IMMIGRANTS CONVICTED OF HOMICIDE: EXPLORING DISPARATE

SENTENCING OUTCOMES

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ABSTRACT

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Throughout U.S. history, persistent negative stereotypes about immigrants have abounded in public discourse, leading to negative outcomes for people without U.S. citizenship across social and economic life. Stereotypes such as these are also known to impact the discretionary decision-making of judges in the sentencing phase of a trial, shifting punishment outcomes along racial, gendered, and age-related lines in ways that negatively impact minority offenders. This study explores whether the negative stereotypes surrounding immigrants may also be considered by judges, resulting in differential treatment for offenders based on citizenship. Using a 2018 dataset of offenders currently incarcerated in Texas Department of Criminal Justice facilities for homicide ($N = 14,752$), with sentencing dates going back to 1990 and accounting for citizenship of each offender, this study uses multinomial logistic regression to explore whether immigrants receive significantly different sentences as suggested by the focal concerns perspective. This study, using a composite measure of immigration and race, finds mixed support for the idea that immigration is a uniquely relevant predictor of disparate sentencing outcomes. While Hispanic immigrants are more likely to have received a shorter sentence than White citizens, Hispanic citizens also received shorter sentences, suggesting that race and ethnicity are more relevant than immigrant status. Support for focal concerns theory is found through an evaluation of other legally relevant and extra-legal variables. Limitations and directions for future research are discussed.

KEY WORDS: Immigrants, Sentencing, Focal concerns, Homicide, Multinomial regression analysis

ACKNOWLEDGEMENTS

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CHAPTER I

Introduction

Injustice and inequity are troubling, pervasive shortcomings that crop up across the criminal justice system. Policing, sentencing, and corrections are all burdened by the irrationality of human actors who are deeply influenced by stereotypes, misconceptions, and patterns of decision-making that are frequently incongruent with the ideals of equal justice for all. Criminal justice researchers have, for decades, sought to understand the nature, extent, and causal mechanisms of these disproportionate outcomes with the hopes of contributing to more equal systems of justice. This research seeks to continue in that tradition.

During the determination-of-guilt stage in a criminal court case, judges serve the role of impartial arbitrator, ensuring correct procedures are being followed while presiding over a robust, adversarial system of fact-finding. In the rare instances where a criminal case is not settled by plea bargain, the judge also presides over the disposition phase, where a verdict is delivered by either a jury of the defendant's peers or the judge themselves in a bench trial. This decision is extremely consequential and full of drama; it is the stuff of many forms of popular entertainment. What comes next, if a guilty verdict is delivered, receives far less public attention, but is no less significant for those involved.

Judges bear the responsibility of determining an appropriate form of punishment for convicted individuals. The introduction and gradual strengthening of sentencing guidelines across the United States over recent decades has limited the discretionary power of judges in this process, though judges still enjoy a fair amount of freedom, varying based on the specific sentencing guidelines and practices in their jurisdiction.

Judges have the authority and duty to make discretionary decisions that carry monumental consequences for convicted offenders. In addition to the obvious consequences of an offender losing their autonomy and income, growing research into the unintended consequences of incarceration have added to the understanding of sentencing as being a profound event for offenders, victims, and the families of all involved parties (Arditti, 2012; Clear, 2007; Comfort, 2008). With those facts in mind, it is readily apparent that sentencing is an extremely consequential event that bares close attention and rigorous study. In states that employ the death penalty, these consequences can be as severe as life or death.

For these reasons and others, many researchers have contributed to a body of literature examining the nature of sentencing disparities and their causal mechanisms. While this has proven to be a productive endeavor, sentencing still resides under the relatively young umbrella of criminal justice research, with several gaps remaining to be addressed.

As this field of research has grown and expanded, so too has immigration to the United States. In fact, immigration has not just grown over the past few decades, it has skyrocketed, as the percentage of foreign-born residents in the United States has risen from 7.9% in 1990 to 12.9% in 2010, as nearly 20 million new immigrants arrived in the United States (U.S. Census Bureau, 1990, 2010). Millions of people have arrived in the United States to a country with a conflicted and problematic past in its treatment of immigrants. Driven by racism, exclusion of non-Western European immigrants was commonplace until as recently as the 1960s through policies such as the Chinese

Exclusion Act of 1882, the notoriously anti-Semitic Immigration Act of 1924, and the "national origins formula."

While the United States is undeniably a nation built on immigration, its people and government have consistently sent the message that not all immigrants are equally welcome. Though many of the most discriminatory restrictions on immigration were lifted by the Immigration and Nationality Act of 1965, the United States has internalized a negative view of non-White immigrants, associating them with crime and deviance (Chiricos et. al., 2014; Pickett, 2016; Stupi et. al., 2016), blaming them for labor market shortages (Buckler, 2008; Chiricos et. al., 2014), and perpetuating a variety of other harmful and untrue stereotypes (Buckler, 2008; Chiricos et. al., 2014).

Despite immigrants being one of the fastest growing minority groups in the United States, sentencing research has not yet rigorously evaluated whether negative stereotypes about non-U.S. citizens have contributed to discriminatory treatment during the sentencing process. Furthermore, less common offenses such as homicide have been largely overlooked, leaving gaps in the understanding of whether judges consider the same factors when making sentencing decisions, regardless of offense type.

This study seeks to address those gaps in a "catch two fish with the same net" approach, addressing gaps in both immigration and homicide research within sentencing, by leveraging a large dataset of individuals incarcerated for homicide in the state of Texas, accounting for offender-specific demographics including whether the convicted individual is an immigrant. This study's design is informed by a prominent theoretical perspective in sentencing literature, focal concerns theory, which offers compelling explanations of discretionary decisions made by judges, including their consideration of

whether an offender is an immigrant, among other legal and extra-legal factors. The analysis performed in this study explores whether immigrant homicide offenders are sentenced differently than their U.S. citizen counterparts, controlling for other commonly relevant factors.

CHAPTER II

Literature Review

The past few decades have witnessed substantial development within the sentencing literature. This growing body of research has explored the nature of judicial decision-making and several theoretical explanations have emerged to explain disparities in punishment decisions. This literature review seeks to capture the essence of this literature, narrowing in focus from overarching theories down to an exploration of the outer fringes, exploring what few studies have been done on homicide sentencing and the influence of an offender's citizenship.

First, the principal individual-level theory employed in the study of sentencing disparities will be examined: focal concerns theory. Next, an example of a significant macro-level theory will be briefly discussed, followed by a review of how these theories have been applied to explain the influences of legal and extralegal factors on sentencing outcomes. Finally, attention will be directed towards the limited set of research on immigrants and the study of sentencing disparities in homicide cases.

Theoretical Framework

Contemporary studies on sentencing disparities draw primarily from two theoretical perspectives: focal concerns (Steffensmeier et. al., 1998) and minority threat (Blalock, 1967).

Focal Concerns

The "focal concerns" perspective provides a foundation for understanding sentencing disparities through the eyes of those most directly responsible for disparate sentencing outcomes: judges. This individual-level framework posits that there are three

considerations which most heavily influence judicial discretion: blameworthiness of the offender, protection of the community, and practical constraints and consequences (Steffensmeier et al., 1993; Steffensmeier et al., 1998).

Typical courtroom settings have an overwhelming number of cases and judges are only privy to a limited set of information. Attempting to equally weigh all case and offender-related information may be philosophically appealing in a Libra-scales-of-justice way, but in the practical judicial setting it is unfeasible. Judges, prosecutors, and other actors in the sentencing process choose to condense particular philosophies and prioritize certain information to maintain some degree of efficient function in a complex environment. To process so many cases, navigate limited sets of information, and bring order to chaotic, murky decisions, judges and juries craft and employ "perceptual shorthand" (Steffensmeier et al., 1998, p. 767) informed by both their own experiences and internalized stereotypes linked to offender characteristics such as race, gender, and age (Farrell & Holmes, 1991).

This idea closely resembles previous work applying structural-organizational theory to identify "patterned responses" (Albonetti, 1991, p. 249) that emerge when rational actors attempt to process complex situations without enough time, resources, and case-related details. In the courtroom setting, attempts to acquire all possible case-related information could make trials last for ages, violating the deterrence-derived expectation of speedy trials. Even if such information gathering was possible, equally weighing out and synthesizing such a broad array of information is overwhelming. Uncertainty and inconsistency would abound absent any rational framework, so judges develop one

through "bounded rationality" (March & Simon, 1958, p. 109), justifying predictable sets of behavior through internalized biases and previous experiences.

Given powerful, pervasive stereotypes around certain demographics, discretionary decision-making is made more predictable, but at the cost of replicating and reflecting both valid concerns and problematic misconceptions. The door is left open to differential treatment based on rational, ethically appropriate concerns but more commonly enables the consideration of discriminatory extra-legal factors that should have no impact in a legal system founded on notions of equal justice for all.

For example, historically rooted notions that people of color are less moral than white people and unscientific misinterpretations of crime data contribute to the idea that people of color are more inherently "criminal" and that certain types of offending, such as violent crime, are the domain of minorities; these stereotypes lead individuals to support more punitive responses when a case aligns with their pre-conceived notions (Hurwitz & Peffley, 1997; Dunbar, 2019).

In this way, the stereotypes which leech into a judge's focal concerns produce unequal outcomes in the sentencing phase. As immigrants are also frequently thought to be especially prone to criminality (Pickett, 2016), it is reasonable to hypothesize that immigrant offenders are likewise disadvantaged in the sentencing phase, especially when an offense aligns with stereotypes about immigrant offending. This theoretically informed linkage between stereotypes and differential treatment forms the basis for this current study.

Psychological research into the thought processes of people reviewing criminal case files finds further support for this theoretical perspective. In one study, criminal

stereotypes were consistently applied as "judgmental heuristics," a functional equivalent to Steffensmeier's concept of "perceptual shorthand", providing participants in the study with an expeditious framework for evaluating complex cases at the cost of reflecting unjust stereotypes they had relating to the race of the offender (Bodenhausen & Wyer, Jr., 1985).

The three principal "focal concerns" will now be reviewed in greater detail before examining the second fundamental lens through which sentencing discretion is often understood.

Blameworthiness

The first *focal concern* is the *blameworthiness* or culpability of the defendant. This concept is logically consistent with the punitive, retributive norm of criminal justice, commonly known as "just deserts", which dictates that the intensity of punishment should scale with the magnitude of an offense. In this mindset, the more responsible an offender is for their actions and the greater damage caused to people, property, and society, the more severe the resulting sentence should be (Steffensmeier et al., 1998). This eye-for-an-eye mentality is reflected by a number of long-standing sentencing policies across the United States, including more severe punishments for more severe offense types, discretionary habitual offender labels that more harshly punish repeat offenders, consideration of an offender's degree of involvement in the crime, and the discretionary application of the death penalty in capital murder convictions.

These concerns often extend from those legal factors to extra-legal factors, such as demographic characteristics. Norms such as being employed, married, and having dependents, among other traditional "markers of stability" (Daly, 1994, p. 230), tend to

reduce an offender's blameworthiness in ways that compound racial, gendered, and class-based disparities in sentencing outcomes. Whether the offender had themselves been victimized, or their demographics lent to assumptions of increased vulnerability to victimization, judges tend to view the defendant as less culpable (Steffensmeier et al., 1998).

If an old, white woman commits a violent crime, for example, it might be viewed as an aberration and the nuances of the case may be explored more deeply to find explanations which would humanize the offender and lead to a more lenient sentence. On the other hand, when a young, Black man commits a violent crime, this offense is more likely to align with a judge's internalized stereotypes. If young Black men are thought to be violent and this case matches that stereotype, the judge may feel no need to fully explore case details in search of an explanation; they are more plainly guilty and "blameworthy." A judge's "perceptual shorthand," in the case of the stereotypical offender committing a stereotypical crime, urges them to quickly and comfortably avoid a rigorous evaluation of the case and any chance of empathizing with the offender to provide a more lenient sentence.

Additionally, since the characteristics of this case are congruent with what is believed to be a common pattern of offending which threatens community safety, judges may feel that it is especially deserving of harsh punishment as this is the second focal concern which guides discretionary sentencing.

Protection of the Community

The second *focal concern* for judges is *protection of the community*. Convicted offenders have demonstrated the capability of committing a certain offense at least once;

whether they will recidivate is a source of considerable stress and uncertainty for judicial actors (Steffensmeier et al., 1998). No one wants to feel responsible for an offender's future victimization of others due to insufficient incapacitation, but prisons are overflowing, and every possible risk cannot feasibly be squashed with long sentences: a balancing act must take place. In attempting to handle the responsibility of protecting the community from recidivating offenders, judges contribute to their growing "perceptual shorthand" by connecting certain offense and offender characteristics to varying likelihoods of recidivism and punishing them accordingly.

Judges deem offenders with longer criminal histories, fewer familial and communal attachments, and drug issues (among other commonly considered factors) to be more likely to recidivate and home in on this focal concern, clamping down with more serious punishments for the same offenses, increasing sentencing disparities (Steffensmeier et al., 1998). Severity of the current offense and a history of prior convictions are fundamental, but as before with *blameworthiness*, this aspect of discretionary decision-making opens the door to problematic racial, ethnic, and immigrant-related stereotypes which produce unjust sentencing disparities. If violent crime is believed to be the domain of Black men, for example, judges may feel cases which meet that description deserve a harsh response to protect the community from a pattern of dangerous behavior.

Practical Constraints and Consequences

The third and final *focal concern* influencing judicial discretion are *practical constraints and consequences.* Judges must maintain efficiency, consider other actors in the justice system, adapt to jurisdiction-specific conditions such as caseload and

institutional overcrowding, and consider whether an offender has the "ability to do time" (Daly, 1987; Steffensmeier et al., 1998). In many states, judges are elected, meaning they can be held accountable by voters for discretionary actions that negatively impact structures and individuals; judges must consider potential praise or hostility to acts of retribution or mercy. Unintended consequences are frequently considered by judges, enabling disparities across jurisdictions and/or longitudinally over time. Particularly overworked judges may speed through the sentencing phase, doling out punishments with less care and a greater potential for inequity. Once again, this focal concern is useful for judges, but gives way to inconsistencies and disproportionality that is in no way the fault of the offender.

If an "ability to do time" is considered by judges, who might judges choose to treat more leniently in the sentencing phase? If young men of color, for example, are believed to be more inherently criminal, they might be believed to handle prison life more easily than an older white woman convicted of the same offense. In this way, the consideration of practical constraints also reproduces inequities derived from stereotypes present in the general public.

With regards to immigrants, the key population in this study, practical concerns around sentencing are even more complicated; these will be addressed in a later section dealing specifically with prior literature on the relevance of citizenship status in the sentencing process.

Minority Threat

The minority threat perspective, a classic example of conflict criminology, is built from Blalock's (1967) seminal text exploring relationships between minority and

majority groups. This macro-level hypothesis, often applied in research as racial threat or ethnic threat, predicts that majority groups (e.g., citizens, White people) view increases in the size and relative power of minority groups (e.g., immigrants, Black people) as a direct threat to their economic resources and political power. The perceived "static" threat of larger proportions of minority residents and "dynamic" threat of faster growing minority populations elicits defensive responses within majority groups who view themselves as a party under siege, resulting in strengthened social control mechanisms and increases in discrimination and injustice (Caravelis et. al., 2011; Zane, 2018).

Just as with the focal concerns perspective, the minority threat hypothesis also predicts the construction of stereotypes which seep into judicial discretion (Ferradino, 2015). Judges, situated in contexts where levels of perceived threat are higher, may interpret crimes committed by minorities, especially in neighborhoods that are still firmly controlled by the majority, as an example of the "threats" faced by majority groups when their hegemony fades. Harsher social controls may be extended in a way that directly targets the "threatening" minority groups, though punitive measures may also be "diffuse", with majority and minorities bearing the brunt of harsher social controls (Zane, 2018).

This theoretical perspective is difficult to test as it may result in disparate treatment through targeted responses, though it may not contribute to measurable inequity if responses are diffuse. Research has also found that there are diminishing returns to sources of threat; there is not a perfectly linear relationship between static or dynamic minority threat and punitive social control responses. Eventually, a curvilinear

relationship becomes evident with threat perceptions leveling off as a minority group approaches the majority group's level of size and power.

Due to a lack of macro-level data, this perspective will not be reflected in this study's design, though it is important to bear in mind that immigration is not merely an individual-level phenomenon; it also affects and is affected by community, county, state, and national contexts.

Theoretical Summary

Focal concerns perspective offers a reasonable framework through which the discretionary sentencing practices of judges can be explored and understood. Judges, feeling the pressure to respond quickly and efficiently to large case volumes with limited information, rely on stereotypes to streamline their decision-making process. Immigrants, racial minorities, males, and young adults are all impacted by these negative stereotypes in the sentencing phase. While there are also perspectives which explain macro-level influences into sentencing disparities, they require multiple levels of data to test appropriately and, at least in the case of minority threat, can be difficult to falsify. As an individual-level theory, the focal concerns perspective is well-suited to data which only enables an individual-level unit of analysis and provides fewer hurdles to interpretation. It is frequently applied in examining the impact of various legal and extralegal factors on sentencing outcomes.

Legal Factors

A variety of case and offender-related factors enable and constrain judicial discretion during the sentencing process. Prior research has shown the influences of these legal factors to be straight-forward, offering little in the way of surprises.

Offense severity is a primary concern, with more serious forms of crime earning more serious sanctions (Brennan & Spohn, 2008). Prior criminal history is also considered by criminal codes and is typically significant in predicting more severe sentencing outcomes (Steffensmeier et. al., 2017). Both of these are clearly compatible with the focal concerns perspective, as more serious offenses and patterns of offending incur more blameworthiness and demand greater formal action to ensure the safety of the community. Murder is far more reprehensible and predictive of further dangerous behavior than petty theft. Prior felony convictions indicate a more threatening pattern of behavior than a first-time offender. These offender and offense characteristics, in the current system of justice, demand greater formal sanctions, such as imprisonment over community sanctions and longer, less-negotiable sentences over shorter ones. Other commonly considered legal factors include the involvement of a weapon, number of simultaneous offenses, and victim-related factors (Steffensmeier et. al., 2017). The victimization of children and law enforcement officers, for example, incur increased penalties.

These legally sourced considerations, reflected in sentencing guidelines such as those present in state penal codes (Texas Penal Code, Title 3, Chapter 12), give judges considerable guidance during the sentencing process. People who commit more serious crimes are punished more harshly, and more reckless, problematic offenders receive firmer punishments for the same offenses than people who do not indicate a consistent pattern of deviant behavior.

Though legal factors explain most of the variation across sentencing decisions, patterns remain that legal context alone fails to account for (Doerner & Demuth, 2009).

These residual disparities are partly explained by additional considerations outside the scope of those legally permitted by penal codes.

Extra-legal Factors

Judges are not immune to biases, whether internalized or conscious. Human actors are simply incapable of detaching themselves completely from powerful social influences: norms, stereotypes, labels, and other aspects of socio-political context. These shape personal preferences and decision-making, causing judges to replicate and reflect commonly held beliefs about crime and justice, whether they are valid or not.

At the macro-level, social-contextual factors combine to shape sentencing outcomes. Facts as simple as whether a court is in a rural or urban area, an area with a healthy or struggling economy, or a jurisdiction with a high or low proportion of Black residents predicts substantial variation in incarceration decisions as well as sentence length (Britt, 2000). Sentencing guidelines that are laid out at the state level and expected to be enforced uniformly are applied with shocking irregularity based on arbitrary factors that should be irrelevant in an equitable system of justice.

At the individual level, popular preconceived notions about the relationship between crime and demographic variables, such as gender, age, and race, seep into the sentencing process of judges, producing disparities separate from those permitted in penal codes regarding case and offender-specific factors. Focal concerns are expanded to consider demographic characteristics of the offender. This lens forms the basis for a wide variety of studies into the influences of demographic characteristics on sentencing disparities.

Three of the most commonly studied extra-legal, individual-level factors influencing sentencing outcomes will now be addressed. These factors: gender, age, and race, are fundamental to sociology, and by extension, criminological studies such as this one. Though the focus of this brief literature review will shift from one factor to the next, it should not be implied that these fundamental aspects of a person's identity exist separately from one another. Quite the contrary, no one who comes before a judge to be sentenced could be solely black, solely female, solely young, or solely an immigrant. All aspects of a person's identity that are known to the people making sentencing decisions present themselves in unison; this is the essence of intersectionality (Crenshaw, 1989).

These characteristics interact in ways that produce substantial variation among the experiences of each gender, racial category, and age group, among other demographic characteristics. The nuances of these interactions in relation to sentencing outcomes will be touched on in this section, though this study's research design is unable to explore these effects due to an insufficient number of cases.

Gender

Gender is not dichotomous; it is a performance that can shift around within (and outside of) a broad spectrum of identities (Butler, 1990). Current societal norms, however, continue to conflate gender with biological sex (which is itself not perfectly binary), forcing researchers to analyze data that divides all people into "man" and "woman". This paper must continue in this tradition based on the restrictions of prior literature and currently available datasets.

Based on a "man-woman" dichotomy, research on the influences of gender on sentencing outcomes consistently finds that men receive harsher treatment than women

for the same offenses (Crawford, 2000; Doerner & Demuth, 2009; Hart et. al., 2014; Spohn & Holleran, 2000; Steffensmeier et. al., 1993; Steffensmeier et. al., 1998; Steffensmeier et. al., 2017).

These findings have held true across decades of intensive study, bolstered by the fact that gender is readily available in datasets of sentencing and can be easily included in any study of sentencing disparity, regardless of the study's primary variable of interest. Consistently harsher punishments for men have been found, with few exceptions, in studies of "habitual offender" decisions (Crawford, 2000), in/out decisions (Doerner & Demuth, 2009; Hart et. al., 2014; Spohn & Holleran, 2000, Steffensmeier et. al., 1993; Steffensmeier et. al., 1998; Steffensmeier et. al., 2017), and length-of-sentence outcomes (Brennan & Spohn, 2009; Doerner & Demuth, 2009; Hart et. al., 2014; Steffensmeier et. al., 1998; Steffensmeier et. al., 2017).

Explanations as to why women tend to receive more favorable discretionary outcomes than men in the sentencing process are frequently rooted in the focal concerns perspective (Doerner & Demuth, 2009). Traditional notions of gender in the United States regard women as less dangerous than men, and in keeping with the "protection of the community" focal concern, the more dangerous gender is punished more harshly. The "practical constraints" prong of focal concerns also may explain gendered sentencing disparities. Women tend to be more expensive to imprison than men due to a greater need for reproductive and mental health care (Brennan & Spohn, 2009). The modern prison system, historically derived from a carceral model created to punish male offenders, is notoriously ill-equipped to handle female inmates (Britton, 2003). Seeking to mitigate this burden on already overwhelmed and overtaxed correctional systems, judges may be

more lenient to women offenders with concerns of financial and practical efficiency in mind.

While men receive harsher discretionary treatment than women in the sentencing stage, gender is not the only extra-legal consideration that shapes judges' decisions.

Age

Age is another extra-legal, offender-specific factor that consistently predicts variation in sentencing outcomes, though not in a straightforward way. Evaluation of gender's impact on sentencing outcomes is eased by it being a dichotomous measure. Age, on the other hand, is continuous, requiring different methodological approaches. Additionally, researchers looking for a simple, linear relationship between age and sentencing outcomes would be hard pressed to find one, as offending patterns and age-related stereotypes about people vary across the life-course in non-linear ways.

A curvilinear explanation is most common in recent literature, as data have shown people in the prime offending years of young adulthood, the 21-35 range, as tending to receive longer sentences than younger and older offenders, though the strength of these associations are generally low (Spohn & Holleran, 2000; Steffensmeier et. al., 1998; Steffensmeier et. al., 2017). Theoretically, youthful offenders are commonly seen as less blameworthy, while middle-aged and elderly adults are presumed to be less dangerous.

These findings have not been resilient to more rigorous methodologies, however (Wu & Spohn, 2009). While age is sometimes shown to have a significant, independent effect on sentencing outcomes, especially in older (1990s and early 2000s) studies that included fewer controls and a less refined understanding of the non-linear relationship

between age and the focal concerns of judges, the body of literature as a whole is frequently conflicting.

More recent intersectional approaches have explained these contradictory results as being heavily influenced by interactions with gender and race (Steffensmeier, 2017). On its own, the direct effect of an offender's age on sentencing outcomes is nearly negligible; there is no consistent pattern indicating that judges discriminate based on age alone, except for mild harshness towards the young adult age category. There is, however, substantial evidence indicating that age is extremely important as a moderating factor, exacerbating discriminatory treatment of males and racial minorities. White males, for example, are punished less harshly for being in the prime-offending stage of the life-course while young Black and Hispanic men suffer a far greater age-related penalty (Spohn & Holleran, 2000; Steffensmeier, 2017).

Age, through interaction with other demographic factors, represents another extra-legal source of variation in sentencing outcomes. The next-most significant consideration involved is the race of the offender.

Race

Race is a primary spectrum of inequality in the United States. Centuries of slavery and legal discrimination coupled with continuing informal discrimination have cemented profound racial divides across nearly every measurable aspect of social life. The criminal justice system is, notoriously, no exception to this phenomenon, and the sentencing process is likewise not immune to racially disparate treatment.

Decades of research have indicated a crystal-clear pattern: independent of all other factors, White offenders receive more lenient treatment while racial and ethnic

minority offenders, especially those who are Black, are generally imprisoned more often and for longer periods of time, though there is some variation based on the type of offense and the court context in which the sentencing decision was made (Bales & Piquero, 2012; Bridges & Crutchfield, 1988; Brennan & Spohn, 2008; Brennan & Spohn, 2009; Caravelis et. al., 2011; Crawford et. al., 1998; Crawford, 2000; Crow & Johnson, 2008; Feldmeyer & Ulmer, 2011; Feldmeyer et. al., 2015; Holland & Stringer, 2019; Lehmann, 2020; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006; Steffensmeier et. al., 1998; Steffensmeier et. al., 2017; Wu, 2016). Whites are not just arrested and convicted less for the same offenses; they are also privileged in the sentencing phase.

Previously mentioned extra-legal factors: gender, and age, combine with race to place some offenders in a state of compounded disadvantage, with the harshest sentencing decisions concentrated around young, poor, Black and Hispanic men (Doerner & Demuth, 2009; Stewart et. al., 2015; Steffensmeier et. al., 1998). Men are punished more harshly than women in general, but that disparity grows even larger for Black and Hispanic men. Young adults are punished more harshly than teenagers and the elderly, and that inequality is compounded for racial and ethnic minorities. Prevailing explanations for the overwhelming evidence of race-based sentencing discrimination is grounded in focal concerns theory.

Focal concerns theory is frequently used to explain race-based sentencing, as racial minorities are typically stereotyped as being especially dangerous, immoral, and blameworthy (Doerner & Demuth, 2009; Pickett, 2016; Spohn & Holleran, 2000; Steffensmeier et al., 1998). This position, though entirely unfounded, seems to influence judicial actors who make discretionary decisions under the influence of stereotypes.

Directly testing this theory at is applies to race is difficult, however, as qualitative research exploring the decision-making process of judges is sorely lacking.

Only in recent years have studies been done which incorporate qualitative components to evaluate judicial decision-making. This literature, incorporating interviews with judges, has lent support to the idea that race, in conjunction with gender and age, does influence judicial decision-making in the ways that quantitative research has suggested. In one study, judges clearly admitted that preconceived notions about gender, age, and race affected the sentences they doled out (Steffensmeier et al., 2016). Though additional research needs to be done to better test the applicability of focal concerns theory to race-based sentencing disparity, the current body of literature generally supports this perspective.

While there is still clearly work to be done in addressing gaps in the study of these extra-legal factors, their presence at the forefront of sociological research as traditional strata of inequality means that they have had and will continue to receive considerable attention in sentencing literature. There are other, non-traditional strata of inequality that are currently being largely overlooked, though they may prove relevant in predicting disparate sentencing outcomes.

Immigrants

The proportion of foreign-born people in the United States has boomed over the past several decades, as the U.S. Census Bureau has kept track of "percent foreign-born" for many decades. In the southwest United States, a solid majority of this immigration has come from majority-Hispanic nations in Central and South America. As largely native-born communities have seen an influx of immigrant residents, macro-level

perspectives such as the minority threat hypothesis suggest that the public, including judges, would interpret this shift in demographics as a dangerous shift in the balance of power. Immigrants, for this reason, would receive harsher sanctions as a means of maintaining the relative power of native-born U.S. citizens.

Misconceptions about the relationship between immigration and crime have abounded for well over a century in the United States, fueling fear and discrimination towards immigrants. When surveyed, citizens consistently report believing that immigrants are inherently more criminal than citizens, and that the current trend of a growing foreign-born population is at least "somewhat likely" to increase crime (Smith et. al., 2000). This stereotype of the "criminal immigrant" is widespread and deeply rooted (Pickett, 2016; Stupi et. al., 2016), but research debunking this myth is likewise long-standing and well-established. From government mandated studies in the 1930s (Abbott, 1931) to modern-day macro- and cohort-level studies of citizenship status and offending (Dinovitzer et. al., 2009; Green, 2016; Kubrin et. al., 2018; MacDonald et. al., 2013), criminal justice scholars consistently find that non-US citizens living in the United States commit no more crime than U.S. citizens.

Despite overwhelming empirical evidence to the contrary, the myth that non-citizens are especially dangerous persists in the present day, and high-profile politicians, including the current President of the United States, parrot these misconceptions when proposing crime-control and national security policies (Green, 2016; Phillips, 2017). It is reasonable to hypothesize that these stereotypes, just as those surrounding racial and ethnic minorities, may be internalized by judges considering the "protection of the

community" focal concern, producing inequitable treatment in the sentencing phase to favor citizens over immigrants.

It is important to note that while citizenship is a legal status, discrimination based on national origin is prohibited in the United States (US Sentencing Guidelines, Section 5H1.10). While deportation practices often prevent non-citizens from accessing alternative sanctions to imprisonment, as the issuance of an ICE detainer may constrain judges to choose between imprisonment or letting the offender go, sentencing immigrants to longer sentences based on their citizenship status is not legally permitted (Light, 2014).

Research into the treatment of this soaring minority population in the sentencing phase of criminal justice is a recent endeavor, and the current handful of studies have produced conflicting results. While immigrants are frequently disadvantaged in economic and developmental aspects of social life (Gonzales, 2011; Hall et. al., 2010; Suárez-Orozco et. al., 2011), it is currently unclear whether citizenship seems to also be a spectrum of extra-legal stratification in the sentencing process.

At the federal level, where offender-specific citizenship status is readily available, some studies have shown non-US citizens to be at a consistent disadvantage during the sentencing process, receiving harsher punishments independent of other factors (Light, 2014; Light et. al., 2014; Wolfe et. al., 2011). Other studies have found that this disparity varies widely from state to state, with some U.S. District Courts seeming to consider citizenship status as an extra-legal factor and others not producing significantly different sentencing outcomes for non-US citizens (Hartley & Armendariz, 2011; Wu & D'Angelo, 2014). One study even found that Mexican immigrants, in a sample of state and federal prisons, fared slightly better than U.S. citizens in the sentencing process,

further confounding suggestions that immigrants are disadvantaged in the sentencing process (Orrick & Piquero, 2015).

These contrary findings may point to the relevance of different "practical constraints and consequences" for immigrants, specifically the unique fact that they can be deported for sufficiently serious offenses, including "aggravated" felonies and "crimes of moral turpitude." This fact may encourage judges, for serious offenses, to sentence immigrant offenders more leniently than citizens, as violent immigrant offenders cannot be deported until they have completed their sentence (U.S. Code, Title 8, Chapter 12, § 1231). While "criminal immigrant" stereotypes may encourage judges to punish immigrants more harshly, evaluations of sentence length outcomes and in/out decision patterns can be confounded by Immigration and Customs Enforcement's ability to detain and remove immigrant offenders under certain conditions.

Though there is some indication that districts with growing immigrant populations punish immigrants more harshly in keeping with the minority threat perspective, this body of literature has yet to rigorously and consistently evaluate that theoretical explanation as it applies to this non-traditional spectrum of stratification. The same is true for the focal concerns perspective. While it can be reasonably hypothesized that judges have internalized the problematic "myth of the criminal immigrant", current methodologies have been insufficient in addressing this proposition. Both theories currently serve more as hypothetical explanations for citizenship-related disparities and sources of guidance when selecting variables of interest than providing consistently-testable causal mechanisms.

Currently, more research into this offender-specific extra-legal factor is sorely needed, especially in non-federal court contexts. Research on state-specific sentencing outcomes that account for individual-level citizenship status is practically non-existent, as state courts and correctional systems typically do not collect and/or make available the citizenship status of adjudicated people, unlike the federal system.

Homicide

Studies of sentencing disparity typically exclude homicide. There are often too few homicide cases present in datasets, as it is a relatively infrequent range of crimes. This fact carries important implications for the most common form of sentencing research: general felony court samples (Auerhahn, 2007). These datasets tend to be predominately full of robberies and burglaries, obscuring nuances in sentencing disparity for less common crimes, including homicide, with few notable exceptions (Lehmann, 2020). As such, the available research on sentencing disparities specific to homicide is scarce at best.

What little empirical research exists does somewhat support predominant explanations of the causal mechanisms of sentencing disparities (Auerhahn, 2007). Legal factors, as the clearest, most publicly supported markers of blameworthy, dangerous offenders, predict much of the variation. Completed, intentional forms of homicide earn far longer sentences than attempted or accidental (negligent) homicide, and the involvement of a firearm is also frequently important.

Extra-legal factors that are relevant in other forms of offending seem to still carry weight among this subset of offenders. Judicial discretion in homicide sentencing, in keeping with the treatment of other offenses, seems to be significantly affected by

criminal stereotypes, with people conforming to preconceived notions about "criminals", largely young males of color, bearing the brunt of longer sentences. Currently, however, there are very few studies to draw from in verifying this claim.

While there are currently no theoretical and few empirical indications that the sources of sentencing disparity differ for homicide as opposed to other crimes, the frequent exclusion of homicide in this body of literature is a gap that could hinder understanding of judicial discretion. Does the balance of legal and extralegal factors remain the same for judges whether they are ruling on a case of petty theft or a case of capital murder? At present, it is difficult to answer that question given the paucity of studies examining sentencing outcomes for homicide.

Additionally, the least common type of homicide, pre-planned murder, is often excluded even from homicide-centered studies, usually due to a low number of cases (Auerhahn, 2007). It is conceivable that sentence-length considerations in first- and second-degree murder cases may differ from other offenses, even unplanned or accidental homicide. This is a gap that can only be addressed by rigorously evaluating larger datasets that include a sufficient sample size of offenders sentenced for homicide.

One recent study in this vein found conflicting results, with Black and Hispanic offenders being at a significant disadvantage compared to Whites sentenced for many violent offenses, but not for some forms of homicide (Lehmann, 2020). That study notes that the importance of victim-specific characteristics, such as race of the victim and their prior relationship with the offender, may explain variation in the relevance of race among different violent crimes, though these connections have yet to be fully evaluated (Lehmann, 2020).

Death Penalty

While available data on all forms of homicide is already scarce, examinations of

capital murder sentencing are slightly more common due to considerable interest in the

death penalty research following Supreme Court battles over its arbitrary and

discriminatory application (*Furman v. Georgia, 1972*; *Gregg v. Georgia, 1976*). In states

that employ the death penalty, sentencing decisions are quite literally life-or-death in

capital murder cases; this is the most serious offense for which extra-legal disparities can

play a role. Though the judge does not make a death penalty ruling, juries do, the roles of

biases and stereotypes posited by prevailing theories of sentencing disparity still apply, as

juries are still human actors prone to replicating biases while attempting to navigate

profoundly complex and arduous cases. Literature specific to this form of sentencing

finds that, at the individual level, victim-specific factors tend to have a greater impact on

death penalty decisions than offender-specific factors.

While some studies find that minority groups are more likely to receive the death

penalty in capital cases, controlling for race of the victim reveals that as Whites typically

kill other Whites, and the court system seems to generally value White lives more than

people of color, White people are more likely to receive the death penalty (Baumgartner

& Lyman, 2015; Baumgartner et. al., 2015; Baumgartner et. al., 2016).

Some studies, however, have found that the defendant's race is still relevant and

in a way that disproportionately harms Black people, with one study observing that Black

offenders were over times as likely to be sentenced to death by a jury than White

offenders in Washington (Beckett & Evans, 2014). These contradictory findings may be

explained by differences in jurisdictions or methodologies, but the primary takeaway is clear: race significantly impacts death penalty decisions to the detriment of minorities.

The race of the victim tends to be more consistently relevant than the race of the offender, and this is manifested in the "white victim effect", often rendering the offender's race insignificant (Ulmer et. al., 2019). This finding is congruent with the focal concerns' perspective, as judges may perceive minority victims to be more blameworthy than White victims, drawing from prevalent stereotypes in the mainstream. Other studies have found that when controlling for victim-specific factors, minority offenders are typically only disadvantaged when they kill White people (Gross & Mauro, 1984; McAdams, 1998).

Nearly all criminal cases are ineligible for the death penalty, as only the rare crime of capital murder is typically considered and many states have prohibited capital punishment, so research that rigorously examines factors influencing sentencing discretion in these cases is somewhat limited. In Texas, capital murder includes the murder of peace officers, prison employees, firefighters, judges and children under 10 years old, murder committed during the commission of many other violent felonies, murder for money, murder during escape from a penal institution, mass murder, and serial killing (Texas Penal Code, Title 5, Chapter 19). Though these cases are rare, it is still important to consider and examine the most serious forms of homicide, as the consequences are as serious as they could possibly be.

Current Study

This study aims to address several gaps in the sentencing literature by examining a statewide dataset of individuals incarcerated for homicide which includes citizenship

status of the offender. The primary focus of this study is to examine how the immigration status of an offender impacts a judge's discretionary decision-making in the sentencing process, specifically for homicide cases.

  A multivariate analysis is performed, with variables and hypotheses derived from focal concerns perspective. Multinomial logistic regression is used to examine the effects of immigration status on sentence length for all forms of homicide, controlling for other relevant legal and extra-legal factors derived from prior literature.

CHAPTER III

Methods

Hypotheses

This study, informed by focal concerns perspective and empirical results

produced by prior literature, explores whether immigration status influences sentencing

outcomes for individuals convicted of homicide, along with other legal and extra-legal

factors. Do judges seem to consider the citizenship status of immigrants when making

discretionary sentence length decisions? The following hypothesis will be tested to

address that research question.

Research hypothesis: Controlling for other factors in a multivariate analysis, immigrants

convicted of homicide offenses will receive significantly different sentence lengths than

U.S. citizens as suggested by the focal concerns perspective.

Data

The sample examined in this study is taken from a dataset compiled by the Texas

Department of Criminal Justice (TDCJ). This dataset contains 16,189 offenders currently

incarcerated in a Texas Department of Corrections institution for criminal homicide as of

March 23rd, 2018. Of these incarcerated people, 14,441 (89.2%) are recorded by TDCJ as

having United States Citizenship, while 1,748 (10.8%) are non-citizens. Of the non-

citizens in this dataset, 1,190 have Mexican citizenship (7.4% of total dataset).

As the proportion of immigrants living in Texas only began to meaningfully

increase during the 1970s and 1980s (Gibson & Jung, 2006) offenders sentenced prior to

January 1st, 1990, have been excluded from the dataset. This cutoff date still allows for

analysis of nearly three decades of offenders sentenced for capital murder, and many

other forms of homicide for as long as the offense-specific maximum sentence length

permits (e.g. 2 years' worth of State Jail Felony offenders, 10 years' worth of 3rd Degree

Felony offenders, etc.).

Of the original 15,283 offenders represented in this dataset, 531 (3.47%) had a

missing value. An analysis of missing values indicated no significant differences in

missing patterns, therefore the missing cases were excluded from the analysis through

list-wise deletion. The resulting sample size for this study is n = 14,752, of which 13,103

are U.S. citizens (88.82%) and 1,649 are non-U.S. citizens (11.18%).

Measures

Dependent Variable

The dependent variable for this component is a categorical measure of sentence

length in years. The three categories include sentences of 20 years or less, sentences

between 21 and 40 years in length, and sentences longer than 40 years, capital life, or

death. Sentences for homicide in Texas are established by Title 3, Chapter 12 of the

Texas Penal Code, and homicides are defined in Title 5, Chapter 19.

Independent Variables

Immigrants and Race

This study's principal focus, immigration status, is reflected in a composite

measure of citizenship and race/ethnicity. This measure includes five categories of

offenders: "Non-U.S., Non-Hispanic," which includes immigrants with a racial identity

of "Black," "White," or "other," "Non-U.S., Hispanic," "U.S., Black," "U.S., Hispanic,"

and "U.S., White and other."

These two concepts, immigration and race, have been merged to address potential multicollinearity issues, given that most of the immigrants in this dataset are Hispanic.

Additionally, "Hispanic", typically understood to be an ethnic identity separate from an individual's racial identity, is treated as an exclusive racial category in this analysis as TDCJ recorded race and ethnicity in this same way. It is therefore impossible to disaggregate the Hispanic offenders in this dataset by their racial identity, so Hispanics are treated as a separate racial category, equivalent to White, Black, and a combined category of all other racial identities. This dataset makes no allowances for multiracial identities, and it does not differentiate between documented and undocumented immigrants.

Legal factors

As informed by prior literature and prevailing theoretical explanations of discretion in sentencing, two legally relevant factors are included in this study.

Offense severity, as the most important factor constraining the discretionary power of judges in the sentencing process, is controlled for by a dichotomous measure: "capital homicide." State jail felonies [criminally negligent homicide], 2nd degree felonies [manslaughter], and 1st degree homicides [murder] are coded as "0," and capital murders are coded as "1." The offenses are classified under Title 5, Chapter 19 of the Texas Penal Code.

This simplification is due to a relatively small number of state jail felony and 2nd degree homicide offenders in the data, especially in decades prior to the 2010s, which is expected given that the sentences for those less serious forms of homicide are typically short.

Prior criminal history is examined through a categorical measure of how many times an offender has previously been sentenced to TDCJ state prisons and state jails. This variable has three categories: "no prior sentences," "1 prior sentence," and "2 or more prior sentences."

Extra-legal Factors

A set of extra-legal factors are also examined. These individual-level variables include two demographic controls: sex ("0" = male, "1" = female) and age at time of the offense ("20 years or younger," "21-30 years old," "31-40 years old," "more than 40 years old"). Mode of conviction is controlled for by a dichotomous measure where "1" represents conviction at trial, the reference category, and "0" represents a guilty plea. Additionally, to control for variations in sentencing practices over the decades, a dummy variable is included. The decade "2010-2018" serves as the reference category for this variable alongside "1990-1999" and "2000-2009".

Analytical Strategies

For this study, a multinomial logistic regression is performed on the dependent variable: sentence severity. This multivariate approach controls for the impact of factors other than the principal independent variable in this study, immigration and race, on the dependent variable, sentence length.

Though the dependent variable in this study can be interpreted as ordinal, with three categories of increasing severity, the data used in this analysis fails to satisfy the proportional odds or parallel lines assumption needed to run an ordinal logistic regression (χ^2 = 484.605***, df = 14). As multinomial logistic regression does not require this

assumption to be true, it is not an issue, though it does affect interpretation of the

regression estimates as this method treats all categories as unordered.

CHAPTER IV

Results

Descriptive Statistics

In Table 1, descriptive statistics are reported for all eight variables to be included in the multivariate analysis. As stated in Chapter 3, the sample size for this study is n = 14,752.

With regards to the dependent variable, sentence length, most offenders in this sample (55.3%) received a sentence of longer than 40 years, of life without parole, or of death. The other half of offenders are split by < 20-year sentences (19.4%) and 21 to 40-year sentences (25.3%).

For the primary independent variable of note, the composite measure of citizenship status and race, most offenders in the sample were U.S. citizens (89.8%), divided fairly evenly amongst Black (35.5%), Hispanic (25.8%), and White or other (27.5%) racial categories. Of the immigrants in this sample, most were Hispanic (9.6%), though a still-analyzable number of immigrants were non-Hispanic (239, 1.6%).

Univariate examinations of the other independent variables reveal predictable patterns of dispersion. The prime ages of offending are reflected by the largest category of offenders by age, 21 to 29 years old (40.8%). Most offenders in this sample were convicted of a non-capital homicide offense (77.1%), though there is still a considerable number of capital homicide sentences reflected in this sample (3,379, 22.9%). The dispersion of sentence dates by decade indicate slightly more cases in the 2010s (39.9%), despite there only being less than nine full years of offenders represented, compared to the 1990s (24.9%) and 2000s (35.2%).

Table 1

Descriptive statistics: Offenders currently incarcerated for homicide in Texas

Department of Criminal Justice prisons, sentenced after 12/31/1989, as of 03/23/2018.

	Category	Frequency (Percent)	Cumulative percent
Sentence length *(Dependent variable)*	≤ 20 years	2,863 (19.4%)	19.4%
	21 to 40 years	3,728 (25.3%)	44.7%
	> 40 years, life, or death†	8,161 (55.3%)	100.0% *(n = 14,752)*
Age at time of sentencing	≤ 20 years old	2,744 (18.6%)	18.6%
	21 to 29 years old	6,012 (40.8%)	59.4%
	30 to 39 years old	3,348 (22.7%)	82.1%
	≥ 40 years old†	2,648 (18.0%)	100.0% *(n = 14,752)*
Capital homicide	Non-capital homicide	11,373 (77.1%)	77.1%
	Capital homicide†	3,379 (22.9%)	100.0% *(n = 14,752)*
Citizenship status and race	Non-U.S. and non-Hispanic	239 (1.6%)	1.6%
	Non-U.S. and Hispanic	1,410 (9.6%)	11.2%
	U.S. and Black	5,241 (35.5%)	46.7%
	U.S. and Hispanic	3,802 (25.8%)	72.5%
	U.S. and White or Other†	4,060 (27.5%)	100.0% *(n = 14,752)*
Decade sentenced	1990s	3,672 (24.9%)	24.9%
	2000s	5,190 (35.2%)	60.1%
	2010s†	5,890 (39.9%)	100.0% *(n = 14,752)*
Mode of conviction	Guilty Plea	7,815 (53.0%)	53.0%
	Trial by Jury†	6,937 (47.0%)	100.0% *(n = 14,752)*
Prior prison and state jail sentences	No prior sentences	11,312 (76.7%)	76.7%
	1 prior sentence	2,065 (14.0%)	90.7%
	≥ 2 prior sentences†	1,375 (9.3%)	100.0% *(n = 14,752)*
Sex	Female	1,198 (8.1%)	8.1%
	Male†	13,554 (91.9%)	100.0% *(n = 14,752)*

Note: † = reference category. Some cumulative percentages may not total 100% due to rounding errors.

A slight majority of offenders pleaded guilty (53.0%) rather than having been sentenced at trial (47.0%), and most offenders had never been sentenced to a TDCJ state jail or prison for a prior offense (76.7%). Finally, most offenders in this sample were classified as male (91.9%) rather than female (8.1%).

Multivariate Analysis

As described in Chapter 3, a multinomial logistic regression was then performed to evaluate potential impacts of an offender's citizenship status and race, along with other variables as informed by prior literature, on sentencing outcomes for homicide offenses.

The resulting regression estimates are presented in Table 2, clustered by variable name as ordered in Table 1. Categories marked "1" reflect a comparison between the significance of membership in that category and having received a sentence of less than 20 years compared to more than 40 years, capital life, or a death sentence. Categories marked "2" reflect a comparison between the other non-referent category: a sentence of 21-40 years to, again, the reference category of the dependent variable: a sentence of longer than 40 years, a capital life sentence, or a death sentence.

A positive-signed Beta-coefficient (B) accompanied by a significant Wald chi-square test result (Wald) results in an exponentiation of Beta which is greater than 1. This value, noted as Exp(B) in Table 2, is interpretable as an odds ratio; this is the risk of an individual outcome falling into the comparison category of the dependent variable (reflected by "1" or "2" as noted above) relative to the reference category when membership in the independent variable category in the left-most column is true.

Citizenship and Race

An examination of the odds ratios for the primary independent variable being examined in this study, citizenship status and race, reveals that an offender's citizenship status and race does significantly affect sentencing outcomes. Hispanic immigrants were more likely to receive sentences of 20 years or less (Exp(B) = 1.664) and 21-40 years (Exp(B) = 1.473), compared to a sentence of longer than 40 years, capital life, or death, than U.S. citizens who were White or of a racial category other than Black or Hispanic. Hispanic U.S. citizens were also more likely (Exp(B) = 1.266 and 1.297) to fall into these shorter-sentence comparison categories. Black U.S. citizens were less likely (Exp(B) = 0.709) to receive a sentence of 20 years or less, though being in this category did not predict a significantly different likelihood of having received a sentence of 21-40 years (B = 0.062). The regression estimates indicated no significant difference in the sentencing of Non-Hispanic immigrants compared to White (or other) U.S. citizens.

Other Independent Variables

The results of this regression estimation also indicated that age was largely irrelevant in predicting sentencing outcomes. The only significant result (B = 0.387***) indicated that offenders at or below 20 years of age at the time of their sentencing were more likely to receive a sentence of 21-40 years (Exp(B) = 1.473) rather than the most serious category of sentencing outcomes, though membership in this age group proved irrelevant when attempting to predict a sentence of less than 20 years (B = 0.082).

Table 2

Multinomial logistic regression results: ≤ 20 year sentence vs. > 40 years, life, or death sentence [1] and 21-40 year sentence vs. > 40 years, life, or death sentence [2] †

	B (S.E.)	Wald (df = 1)	Exp(B)	Lower - 95% CI - Upper	
Intercept [1]	−4.431 (.168)	693.681***			
Intercept [2]	−3.570 (.124)	829.407***			
Age at time of sentencing					
≤ 20 years old [1]	0.082 (.096)	0.735	1.086	0.900	1.310
≤ 20 years old [2]	0.387 (.079)	24.089***	1.473	1.262	1.719
21-29 years old [1]	0.053 (.074)	0.522	1.055	0.913	1.218
21-29 years old [2]	0.117 (.065)	3.210	1.124	0.989	1.278
30-39 years old [1]	−0.029 (.080)	0.135	0.971	0.830	1.136
30-39 years old [2]	−0.068 (.071)	0.897	0.935	0.812	1.075
Capital homicide					
Non-capital homicide [1]	2.831 (.128)	489.255***	16.954	13.193	21.788
Non-capital homicide [2]	2.284 (.082)	770.533***	9.816	8.354	11.534
Citizenship status and race					
Non-U.S. and non-Hispanic [1]	−0.377 (.217)	3.004	0.686	0.448	1.051
Non-U.S. and non-Hispanic [2]	−0.027 (.181)	0.022	0.974	0.683	1.388
Non-U.S. and Hispanic [1]	0.509 (.094)	29.418***	1.664	1.384	2.000
Non-U.S. and Hispanic [2]	0.387 (.086)	20.126***	1.473	1.244	1.744
U.S. and Black [1]	−0.343 (.071)	23.320***	0.709	0.617	0.815
U.S. and Black [2]	0.062 (.059)	1.105	1.064	0.948	1.194
U.S. and Hispanic [1]	0.236 (.072)	10.707**	1.266	1.099	1.459
U.S. and Hispanic [2]	0.260 (.063)	17.009***	1.297	1.146	1.468
Decade sentenced					
1990s [1]	−3.748 (.147)	647.317***	0.024	0.018	0.031
1990s [2]	−0.787 (.061)	165.229***	0.455	0.404	0.513
2000s [1]	−1.086 (.058)	353.647***	0.338	0.301	0.378
2000s [2]	−0.111 (.052)	4.526*	0.895	0.809	0.991
Mode of conviction					
Guilty Plea [1]	1.747 (.059)	875.393***	5.738	5.111	6.442
Guilty Plea [2]	1.439 (.047)	949.252***	4.215	3.846	4.618
Prior prison and state jail sentences					
No prior sentences [1]	0.791 (.097)	65.882***	2.205	1.822	2.669
No prior sentences [2]	0.132 (.079)	2.820	1.141	0.978	1.332
1 prior sentence [1]	0.423 (.114)	13.733***	1.527	1.221	1.910
1 prior sentence [2]	0.075 (.092)	0.664	1.078	0.900	1.292
Sex					
Female [1]	0.676 (.091)	54.956***	1.965	1.644	2.350
Female [2]	0.342 (.086)	15.607***	1.407	1.188	1.667

Note: ***Sig. < .001; **Sig. <.01; *Sig. <.05. *n = 14,752.* −2 Log Likelihood = 3,504.106*** (df = 28). McFadden R^2 = .234.
† = Table formatting adapted from Holleran and Spohn, 2004, p. 224.

The dichotomized measure of offense severity, capital homicide, proved to be extremely relevant in predicting sentencing outcomes. Having been convicted of a non-capital homicide rather than capital homicide made an offender far more likely to receive a sentence of less than 20 years (Exp(B) = 16.954) or sentences of 21 to 40 years (Exp(B) = 9.816) rather than the reference category composed of the most severe sentencing outcomes.

The distribution of offenders' sentence lengths was also impacted by the decade in which they were sentenced, as expected. Of the offenders still in prison as of March 23rd, 2018, those sentenced in the 1990s and 2000s were far less likely to have received a sentence other than the most serious ones present in the reference category of the dependent variable, reflecting that most offenders sentenced in prior decades for shorter sentences had already been released as of the date this dataset was compiled.

Mode of conviction was also relevant, with offenders who pled guilty rather than having been convicted at trial being more likely to have received a sentence of less than 20 years (Exp(B) = 5.738) and to have received a sentence between 21 and 40 years in length (Exp(B) = 4.215).

Offenders with fewer than two prior sentences to a TDCJ state jail or prison tended to have received sentences less than 20 years compared to more than 40 years, capital life, or death (B = 0.791*** and 0.423***), though having one or no prior sentences did not predict a significantly different likelihood of having been convicted to a prison sentence lasting between 21 and 40 years (B = 0.132 and 0.075).

Finally, sex was also indicated to be a relevant predictor of sentence length. Females were more likely to receive a sentence of less than 20 years (Exp(B) = 1.965), and to receive a sentence between 21 and 40 years (Exp(B) = 1.407).

CHAPTER V

Discussion

The focal concerns perspective, and the understanding it demands of the influence of stereotypes on the discretionary decision making of judges, directs the focus of sentencing research towards a broad set of legal and extra-legal measures. Given that immigrants, due to myths surrounding their criminality and circumstances around deportation and ICE detainers, can be reasonably connected to all three of a judge's focal concerns, blameworthiness, protection of the community, and practical constraints and consequences, it is worth investigating whether immigrants receive differential treatment in the sentencing process.

The results of this study echo the consensus of prior literature: these findings are mixed and this research question is still far from resolved. The multivariate analysis performed in this study relies on an admittedly-limiting composite measure of race and citizenship, reducing the clarity of an immigration-specific evaluation, though the lack of a pattern between the three racial categories of U.S. citizens and the two racial categories of immigrants suggests that, if immigration status is considered by judges, it is not nearly as important as an offenders race. This point is most clearly visible in the fact that, while Hispanic immigrants were more likely to receive shorter sentences than White citizens, so were the Hispanic citizens in this sample (Table 2). Non-Hispanic immigrants did not receive significantly different sentences than White citizens, though the likelihood of being able to discover anything less than a substantial inequity was low given the small number of offenders in this category (n = 239).

These results, due to several limitations, do not definitively settle the question of whether immigration is an important hierarchy of inequity in the sentencing process, although the fact that a race-based commonality emerges in this analysis rather than a citizenship-based one suggests that traditionally-studied minority identities are more strongly relevant in the sentencing process than immigrant identity.

The race-based commonality, that Hispanic immigrants and citizens were more likely to have received a sentence of 40 years or less rather than a sentence of longer than 40 years, life without parole, or death compared to White citizens, is an unusual finding, given that prior literature suggests that Hispanics are disadvantaged in the sentencing process. The presence of racial discrimination in sentencing has always been more pronounced and frequently studied for Black offenders than Hispanic offenders, though this result is still somewhat unexpected. Prior research comparing prison sentence lengths between Whites and Hispanics for violent crime is limited, though one recent study found that Whites received *shorter* sentences than Blacks and Hispanics for manslaughter and murder (Lehmann, 2020).

These results are largely incongruent with the race-based application of both minority threat and focal concerns theory to homicide offenses, suggesting that offense type is an extremely relevant mediating factor between extralegal factors and sentencing outcomes. This lends support to the idea that less-common crimes such as homicide need to be more frequently accounted for in sentencing research as the same models which explain disparities in property offending and more-common, less-serious violent offending may not hold up for fringe-cases. Perhaps a meaningfully different balance of considerations come into play for judges in homicide cases compared to other forms of

offending; future studies should endeavor to examine homicide and other forms of serious, violent offenses which often go overlooked.

Other Independent Variables

With regards to the other measures accounted for in the multivariate model, few surprises emerged in the regression estimates.

Legally relevant factors, including mode of conviction, prior incarcerations, and offense severity, were important predictors of sentence-length outcomes.

In keeping with prior literature, offenders who pleaded guilty were less likely to have received the most serious sentences, though it is not clear whether this is due to judges seeking to punish offenders who were sentenced at trial more harshly for apparent dishonesty or because offenders might be more likely to contest cases which could carry high-stakes sentences and plead guilty to less-serious forms of homicide that would only carry, at most, a sentence of a few years in prison.

Prior sentences to Texas state jails and prisons also predicted differential treatment at the time of sentencing. Offenders who had previously served either one or no prior prison and state jail terms were far more likely to receive a sentence of 20 years or less than offenders with multiple previous incarcerations. Without serious prior felonies on a person's record, only exceptionally serious offenses can earn long prison sentences given Texas' sentencing guidelines; these results reflect the well-understood relevance of an offender's prior criminal history in the sentencing process.

Offense severity also predicted sentencing outcomes, as offenders convicted of non-capital offenses were far more likely to have received a shorter sentence than capital-murder offenders. This dichotomized control measure is, however, far from an ideal,

rigorous, multi-category variable present in most sentencing literature. Unfortunately, a relatively small number of negligent homicide and manslaughter cases (residing almost entirely in the 2010s due to their obviously short sentence lengths) prohibited using a more substantive offense severity score.

Other extra-legal factors proved to be relevant predictors of sentence length in ways that were compatible with the findings of previous work.

Females were more likely than males to have received a shorter sentence, and age alone was largely irrelevant, with the only significant result being that especially young offenders ($\leq$ 20 years old) were significantly less likely to receive sentences longer than 40 years, life without parole, or death sentences. This particular result is expected, given that it is reasonable to assume that judges, in cases where especially severe sentences are permitted under the state's penal code, would be especially hesitant to sentence a teenager to sentences which effectively take away their entire life, either figuratively from exceptionally long sentences or literally from capital punishment.

Offender age at the time of sentencing as a largely irrelevant main factor is in keeping with prior literature, though this does not suggest that age is not important to judges during the sentencing process. Prior literature finds that age is exceptionally relevant when accounting for interaction effects with an offender's race and gender. As the current study does not account for these (or any) interaction effects, this important fact must go untested.

Summary

In total, the results of this current study lend support to the findings of previous literature: legally relevant considerations and extra-legal factors alike shape the

discretionary decision-making of judges in ways that are compatible with the focal

concerns perspective. Offenders who committed more serious offenses, had more

troubling patterns of prior offending, or were deemed guilty by their peers at trial rather

than making an admission of guilt were all more likely to have received more serious

sentences, in keeping with the "blameworthiness" and "protection of the community"

focal concerns. This perspective posits that judges differentially punish based on their

perceptions of an offender's culpability, dangerousness, and dishonesty, and the current

study supports that understanding.

With regards to the research hypothesis and primary focus of this study, however,

the results were less clear cut. No support was found for the research hypothesis, which

anticipated that immigrants would receive different punishments than citizens. While

Hispanic immigrants did receive significantly different sentences than White citizens, so

did Hispanic citizens, suggesting that race, not immigration status, is the more relevant

predictor. An offender's immigration status may interact with a judge's focal concerns,

but this study's research design found no clear support to that effect. Further studies, with

larger sample sizes and more rigorous research designs, need to be conducted to better

understand the relevance or irrelevance of an offender's immigration status in the

sentencing phase.

Finally, racial patterns that began to emerge in the data suggest that homicide

needs to be better accounted for in future sentencing research, as slightly unexpected

findings emerged in the data. Some support was found for the finding in prior literature

that Black offenders are disadvantaged in the sentencing process, as Black citizens were

significantly less likely than White citizens to receive sentences of less than 20 years

compared to sentences of longer than 40 years, life without parole, or death. The findings for Hispanic offenders, however, that they seemed to receive more favorable sentences than White offenders, suggest that the influence of race and ethnicity on sentencing outcomes is not yet fully understood, especially for exceptionally violent crimes.

Limitations

The current study's research design contains several important limitations.

For one, the primary focus of this study, immigration, is obscured by being accounted for in a composite measure alongside race. Race of the offender is known to be a profoundly relevant predictor of sentencing outcomes; the strength of this effect could easily obscure any impact that immigrant status may have. Judges may be using Hispanic race as a proxy for immigration, suspecting that most Hispanic offenders are immigrants and sentencing all Hispanics similarly regardless of individual immigration status. With both factors combined into one variable, those suppositions cannot be tested at all.

Additionally, the dataset used in this study makes no distinction between documented and undocumented immigrants, further failing to account for a potentially relevant distinction. Negative stereotypes and public opinions surrounding undocumented immigrants are far more powerful and pervasive than those surrounding documented immigrants; it is reasonable to hypothesize that judges might view undocumented immigrants more unfavorably than those who are documented.

The primary independent variable is not the only one in this research design that was heavily simplified. While many studies of sentencing outcomes use rigorous ordinal measures of offense severity, the dichotomous measure employed in this study may

obscure significant variation in sentencing practices between negligent homicide, manslaughter, and non-capital murder.

Some other potentially relevant predictors were not just simplified but were entirely absent from this analysis. Victim characteristics, such as race, gender, and relationship to offender, were not controlled for despite their relevance in previous explorations of violent crime sentencing, especially in capital murder cases. Additionally, other case details, such as the type of weapon used, type of attorney employed, and whether the offender was identified as a gang member, were not accounted for, though they have been known to influence sentencing outcomes in prior studies.

Also, while race, gender, and age were accounted for, intersectionality was not. Due to an insufficient sample size, interaction effects were not explored in this model, though recent literature has firmly established that the interactions of demographic variables are far more informative than main effects in sentencing research.

Many of these limitations could be overcome with a larger dataset, if one exists, allowing for more precise, comprehensive variables and more rigorous statistical methods, such as linear regression or, better yet, multi-level models which account for theoretically relevant macro-level contexts. Due to the relatively small number of homicides committed in even the largest of the United States' fifty state jurisdictions, however, it is difficult to assemble a sufficiently large number of homicide-specific cases.

CHAPTER VI

Conclusion

As the proportion of immigrants living in the United States continues to increase, an ever-greater number of immigrants will continue to come into contact with the criminal justice system. Ensuring that the treatment of this minority group in the sentencing process is equitable requires that researchers begin to account for citizenship status in their analyses of disparities in sentencing outcomes whenever possible.

This study found no concrete support for the hypothesis that immigrants are treated differently in the sentencing process, though the strong theoretical connection between stereotypes, such as popular, negative ones about immigrants, and the discretionary decision-making processes of judges is too compelling to dismiss. As immigrants are widely believed to be especially immoral, dangerous, or incompatible with U.S. society, it is too likely to ignore the possibility that judges may act on internalized biases derived from these unsubstantiated beliefs, more harshly punishing immigrants due to being perceived as more blameworthy or dangerous just as is done with young, minority, male offenders. It is also possible, however, that immigrants may receive more lenient treatment with regards to sentence length due to the practical concern that they cannot be deported until they finish an incarceration sentence for violent offenses such as homicide.

Additionally, this study lends support to the idea that particularly extreme or uncommon crimes, such as homicide, should be more commonly accounted for in sentencing literature. It is possible that judges do not consider the same balance of factors when making sentencing decisions for homicide offenders as they do for petty property

crimes; even the most predominant explanations of sentencing disparity have not yet been

comprehensively applied to some of the more uncommon offenses, creating a blind spot

in our current understanding that only more rigorous future studies can sufficiently

explore.

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