentence. Further to this although a series of case studies may be able to give a more detailed explanation into sentencing discrepancies, it would only be case specific and would be harder to generalise, thus not giving a general overview. In order to draw more specific conclusions future research in the area of sentencing discrepancy between partisan and non-partisan judiciaries should look at specific crimes, e.g. drug possession, burglary, etc. By looking at one particular crime one can more accurately analyse and map sentencing differences.

As stated in the previous discussion section the data I have collected was only from 10 counties in each state and not from the whole state and although a significant difference was found between the states the strength of the inference of the results should not be overstated. The

method of choosing counties tried to ensure a fair cross-section of the respective states was accounted for in the data. However as it was a selection of counties and not all counties it would not be accurate to infer that the results show that Illinois has significantly higher sentencing than Michigan. The results returned certainly favour my hypothesis and theory however a state wide analysis is required before one can categorically claim that the null hypothesis can be ruled out.

Possible External Causal Factors

The results from the Illinois counties with over 10% black population when compared to the total state data showed the possible effect of this racial causal factor. However as the Michigan counties with 10% or greater black population were not significantly different to the total state data and Illinois and Michigan have similar total black populations the data did not affect my findings in this study. However it certainly raises questions in regards to a possible affect of party affiliation and racial inclusion, or exclusion. Furthermore only three counties out of the selected Illinois counties had 10% or greater black population and one should not deduce more meaning from these results than what is present. They do however prompt further research in this area.

Possible Partisan Difference

The data and results collected from the Republican and Democrat which produced no significant difference, favours my theory for both party's battle for the middle ground. However the results as stated did show a trend towards higher conviction and imprisonment in favour of the Republican dominated judiciaries. A greater sample of Democratic (5 present in my sample) and Republican (4 present in my sample) are needed in order to make a more conclusive resolution of this issue, either confirming or dispelling my theory. In regards to my theory on the effect electoral competition has upon sentencing in Illinois, I only had one county that resided in a bipartisan circuit judiciary. The data from this county in relation to the collated state data confirmed my theory on competition; that competition in party primaries causes harsher sentencing due to a judicial officer's obligation back to their party for their position in office

rather than tougher competition in a general election causing a higher rate of sentencing.

However this validation is only based on the results of one county and once again more counties with a bipartisan judiciary should be looked at before this theory can be generalized.

Further Research

The results returned were in favour of my hypothesis, with Illinois having significantly higher rates of imprisonment than Michigan, suggesting party affiliation, partisan selection process and the Median Voter Theorem effect sentencing in partisan elected judiciaries more so than non-partisan elected judiciaries. In order to further test this theory a comparison of a partisan elected judiciary, a non-partisan elected judiciary and an appointed judiciary's conviction and imprisonment rates should be done. By comparing the three methods of judicial selection one could then better understand the role elections have upon sentencing.

Conclusion

The results of this investigation have suggested that if Lady Justice was elected via partisan method her blindfold seems to be removed and, rather than distributing justice dispassionately and impartially, she is staring at public opinion and partisan obligations. The judiciary is a normative system, prescribing behaviour in society and when these prescriptions seem to vary between states one has to question why. Through this study I have tried to illuminate why sentencing differences occur between partisan and non-partisan elected judiciaries, and why higher or harsher sentences are more likely to occur in partisan elected judiciaries.

Positioning the Research

It is my hope that this study has attended to the gap present in current judicial selection scholarship and sentencing behaviour. By examining and comparing conviction and imprisonment rates of partisan and non-partisan elected judiciaries I have been able to raise the

question of sentencing disparity between these two selection methods. I have attempted to address the causes for such disparity through my own theoretical framework.

In the literature review I identified the current strands of scholarship, partisan effect, election year effect and the general debate on judicial integrity. By identifying these areas of literature I was able to highlight the void currently in judicial scholarship, the lack of analysis and comparison of partisan and non-partisan judicial election. Following this I looked at the history behind judicial elections and the current situation in regards to debate and reform. The current strands of scholarship, particularly the work of Bright and Keenan (1995) and Streb (2007) and the current context surrounding judicial elections allowed me to build my theory analogous to theirs. Rather than looking at the partisan effect as described in the literature review, Democrats vs. Republicans, my primary theory is built upon the effect party affiliation, or partisan labelling might have upon judicial behaviour. Firstly I looked at how and why parties exist with reference to the work of Aldrich (2011), following from this I used the Median Voter Theorem in order to explain why it was beneficial to a judicial officer to be perceived as tough on crime. This convergence to the median, e.g. an appearance of being “tough on crime” should also be applicable to non-partisan elected judiciaries. However my argument is that the partisan selection process causes a heightening of this effect. Partisan primaries and subsequent party donations are why we should see higher rates of sentencing from partisan elected judiciaries. A judicial officer is no longer accountable just to their constituents but to their party and their donors. Combining Keenan and Bright’s (1995) theory and the Median Voter Theorem that it was in the interest of both political parties to be perceived as tough on crime, I further theorized that there should not be any within state difference in sentencing due to different parties. This theory, by rights, should be applicable to partisan elected judiciaries in other states.

Closing Remarks

By looking at the conviction and imprisonment rates of ten selected counties of Illinois and Michigan I was able to tabulate results and create a paradigm in relation to my theory. Overall my results showed that Illinois had significantly higher imprisonment rates than Michigan. These results along with further testing of external causal factors such as racial demographics and geographic area suggest that these significantly higher rates of imprisonment are due to the differing methods of judicial selection.

In the discussion and limitation sections I was able to reflect upon how the results validate parts of my theory and highlight weakness in other areas. Further to this I was able to address which areas of my study require further review and analysis, those being the significantly higher rates of imprisonment in Illinois counties with a black population of 10% and greater, and the need to include a greater number of counties in future analysis. I also reflect on the need for a study to review party and independent campaign donations and subsequent sentencing practice in order to sufficiently address the questions in regards to integrity and independence which I raise.

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Appendices

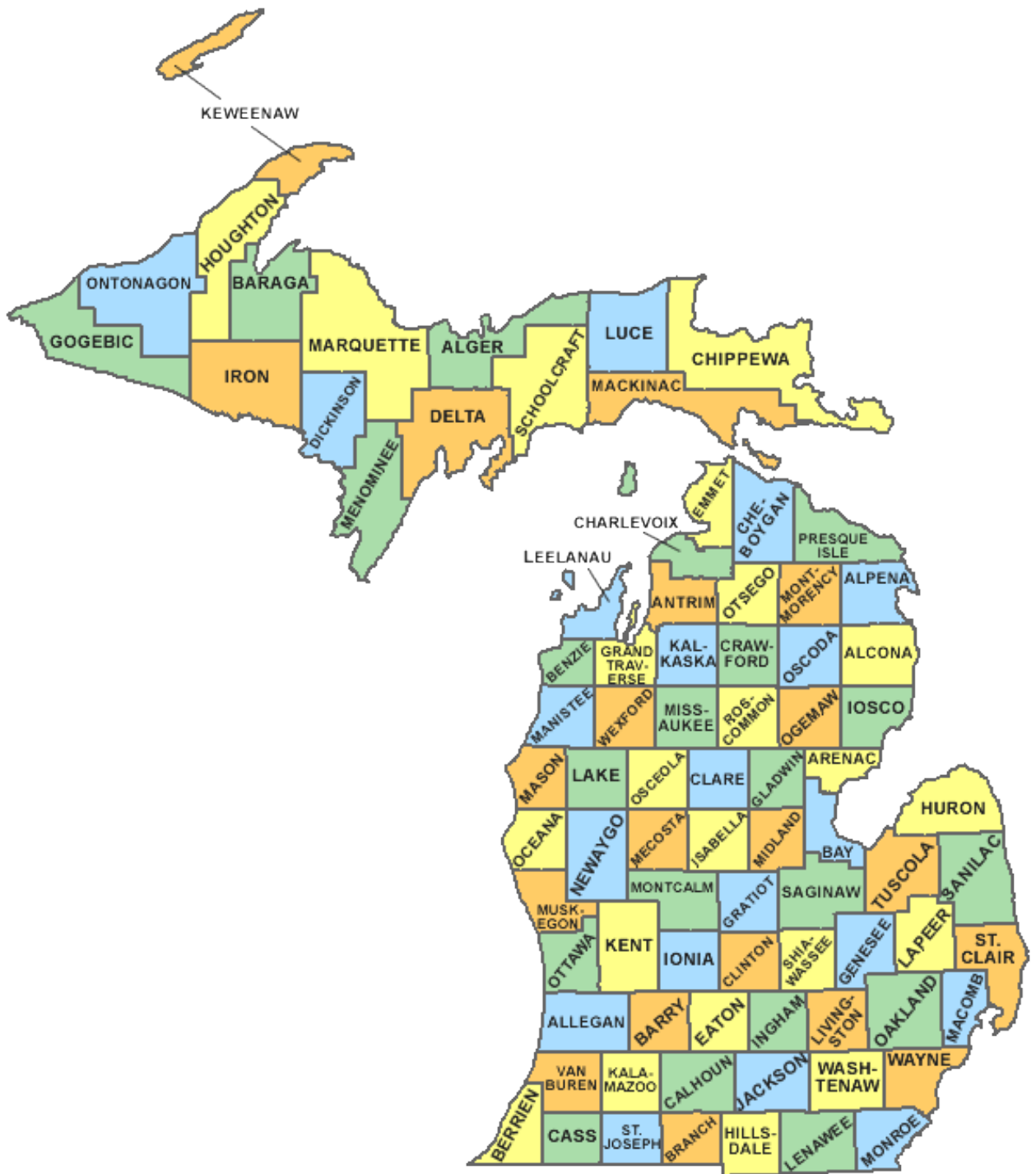
Figures



Figure 1: Map of Illinois, from <http://kids.britannica.com/comptons/art-59738/Illinois-cities>



Figure 2: Map of Illinois counties, from http://www.geographic.org/maps/new2/illinois_maps.html



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Figure 5: Map of Michigan counties, from <http://www.digital-topo-maps.com/county-map/michigan.shtml>

Tables

Table 1: Illinois County Demographics

County	Pop.	Area	Median Age	Median Annual Income \$		Racial Makeup %						Educational attainment % (ppl aged 25+)	
				Male	Female	White	Black	Hisp.	Nat. Amer.	Asian	Other and mixed	High School Completion	Bachelor Degree
Cook	5,194,675	Metro.	34	40690	31298	43.7	25	24.4	0.8	6.5	1.8	83.2	33.2
Dupage	916,924	Metro.	35	60909	41346	69.8	5.1	13.6	0.4	10.4	1.7	92	45.3
Fulton	36,962	Rural	39	31800	21223	92.4	3.8	2.5	0.6	0.4	0.9	83.6	13.4
Grundy	50,063	Reg.	36	46392	26487	88.4	1.6	8.4	0.3	0.8	1.1	90.7	18.3
Jefferson	38,827	Rural	38	34089	21015	87	8.7	2.2	0.3	0.7	1.6	83.7	14.1
Kendall	114,736	Reg.	34	50268	30415	73.7	6.1	15.9	0.4	3.3	1.7	92	32.3
Lake	703,462	Metro.	34	50789	33458	64.8	7.4	20.3	0.8	6.6	2	88.8	41.3
Perry	22,350	Rural	38	29169	20170	86.7	8.8	2.8	0.4	0.4	1.4	81.5	13.5
Sangamon	198,844	Reg.	37	37696	28814	82.3	12	1.9	0.2	1.7	2.1	91	31
Will	677,560	Metro.	33	50152	31345	66.8	11.5	15.9	0.4	4.8	1.7	90	30.7

Table 2: Michigan County Demographics

County	Pop.	Area	Median Age	Median Annual Income \$		Racial Makeup %						Educational attainment % (ppl aged 25+)	
				Male	Female	White	Black	Hisp.	Nat. Amer.	Asian	Other and mixed	High School Completion	Bachelor Degree
Bay	107,771	Reg.	42	31035	18294	91	1.5	4.7	0.4	0.5	1.7	87.1	18
Berrien	156,813	Reg.	41	26745	16289	75.9	15.2	4.5	0.5	1.5	2.2	86.6	23.3
Clinton/Gratiot	117,614	Reg.	37	37411	26699	88.9	3.95	4.75	0.5	0.9	1.4	90	20.35
Delta	37,069	Rural	46	28702	15093	94	0.3	0.9	2.4	0.4	2.1	90.6	18.7
Hillsdale	46,688	Rural	36	35349	23718	95.6	0.7	1.9	0.4	0.5	1.2	86.6	14.2
Oakland	1,202,362	Metro.	37	55833	35890	74.6	14.1	3.6	0.3	5.8	2	92.2	42.2
St Clair	163,040	Metro.	41	30056	16771	92	2.6	2.9	0.5	0.5	1.9	87.8	15
Tuscola	55,729	Rural	42	28288	15314	94.1	1.3	2.9	0.5	0.3	1.1	84.8	12.4
Washtenaw	344,791	Metro.	31	49304	33598	71.7	12.9	4.2	0.4	8.3	3.3	93.6	50.8
Wayne	1,820,584	Metro.	37	26823	17744	49.8	40.3	5.4	0.4	2.7	2.2	83.2	20.2

Table 3: County and Circuit Judicial details and Illinois Partisan rating

Illinois

County	Circuit #/Region	#Judges per Circuit	# Dem	# Rep	Classification	# of judges with party affiliation unaccounted for
Cook	Cook/1st Appellate	166	141	9	Democrat	16
Dupage	18th/2nd Appellate	14	0	14	Republican	
Fulton	9th/3rd Appellate *	10	4	6	Bipartisan	
Grundy	13th/3rd Appellate *	8	5	2	Democrat	1
Jefferson	2nd/5th Appellate *	15	10	5	Democrat	
Kendall	16th/2nd Appellate *	19	2	17	Republican	
Lake	19th/2nd Appellate	13	11	2	Democrat	
Perry	20th/5th Appellate *	11	9	1	Democrat	1
Sangamon	7th/4th Appellate	11	3	8	Republican	
Will	12th/3rd Appellate	16	5	11	Republican	

(* includes other counties)

Michigan

Bay	18th/3rd	3
Berrien	2nd/2nd	4
Clinton/Gratiot	29th/3rd	2
Delta	47th/4th	1
Hillsdale	1st/2nd	1
Oakland	6th/1st	18
St Clair	31st/1st	3
Tuscola	54th/3rd	1
Washtenaw	22nd/1st	5
Wayne	3rd/1st	61

Party affiliation data obtained from <http://www.elections.il.gov/CampaignDisclosure/CandidateSearch.aspx>

Table 5: Illinois counties with a Black pop. of 10% or greater conviction and imprisonment numbers and rates

County	Convictions						Imprisonments					
	% of Cases Convicted						% of Convictions Imprisoned					
	2008	%	2009	%	2010	%	2008	%	2009	%	2010	%
Cook	23821	67.53	23967	69.46	20748	70.39	13854	58.16	14541	60.67	11602	55.92
Sangamon	635	45.07	714	51.22	567	43.09	383	60.31	401	56.16	275	48.50
Will	2068	77.92	2311	79.91	2157	78.98	1074	51.93	1136	49.16	1018	47.20
Average	63.51		66.86		64.15		56.80		55.33		50.54	
Standard deviation	16.79		14.52		18.74		4.35		5.80		4.70	

P-Value **0.47** **0.44** **0.42** **0.00** **0.01** **0.01**
 (10% or greater Black pop. vs Illinois data set)

Table 6: Michigan counties with a Black pop. of 10% or greater conviction and imprisonment numbers and rates

County	Convictions						Imprisonments					
	% of Cases Convicted						% of Convictions Imprisoned					
	2008	%	2009	%	2010	%	2008	%	2009	%	2010	%
Berrien	1413	90.29	1351	88.47	1190	91.68	323	22.86	362	26.80	330	27.73
Oakland	5055	78.46	4613	76.27	4294	80.17	1171	23.17	1045	22.65	953	22.19
Washtenaw	1164	39.06	966	43.81	996	45.58	312	26.80	273	28.26	239	24.00
Wayne	13283	71.75	12101	72.06	10882	68.61	2778	20.91	2596	21.45	2442	22.44
Average	69.89		70.15		71.51		23.44		24.79		24.09	
Standard deviation	21.94		18.89		19.69		2.46		3.26		2.56	

P-value **0.49** **0.48** **0.47** **0.24** **0.41** **0.16**
 (10% or greater Black pop. vs Michigan data set)

Table 7: Illinois counties with a White pop. of 80% or less conviction and imprisonment numbers and rates

County	Convictions						Imprisonments					
	% of Cases Convicted						% of Convictions Imprisoned					
	2008	%	2009	%	2010	%	2008	%	2009	%	2010	%
Cook	23821	67.53	23967	69.46	20748	70.39	13854	58.16	14541	60.67	11602	55.92
Dupage	2723	67.47	2673	70.31	2272	66.67	922	33.86	992	37.11	727	32.00
Kendall	388	88.99	362	88.73	347	86.53	178	45.88	132	36.46	119	34.29
Lake	2404	41.33	2345	40.21	2118	41.64	779	32.40	867	36.97	698	32.96
Will	2068	77.92	2311	79.91	2157	78.98	1074	51.93	1136	49.16	1018	47.20
Average	68.65		69.72		68.84		44.45		44.07		40.47	
Standard deviation	17.67		18.28		17.05		11.22		10.70		10.61	

P-value **0.27** **0.33** **0.22** **0.33** **0.30** **0.30**
 (80% or less White pop. vs Illinois data set)

Table 16: Comparison of Illinois and Michigan 'similar' counties conviction and imprisonment numbers and rates

County	State	Convictions						Imprisonments					
		% of Cases Convicted						% of Convictions Imprisoned					
		2008	%	2009	%	2010	%	2008	%	2009	%	2010	%
Cook	Illinois	23821	67.53	23967	69.46	20748	70.39	13854	58.16	14541	60.67	11602	55.92
Wayne	Michigan	13283	71.75	12101	72.06	10882	68.61	2778	20.91	2596	21.45	2442	22.44
Difference		4.22		2.60		1.78		37.25		39.22		33.48	
Lake	Illinois	2404	41.33	2345	40.21	2118	41.64	779	32.40	867	36.97	698	32.96
Washtenaw	Michigan	1164	39.06	966	43.81	996	45.58	312	26.80	273	28.26	239	24.00
Difference		2.27		3.36		3.94		5.60		8.71		8.96	
Dupage	Illinois	2723	67.47	2673	70.31	2272	66.67	922	33.86	992	37.11	727	32.00
Oakland	Michigan	5055	78.46	4613	76.27	4294	80.17	1171	23.17	1045	22.65	953	22.19
Difference		10.99		5.96		13.50		10.69		14.46		9.81	
Sangamon	Illinois	635	45.07	714	51.22	567	43.09	383	60.31	401	56.16	275	48.50
Berrien	Michigan	1413	90.29	1351	88.47	1190	91.68	323	22.86	362	26.80	330	27.73
Difference		45.22		37.25		48.59		37.45		29.36		20.77	
Perry	Illinois	110	63.95	105	70.47	94	70.68	24	21.82	25	23.81	21	22.34
Delta	Michigan	117	60.31	99	61.49	109	70.32	22	18.80	13	13.13	17	15.60
Difference		3.64		8.98		0.36		3.02		10.68		6.74	
Jefferson	Illinois	287	46.59	432	49.26	304	39.69	115	40.07	160	37.04	90	29.61
Tuscola	Michigan	291	65.99	310	70.78	291	69.29	65	22.34	86	27.74	93	31.96
Difference		19.40		21.52		29.60		17.73		9.30		2.35	
Fulton	Illinois	158	61.48	147	62.03	118	50.64	54	34.18	54	36.73	49	41.53
Hillsdale	Michigan	116	67.84	109	73.15	115	82.73	58	50.00	51	46.79	63	54.78
Difference		6.36		11.12		32.09		15.82		10.06		13.25	
Kendall	Illinois	388	88.99	362	88.73	347	86.53	178	45.88	132	36.46	119	34.29
Clinton/Gratiot	Michigan	253	70.87	260	68.24	298	71.63	76	30.04	90	34.62	105	35.23
Difference		18.12		20.49		14.90		15.84		1.84		0.94	
Will	Illinois	2068	77.92	2311	79.91	2157	78.98	1074	51.93	1136	49.16	1018	47.20
Bay	Michigan	576	66.21	590	68.29	553	64.15	136	23.61	110	18.64	160	28.93
Difference		11.71		11.62		14.83		28.32		30.52		18.27	
Grundy	Illinois	160	65.84	185	71.71	193	66.32	59	36.88	65	35.14	57	29.53
St Clair	Michigan	901	84.13	819	84.17	812	78.23	169	18.76	132	16.12	144	17.73
Difference		18.29		12.46		11.91		18.12		19.02		11.80	