

SAME CRIME: DIFFERENT PUNISHMENT? INVESTIGATING SENTENCING DISPARITIES BETWEEN IRISH AND NON-IRISH NATIONALS IN THE IRISH CRIMINAL JUSTICE SYSTEM

AVRIL MARGARET BRANDON* and MICHAEL O'CONNELL

Ireland's economic growth from the late 1990s prompted sustained and diverse inward migration, resulting in substantial changes in the population and reshaping the social and cultural landscape. These shifts have also been visible among those processed by the criminal justice system, with a marked increase in the number of non-Irish nationals committed to Irish prisons. International research suggests that racism is a significant issue within criminal justice systems, with ethnic minority groups often disadvantaged. Despite these findings and the growth in non-Irish national prisoners, little research has assessed the impact of racial bias on Irish sentencing outcomes. This exploratory study examines whether disparities exist between the sentencing of Irish and non-Irish defendants, using data from the Irish Prison Service.

Key Words: sentencing, attitudes, imprisonment, bias, racism, prejudice

Introduction

It is a fundamental tenet of justice in modern democratic societies that all persons are to be treated fairly, with equal respect, and not be subject to any form of adverse discrimination, whether direct or indirect (Shute *et al.*, 2005). Symbolism of equality before the law is at the heart of legal systems, and thus, any prejudice in the enforcement or administration of law threatens this value and undermines trust in the criminal justice system (Steffensmeier and Demuth, 2000). As such, the question of whether the criminal justice system discriminates based on the ethnic, cultural or social groups of those involved is a pressing issue globally (Clark *et al.*, 2013).

The narrative of Ireland has historically been one of mass emigration. Until the economic growth of the 1990s, Ireland had largely been a net exporter of people and emigration to the United States, the United Kingdom, Canada and Australia tended to overshadow any discussion of immigration (Bracken, 2016). This paradigm shifted substantially between the 1990s and mid-2000s, during which employment opportunities and financial prosperity led to the inward migration of foreign national groups. Like the United Kingdom and Sweden, and unlike most of the pre-2004 European Union countries, Ireland did not place restrictions on the number of EU citizens allowed to enter the country, resulting in a sizable proportion of migrants from Eastern Europe and beyond (Bracken, 2016). Although the recent economic recession reduced migrant inflows, Ireland is now home to a sizable non-Irish national population, with evidence

*Avril Margaret Brandon, School of Psychology, University College Dublin, Belfield, Dublin 4, Ireland; Avril.Brandon@gmail.com, Avril.Brandon@ucdconnect.ie; Michael O'Connell, School of Psychology, University College Dublin, Belfield, Dublin 4, Ireland.

suggesting that its new status as a multicultural society will remain. The most recent census data estimate that 11.6 per cent of the population are of non-Irish nationality, the six largest groups of which are Polish, British, Lithuanian, Romanian, Latvian and Brazilian (CSO, 2017).

This ethnic and cultural diversification of Ireland's population has been reflected in the profile of those processed by the Irish criminal justice system. From 2001 onwards, Irish Prison Service statistics chart a marked and rapid increase in the proportion of non-Irish persons committed to Irish prisons, peaking in 2007 when almost one third of committals were those of foreign nationality. The most recent statistics available report that in 2014, approximately 17 per cent of all committals were of non-Irish nationality (2.21 per cent British, 9.27 per cent EU citizens) (Irish Prison Service, 2017). However, despite these figures and expressions of concern regarding inconsistencies in sentencing outcomes in Ireland (O'Malley, 2001; 2003; Law Reform Commission, 2013; O'Nolan, 2013), there has been a paucity of research to date examining whether disparities exist between the sentencing of Irish and non-Irish defendants (MacGréil, 2011; Bracken, 2015). Furthermore, the ethnic monitoring of prisoners has not yet been introduced in Ireland, resulting in a distinct inability to draw meaningful conclusions about possible ethnic disparities in Irish sentencing.

The first section of this article sets out to briefly describe the Irish court system and the prevalence of judicial discretion. The second section will reflect on international research, discussing the potential areas in which ethnic bias may arise throughout the criminal justice system, from point of contact with law enforcement to imprisonment. The third section discusses the analysis of Irish Prison Service sentencing data and aims to ascertain whether, in the absence of data relating to prisoner ethnicity, sentencing disparities along national lines exist in Ireland. The final section will reflect on the results, the strengths and limitations of the present study and suggestions for research moving forward.

Sentencing in Ireland

The Republic of Ireland has one of the most unstructured sentencing systems in the common-law world, wherein sentencing policy has largely been developed by judges on an *ad hoc* basis (Maguire, 2016). Though at the bottom of the hierarchal Irish court system, District Courts exert a critical influence on the criminal justice system, dealing with over 90 per cent of cases and the majority of committals to Irish prisons (O'Nolan, 2013). While superior courts dispose of serious crimes, often with mandatory sentences in place, District Court judges enjoy general sentencing discretion and are not required to provide justification for their decision. In the absence of a coherent sentencing framework from the legislature, the primary source of sentencing guidance has been based on the principle of proportionality (Maguire, 2016). To this end, it is considered a constitutional requirement that the sentence must be proportionate to both the circumstances of the crime and the circumstances of the criminal. However, although there is an obligation on a court to *consider* and give due weight to all mitigating factors present, and while this should usually result in a reduction in proportionate sentence, a court may exercise its discretion not to decrease the penalty. Maguire (2016) considers that in the absence of legislative guidance, the development of the

principle of proportionality in sentencing as a guide to judges exercising their sentencing discretion is a considerable achievement, but notes that its ability to guide judicial sentencing is undermined by several factors. As judges in Ireland are free to choose from a number of sentencing aims, including retribution, deterrence, public protection and rehabilitation, each requiring a different approach, variations in sentencing outcome may easily arise. Additionally, the principle of proportionality remains relatively broad and, thus, may be considered to lack the specificity necessary to truly guide the exercise of sentencing discretion.

Maguire's concerns are supported by statistics released by the Courts Service of Ireland (Courts Service, 2008, cited in [C. O'Nolan, 2013: 15](#)), which have revealed significant variation and, ultimately, a lack of consistency in sentencing between District Court judges. Furthermore, the absence of transcripts or audio recordings from District Court cases has added to a sense of limited accountability for those in authority. In 2013, the Law Reform Commission noted findings of inconsistency in sentencing and a visible absence of relevant guidance in the District Courts. Recommendations have been made for the establishment of a Judicial Council—in the Judicial Council Bill (2009)—to oversee the formulation of sentencing guidelines; however, this has not yet been enacted ([Maguire, 2016](#)).

The impact of racism

Prejudice is a preconceived negative bias towards a category of people based on factors such as ethnicity and nationality ([Allport, 1954; MacGréil, 2011](#)). Over the last century, socio-psychological research has noted distinct shifts in the ways prejudice is expressed ([Dovidio and Gaertner, 1999](#)). While explicit prejudice occurs and is expressed in a conscious mode, for example through segregation legislation, implicit racial or ethnic bias operates outside an individual's awareness and represents introspective, unidentified or inaccurately identified traces of experience that produce automatic positive or negative feelings, thoughts or actions towards social groups ([Greenwald and Banaji, 1995; Gawronski and De Houwer, 2014](#)). As such, majority group members may endorse egalitarian values and regard themselves to be non-prejudiced, while continuing to harbour unconscious negativity towards minorities ([Dovidio et al., 1997; Durrheim, 2012](#)). This negativity may be expressed in ambiguous situations, during which the behaviour can be rationalized and attributed to non-racial factors, falling outside the fear of violating 'social norms'. It is particularly influential when individuals have limited time and must make quick decisions with incomplete information ([Graham and Lowery, 2004; Richardson and Goff, 2013](#)). The impact of implicit racial or ethnic bias in quick decision-making may therefore be highly relevant to criminal justice systems. International research indicates that implicit racism is a major problem within criminal justice systems, with punitive attitudes and outcomes heavily impacted on by the ethnicities of those involved ([Eberhardt et al., 2006; Eberhardt and Hetey, 2014; Glaser et al., 2015; Hunt, 2015](#)).

Minority over-representation

The over-representation of ethnic minority and/or indigenous groups has been recognized in criminal justice systems internationally. In New Zealand, the indigenous Māori

people comprise approximately 14 per cent of the overall population, but 50.8 per cent of prisoners (Craig *et al.*, 2013), Aboriginal and Torres Strait Islanders account for 2 per cent of the Australian population and 27 per cent of prisoners (Australian Bureau of Statistics, 2016); and in Canada, Aboriginal people—3 per cent of the Canadian population—account for approximately 22 per cent of admissions to provincial/territorial sentenced custody, 17 per cent of admissions to federal custody, 17 per cent of admissions to remand, 17 per cent of probation admissions and 19 per cent of admissions to conditional sentence (Bracken *et al.*, 2009).

In the United Kingdom, concerns have been expressed regarding sentencing consistency, with evidence alluding to the differential treatment of ethnic minority groups at different stages of the criminal justice system (Shute *et al.*, 2005). Following claims that the courts were operating a blanket sentencing policy for all youths of colour, the English Home Office began to monitor prisoner ethnicity in 1984. In 1992, Roger Hood published a report examining over 2,800 comparable cases involving ethnic minority and White-British defendants. Hood concluded that individuals of African-Caribbean descent were greatly over-represented in the flow of cases into the respective English courts and that a higher proportion of these individuals were sentenced to imprisonment than their White-British or Asian counterparts. Although Hood acknowledged that legitimate factors accounted for most of the disparity, the probability of an African-Caribbean male being sentenced to prison remained 5–8 per cent higher than expected on average and 23 per cent higher in one of the courts studied (Hood, 1992).

The Lammy Report (2017) echoed these findings, reporting that individuals from Black, Asian and Minority Ethnic (BAME) backgrounds were significantly over-represented in custodial institutions in England and Wales—comprising 14 per cent of the general population, but 25 per cent of the adult prison population. This disproportionality was further pronounced in the youth justice system, with over 40 per cent of young people in youth custody from ethnic minority backgrounds. Within this group, individuals of African descent were most heavily over-represented, comprising just 3 per cent of the total population but 12 per cent of the adult prison population and over 20 per cent of children in custody.

Perhaps the best-documented example of minority over-representation in a criminal justice system is that of African-Americans in prisons across the United States. Approximately 13 per cent of the American population are African-American, yet in 2017, they accounted for 37.7 per cent of those incarcerated (Federal Bureau of Prisons, 2017). African-American males are 6.5 times more likely to be incarcerated than White males, with recent estimates suggesting that for African-American males in their 30s, one in ten is in prison or jail on any given day (Espinoza *et al.*, 2015; The Sentencing Project, 2017). In 12 states, over half of the prison population is African-American; this percentage is highest in Maryland at 72 per cent. Even in Hawaii, the state with the lowest racial disparity, the rate of imprisonment for African-Americans is more than twice that of Whites (The Sentencing Project, 2016). If this trend continues, Mauer (2011) suggests that one in every three African-American males born today can expect to go to prison in his lifetime, compared with approximately one in every seventeen White males. The over-representation of people of colour in the criminal justice system has come to be referred to as Disproportionate Minority Contact (DMC) and is acknowledged as a serious issue in American society (Hartney and Vuong, 2009).

Although limited statistical data exist, observational research in the Irish District Courts suggests that several non-Irish nationalities may be over-represented (O’Nolan, 2013). Based on previous immigration figures, O’Nolan hypothesized that members of the Polish, Lithuanian and Chinese communities would be observed with the most frequency; however, this was not supported. In contrast, Nigerians appeared often, commonly charged with motoring offences and theft. Similarly, Romanians appeared to be over-represented—principally due to a large number of Roma community members observed (approximately 90 per cent of the Roma community are of Romanian nationality) (Horgan, 2007). Furthermore, although criminal justice statistical data do not yet independently categorize members of the Irish indigenous Travelling community, it must be noted that they appear to be significantly over-represented and treated more punitively. A report published by the [Irish Penal Reform Trust \(2014\)](#) suggests that Traveller males are between 5 and 11 times more likely to be imprisoned than males from the Irish settled-majority community. Similarly, Traveller females face a risk of imprisonment as much as 18–22 times higher than that of the general population. As further empirical data are not available, the role of Travellers within the present study cannot be statistically accounted for and will require further research. The implications of this will be noted in the discussion.

When investigating the cause of ethnic minority over-representation within international criminal justice systems, it is necessary to reflect on three possible explanations. The first is that ethnic minority groups simply commit more crime than the majority ethnic group. The second possible explanation is that they are targeted by law enforcement and ‘over-policed’, resulting in disproportionate arrest rates. This may be due to conscious or unconscious ethnic profiling by officers, concentrated policing in certain areas or policies that disproportionately impact minorities. Finally, the third possible explanation considers that ethnic minorities are given harsher sentences than the majority group for proportionately similar crimes. This may occur as a result of implicit or explicit racial or ethnic bias by criminal justice agencies.

Explanation 1. Do ethnic minorities commit more crime?

One widely proposed reason for disparities in imprisonment is that ethnic and racial minorities are prone to commit more crime than majority groups. This concept has received both support and criticism. On one the hand, proponents of this idea point to data which suggests that in the United States, African-Americans—particularly males—tend to commit violent and property crimes at higher rates than other groups. However, opponents of this minority generalization consider that one’s proclivity towards criminal behaviour is often better explained by socioeconomic factors than ethnicity, including poverty, employment and family differences ([Irish Penal Reform Trust, 2014](#); [The Sentencing Project, 2016](#)). Predominantly White communities seldom suffer the same levels of high and persistent unemployment, removal of commercial and civic venues and family dissolution as those of African descent. The [Economic Policy Institute \(2017\)](#) noted that approximately 27.4 per cent of African-Americans are now living in poverty compared with 9.9 per cent of Whites. Similarly, [Lammy \(2017\)](#) reports that individuals from an African background are more than twice as likely to

live in poverty than those from a White background in England and Wales. These differences in disadvantage may explain a substantial portion of the disparities in crime committal rates.

The impact of this structural disadvantage begins in early life. The Economic Policy Institute estimate that 45.8 per cent of African-American children under the age of six live in poverty (compared with 14.5 per cent of White children in the United States). As such, [the Sentencing Project \(2016\)](#) considers that it is not necessarily the case that ethnic minority youths have a greater tendency to engage in criminal behaviour, but rather than uneven opportunities from the start create inequalities that are ultimately related to who goes on to commit crime and who is psychologically and emotionally equipped to desist. More specifically, because of these structural differences, ethnic minority youths are more likely to be exposed to violence in their family and/or the community, experience higher levels of unemployment, come from unstable family systems and leave education at a younger age. In their analysis of the Pittsburgh Youth Study, [Loeber and Farrington \(2011\)](#) found that African-American boys were more disadvantaged than White boys on socioeconomic/demographic factors, including coming from a broken home, a family in receipt of welfare, a 'bad' neighbourhood and a young mother. A resulting lack of legitimate opportunities for securing income, referred to as 'strain theory', has been widely cited as a frequent cause for criminality ([Agnew, 1992](#)). Nevertheless, [Loeber and Farrington \(2011\)](#) concluded that when social and structural factors of the Pittsburgh Youth Study cohort had been taken into account, ethnicity did not predict violence or homicide offending.

Although there is limited Irish research examining the social profile of prisoners, it is widely accepted that most of those incarcerated have a history of social exclusion and unemployment, with high levels of familial, educational and health disadvantage ([IPRT, 2012](#); [O'Nolan, 2013](#)). These factors are not limited to those of Irish nationality, and in fact, it may be argued that those of non-Irish nationality in Ireland are a particularly vulnerable demographic, with less social support, unequal access to services and benefits, fewer employment opportunities and poorer English language proficiency heightening their propensity to turn to crime ([O'Nolan, 2013](#)).

It may also be suggested that some offences by their very nature disproportionately impact or target ethnic minority groups with lower economic status. In the United States, policies and political rhetoric surrounding the 'War on Drugs' has had a substantial impact on the African-American community ([Wacquant, 2001](#)), with African-Americans almost four times more likely than Whites to be arrested for drug offences and 2.5 times more likely to be arrested for drug possession. As evidence suggests that Whites and African-Americans use drugs at approximately the same rate, this may be seen to reflect the disproportionate targeting of their community based on law enforcement policies, rather than higher crime committal rates. In the decade between 1995 and 2005, African-Americans comprised approximately 13 per cent of all drug users, but 36 per cent of drug-related arrests and 46 per cent of those convicted for drug offences ([The Sentencing Project, 2016](#)).

In Ireland, offences including non-payment of fines, vagrancy and begging may be seen to disproportionately impact minorities, including refugees and economic migrants. The Court Service of Ireland notes that fines are the most common form of punishment from the District Court; however, setting high fines may result in the indirect imposition of a custodial sentence ([Hamilton, 2005](#)). Imprisonment due to the

non-payment of fines has significant social and economic costs, contributing markedly to the number of committals to Irish prisons. The Criminal Justice (Public Order) Act 2011 criminalizes begging when accompanied by obstruction, harassment or intimidation, and permits police officers to arrest individuals begging near certain areas, including ATMs, vending machines and entrances to dwellings or business premises. These persons may be fined up to €500 or imprisoned for one month, with a further €500 fine for failure to provide a name and address. In its first two months, this Act led to the arrest of 177 individuals and has been met with criticism from the Irish Human Rights Commission (IHRC), who suggests that it disproportionately penalizes the most vulnerable members of society (IPRT, 2012). Based on these findings, the potential disproportionate targeting of ethnic minorities by law enforcement officers, explicitly and/or implicitly, must be considered. Are ethnic minorities committing more crime, or are they simply more likely to be caught?

Explanation 2. Are ethnic minorities targeted by police officers?

Racial and ethnic disparities are often evident at the initial point of contact with police officers. Ethnic minority communities tend to be ‘over-policed’, through high levels of harassment, confrontational policing styles and overt misconduct in various forms; and yet, ‘under-protected’, with their victimization accorded lesser significance by criminal justice agents (Mulcahy, 2011). The outcome of this is that internationally, relations between law enforcement and ethnic minority communities are often characterized by a lack of confidence, suspicion and hostility. While police officers often explain this disproportionate contact as reflective of group crime rates, the previous findings relating to levels of minority criminality suggest that bias may play a modest, but significant, role (Quinton, 2015).

Disproportionate contact between police officers and ethnic minorities has been well documented in the United States, with ethnic profiling cited as a contributing factor (Gelman *et al.*, 2007). Although there is no internationally agreed on definition of ethnic profiling, it has been generally interpreted to mean the practice of stopping someone for questioning or searching based on their ethnic appearance, rather than because of their behaviour or because they match an individual suspect description (Goodey, 2006). As the nature of law enforcement frequently requires snap-judgements about the danger posed by suspects, subconscious racial or ethnic associations may influence the way in which officers perform their jobs (The Sentencing Project, 2013). The most widely publicized example of this has been the ‘stop-and-search’ tactic employed by the New York Police Department. These stops were initially predicated on zero-tolerance policies that focused on illegal firearm possession and drug trafficking—significantly linked to the ‘War on Drugs’; however, their focus on minority communities has served only to widen the gap between ethnic minorities and the police force (Gelman *et al.*, 2007). Between 2010 and 2012, African-Americans—approximately 25 per cent of the city’s population, accounted for 52 per cent of those stopped. In contrast, Whites accounted for 44 per cent of the city’s population, but just 9 per cent of stops. Despite these wide inconsistencies in stop-and-search rates, arrest figures were approximately the same across ethnic groups, and African-Americans were slightly less likely than Whites to be carrying weapons or contraband such as drugs (The Sentencing Project,

2013). Gelman *et al.* (2007) analysed reports from 125,000 stops by the New York Police Department and found that the disproportionate targeting of African-Americans remained even after controlling for precinct variability and ethnicity-specific estimates of criminal behaviour. Racial disparities have also been reported in vehicle stop-and-search policies (Harris, 2002). The Sentencing Project (2013) reflects on research that reported that although African-Americans accounted for just 15 per cent of drivers in a specific area, they comprised 42 per cent of stops and 73 per cent of arrests—despite White drivers violating traffic laws at almost identical rates. Furthermore, although Whites were viewed with less suspicion by law enforcement, they were twice as likely to be carrying illegal drugs.

Following the Stephen Lawrence Inquiry (MacPherson, 1999) and suggestions of institutional racism, the United Kingdom sought to monitor the presence of ethnic minorities at all stages of the criminal justice system. Despite recent reforms to increase police accountability and good practice, the latest published figures show that members of ethnic minority groups are three times more likely to be stopped and searched than those who are White. In particular, those who are of African descent are over six times more likely to be stopped than their White counterparts (Quinton, 2015; Lammy, 2017). Lammy (2017) notes that the disproportionate use of stop-and-search tactics on ethnic minority communities continues to drain trust in the criminal justice system across England and Wales.

Although there is a notable lack of data on the use of ethnic profiling—and a complete absence of ethnic monitoring data—in an Irish context to date, reports of ethnic profiling by police officers have emerged. In 2004, a Human Rights Audit conducted by An Garda Síochána (the Irish police force) found evidence of institutional racism against certain groups, including Nigerian immigrants. The European Union Minorities and Discrimination Survey (EU-MIDIS), published by the EU Fundamental Rights Agency (2009) found that Ireland had the second highest rate of police stops in the EU and 59 per cent of sub-Saharan Africans reported being stopped by police in the last 12 months. Ninety-three per cent of these stops had occurred when the individual was in a vehicle or on a motorbike. This may be reflective of O’Nolan’s frequent observations of Nigerians in the District Court for motoring related offences. Furthermore, as many non-Irish nationals are not visibly distinct from Irish nationals (the six largest non-national groups in Ireland also have majority Caucasian populations), it may be noteworthy that the group reported to be over-represented in the District Courts for offences typically involving police stop-and-search tactics are from a ‘visible’ ethnic minority—those of African descent (O’Nolan, 2013; CSO, 2017). The disproportionate stopping of minority drivers has come to be referred to internationally as ‘Driving While Black’ (Harris, 1997; 2002).

The influence of the Irish police force within the courtroom also cannot be overlooked, and with that, further consideration must be given to the potential impact of officers’ racial or ethnic bias on punitive attitudes. Although the Office of the Director of Public Prosecutions (DPP) was established to facilitate the making of judicial decisions independently of other bodies and institutions, including the government and police force, a substantial majority of District Court cases are not referred to them. As such, the roles of investigating and prosecuting are generally taken by a police officer of the rank sergeant or higher. As prosecution evidence in the District Court is largely based on witness testimony, the word of the arresting officer is often paramount in

securing a conviction or release. O’Nolan (2013) observed that defendants who argued against the officer were generally not believed, with some judges hesitant to question the accuracy of the police. Additionally, although the right to an interpreter for defendants with limited English language proficiency is addressed under Article 6(3)(e) of the European Convention on Human Rights, defendants do not have a statutory right to an interpreter in Ireland, with the onus often lying with the police officer to decide whether one is required (Phelan, 2011). These inconsistencies in the treatment of non-Irish nationals during courtroom proceedings may significantly impact sentencing outcomes.

Although it may be argued that the very nature of some offences may leave police officers with little option but to arrest a disproportionate number of non-Irish nationals, for other crimes, no such justification can be cited. As such, it is necessary that we ask—are non-Irish nationals receiving harsher sentences than their Irish counterparts, when all else is equal?

Explanation 3. Do minorities receive harsher sentences?

Sentencing represents a key symbolic moment in a larger criminal justice process and is undoubtedly influenced by the stages that have gone before (Maguire, 2016). The impact of ethnicity in sentencing outcomes has been well documented in international research, impacting capital punishment, sympathy for victims of crime and sentence lengths (Eberhardt *et al.*, 2006; Lynch and Haney, 2011). Research conducted by Hopkins *et al.* (2016) sought to examine the associations between ethnicity and sentencing in the Crown Court in England and Wales. This work demonstrated that for offenders convicted of recordable, indictable offences in the Crown Court in 2015, those self-reporting as Asian, Black, Chinese or other faced increased odds of imprisonment when compared with their White counterparts. Previous research conducted by Hopkins (2015) found that among a large sample of offenders convicted in England and Wales in 2011, police-recorded ethnicity was independently associated with being sentenced to prison when criminal record, offence and additional relevant characteristics were controlled. Although the effect was small, this analysis found that ethnic minority offenders—particularly males—were more likely to be sentenced to prison than their White counterparts—particularly White females. Furthermore, although the analysis reported no effect of ethnicity within acquisitive violence and sexual offences, the odds of imprisonment for ethnic minority individuals convicted of drug offences were approximately 240 per cent higher than those for individuals from a self-reported White background.

Following a meta-analysis of 71 studies examining the interaction of ethnicity and sentencing, Mitchell (2005) also found that independent of other measured factors, such as criminal history and offence severity, on average, African-Americans were sentenced more harshly than Whites. Mustard (2001) reported that federal judges imposed sentences on African-Americans that were 12 per cent longer than those imposed on White males convicted of the same offence and with comparable criminal histories. Racial and ethnic disparities also appear to increase with the severity of the sentence imposed; two thirds of those serving life sentences in the United States are non-White (66.4 per cent). Although African-Americans make up just 13 per cent of the total

population, they constitute 56.4 per cent of those sentenced to life without parole and 56.1 per cent of those who received a life without parole sentence as a juvenile. These figures are substantially higher in some states, with non-Whites making up 83.7 per cent of those sentenced to life in New York (Ogletree and Sarat, 2012).

When discussing capital punishment, Eberhardt *et al.* (2006) consider that the ethnicity of both the defendant and the victim matters. Even when statistically controlling for a variety of non-racial factors that may influence sentencing, numerous researchers have found that African-Americans are more likely to be sentenced to death than White defendants, and that murderers of White victims are more likely to receive the death penalty than murderers of African-American victims. Additionally, Eberhardt *et al.* (2006) concluded that in cases with a White victim, the probability of receiving the death penalty is significantly influenced by the degree to which the defendant is perceived to have a stereotypically 'African' appearance. Baldus *et al.* (1990) examined over 2,000 capital murder cases that occurred in Georgia, United States, during the 1970s. Their analysis concluded that, even when controlling for non-racial and ethnic variables, defendants charged with killing a White victim were 4.3 times more likely to receive the death penalty than defendants convicted of killing an African-American victim.

Present study

The present study is the first to examine sentencing disparities by offender nationality in an Irish context and poses the question—are non-Irish nationals receiving harsher sentences than Irish nationals, for the same offence? Unlike international research that has largely addressed sentencing disparities along racial lines, in the absence of an ethnic monitoring system within the Irish Prison Service, the present study categorizes prisoners based solely on nationality. This is of further relevance in an Irish context wherein a significant number of non-Irish nationals are not 'visibly' distinct to Irish nationals. As a result, disparities may arise from a broader bias towards national and cultural minorities, rather than the explicit or implicit racism described in international literature. Based on the findings of the three exploratory questions—do minorities commit more crime; are minorities disproportionately targeted by the police; and do minorities receive harsher sentences, the authors examined whether sentences given to Irish and non-Irish nationals differed in any substantial and systematic way. Particular consideration was given to offences relating to financial disadvantage (theft, robbery) and those which may be subject to ethnic profiling, as discussed in international research (motoring offences, drug offences).

Sample

An initial data set comprising all cases that resulted in imprisonment from a consecutive 12-month period between 2015 and 2017 was provided by the Irish Prison Service. The data set disclosed whether the offender was of Irish nationality, their age range, the offence, the resulting custodial sentence range and whether the prisoner had previously received a custodial sentence. To facilitate comprehensive data analysis, offences with 55 or more cases were identified, resulting in 35 independent offence categories.

This process removed offences with mandatory sentences, such as homicide and certain sexual offences, and offences with a small number of committals, enabling like-for-like comparative analysis. Additionally, offences pertaining to breaches of immigration legislation were removed in an effort to include only resident non-Irish nationals. Offence categories were ranked by severity, based on their mean sentence length in months. All other offences were recoded to 0 and were excluded from analysis.

The revised data set of 35 offence categories was comprised of 11,158 cases, of which 9,949 involved an offender of Irish nationality and 1,209 involved an offender of non-Irish nationality. The sample comprised 8,691 males (of which 1,049, or 12.07 per cent, were non-Irish nationals) and 2,467 females (of which 160, or 6.5 per cent, were non-Irish nationals). The age range of the revised sample was 17–90 years ($M = 33.41$ years, $SD = 10.43$ years). The mean age of Irish and non-Irish nationals was 33.83 and 34.96 years, respectively.

Results

Non-Irish national representation

Non-Irish nationals comprised 10.84 per cent of the committals across the 35 offence categories. Primary analysis aimed to assess if, and where, non-Irish nationals were over- or under-represented in these offences. Using cross tabulations, it was possible to observe offences in which the number of non-Irish national committals were higher or lower than expected (Table 1). A Bonferroni correction was made to account for multiple comparisons. Non-Irish nationals were statistically significantly under-represented in the offence categories, ‘attempted robbery’, ‘vehicle theft’, ‘criminal damage’, ‘robbery’, ‘parking fine offences’, ‘assault causing harm’, ‘intoxication in a public place’, ‘threatening behaviour in a public place’, ‘unlawful possession of drugs’ and ‘no television licence’. They were statistically significantly over-represented in the offence categories, ‘driving under the influence’, ‘no vehicle insurance’, ‘theft’ and ‘possession of drugs for sale/supply (to the value of <€13,000)’. The implications of non-Irish national over-representation in the offence, ‘possession of drugs for sale/supply (to the value of <€13,000)’ will be explored in the discussion.

Nationality bias in sentencing

Using *t*-tests, the authors examined whether the mean length of sentences received by non-Irish nationals differed significantly to those received by Irish nationals. Statistically significant sentencing disparities were observed in six categories ($p < 0.05$): ‘assault’, ‘no road tax’, ‘estreatment of bail’ (wherein the defendant fails to pay the bail amount within the time specified and a warrant of committal to prison is issued; Courts Service, 2017), ‘using a vehicle without an NCT (national car test) certificate’, ‘failure to comply with a garda’ and ‘possession of drugs for sale/supply (to the value of <€13,000)’. Irish nationals were found to have received statistically significantly longer sentences for the offences, ‘assault’ and ‘no road tax’. Non-Irish nationals were found to have received statistically significantly longer sentences for the offences, ‘estreatment of bail’, ‘using a vehicle without an NCT certificate’, ‘failure to comply with a garda’ and ‘possession of

TABLE 1 *Are non-Irish over- or under-represented among Irish committals? Percentages of Irish and non-Irish committals by offence type. N = 11,158. Overall % of non-Irish nationals = 10.8%*

Offence group	Percentage of Irish	Percentage of non-Irish	Adjusted standardized residual (z score)
Attempted robbery*	100.0	0.0	-2.9
Vehicle theft*	99.0	1.0	-3.2
Criminal damage*	95.7	4.3	-3.7
Robbery*	95.0	5.0	-2.8
Parking fine offences*	93.8	6.2	-2.9
Assault causing harm*	93.4	6.6	-2.3
Adult failing to wear safety belt	92.8	7.2	-1.4
Intoxication in a public place*	92.6	7.4	-2.6
Threatening behaviour in public place*	92.5	7.5	-2.6
Failure to comply with garda (Police)	92.5	7.5	-1.0
Driving without a licence	92.3	7.7	-1.5
Unlawful possession of drugs*	92.2	7.8	-2.2
Burglary	92.2	7.8	-1.7
Vehicle without an NCT certificate	92.1	7.9	-1.5
Assault	91.7	8.3	-1.0
No television licence*	91.5	8.5	-2.1
Careless driving	91.5	8.5	-1.0
Parking location offences	91.0	9.0	-1.4
Breach of barring order	90.0	9.1	-0.4
Oil-related offences	90.8	9.2	-0.5
Possession of knives and other	90.0	10.0	-0.3
No tax disc displayed	89.8	10.2	-0.3
Car fault related	89.3	10.7	-0.1
Speeding	89.0	11.0	0.1
Trespass with intent	88.7	11.3	0.1
Estreatment of bail	88.5	11.5	0.8
No road tax	88.5	11.5	0.2
Dangerous driving	88.1	11.9	0.4
Holding a phone while driving	87.2	12.8	0.8
Failure to appear in court	87.1	12.9	0.7
Handling stolen property	84.0	16.0	1.7
Driving under the influence*	83.5	16.5	2.9
No vehicle insurance*	83.3	16.7	7.3
Theft*	82.1	17.9	6.9
Drugs for sale/supply (value < €13,000)*	80.7	19.3	4.5

Disproportionately low (-) or high (+) numbers of non-Irish sentenced to prison are indicated by z scores; these indicate effect sizes. Offences ranked from smallest to largest proportion of non-Irish offenders.

*z scores whose magnitude indicate a Bonferroni-corrected level of significance < 0.05.

drugs for sale/supply (to the value of <€13,000)' (Table 2). Where a *t*-test was at or below $p = 0.05$, Cohen's *d* effect size was measured and has been listed.

To account for the potential impact of gender on sentencing outcomes, the sample was sub-divided by gender. Non-Irish males accounted for 12.07 per cent of males. In the male-only sample, an analysis of variance revealed a statistically significant difference in sentencing between Irish and non-Irish for the categories 'estreatment of

TABLE 2 Sentencing disparities between Irish and non-Irish offenders in mean sentence length (months) by offence category, with t-tests of means

Offence	Irish offenders mean sentence	Non-Irish offenders mean sentence	Sentence difference (Irish offender minus non-Irish offender) in months	T score and its <i>p</i>	If <i>p</i> < 0.05, Cohen's <i>d</i> for effect size
Assault	11.12	4.96	6.16	3.71, <0.01	0.67 (medium)
Vehicle theft	13.37	9.0	4.37	0.28, 0.78	
Possession of knives and other	7.57	4.67	2.90	0.80, 0.42	
Handling stolen property	9.91	7.15	2.76	0.98, 0.33	
Criminal damage	8.95	6.81	2.14	0.72, 0.47	
Entering a building with intent to commit offence	4.96	3.43	1.53	1.06, 0.29	
Driving under the influence	2.09	1.93	0.16	0.61, 0.54	
No road tax	1.65	1.5	0.15	2.50, 0.01	0.31 (small)
Threatening behaviour public place	1.93	1.78	0.15	0.41, 0.68	
Oil-related offences	1.6	1.5	0.10	0.55, 0.58	
Parking location offences	1.56	1.5	0.06	0.31, 0.75	
Speeding	1.52	1.5	0.02	0.50, 0.62	
Careless driving	1.52	1.5	0.02	0.30, 0.76	
Careless driving	1.51	1.5	0.01	0.43, 0.67	
No television licence	1.53	1.58	-0.05	-0.62, 0.54	
Intoxication in a public place	1.51	1.62	-0.11	-2.91, <0.01	0.12 (small)
Estreatment of bail	1.51	1.62	-0.11	-1.87, 0.06	
No tax disc displayed	1.52	1.63	-0.11	-1.00, 0.32	
No vehicle insurance	2.29	2.42	-0.13	-2.24, 0.03	0.28 (small)
Using a vehicle without an NCT certificate	1.51	1.66	-0.15	-0.53, 0.59	
Driving without a licence	1.67	1.85	-0.18	-0.31, 0.76	
Failure to appear	4.23	4.5	-0.27	-0.06, 0.95	
Assault causing harm	22.53	22.83	-0.30	-0.23, 0.82	
Dangerous driving	5.42	5.89	-0.47	-0.36, 0.72	
Breach of barring order	4.86	5.40	-0.54	-0.19, 0.85	
Burglary	17.19	17.93	-0.74	-1.27, 0.20	
Theft	6.61	7.57	-0.96	-1.99, 0.05	0.85 (large)
Failure to comply with police	2.37	3.64	-1.27	-0.61, 0.54	
Unlawful possession of drugs	4.94	6.38	-1.44	-2.52, 0.01	0.33 (small)
Drugs for sale/supply (<€13,000)	21.73	32.68	-10.95		

Offences are ranked by sentence differences between Irish and non-Irish offenders.

bail' and 'possession of drugs for sale/supply (to the value of <€13,000)'. A regression analysis showed that disparities between Irish and non-Irish males for the latter crime were substantial, whereby non-Irish males received on average 10.78 months longer than Irish males ($p = 0.018$). For 'estreatment of bail' offences, non-Irish males received a modest, but statistically significant average of 0.14 months longer than Irish males ($p = 0.005$). Similar findings were noted in the female-only sample, in which 6.5 per cent were of non-Irish nationality. For the offences, 'using a vehicle without an NCT certificate' and 'driving without a licence', non-Irish females received an average of 1.45 and 1.50 months longer than Irish females, respectively ($p < 0.001$).

The impact of a previous custodial sentence

In considering factors that may impact sentencing outcomes, it was necessary to examine the possible impact of a previous custodial sentence. Of the revised sample, 66.9 per cent of prisoners had previously served a custodial sentence. This included 72.6 per cent of Irish males, 57.7 per cent of non-Irish males, 54.2 per cent of Irish females and 39.4 per cent of non-Irish females. Controlling for previous custodial sentence, an analysis of variance revealed a statistically significant difference in sentencing outcome between Irish and non-Irish groups for two offences: 'estreatment of bail' and 'using a vehicle without an NCT certificate'. In both categories, a regression analysis showed that non-Irish nationals received modest, but statistically significantly longer sentences, 0.20 months and 0.31 months, respectively ($p = 0.001$; $p = 0.013$).

Discussion

The aim of this study was to investigate whether disparities exist between sentencing outcomes for Irish and non-Irish nationals. Data analyses suggest that there is a modest, but statistically significant difference between sentence lengths for Irish and non-Irish nationals for certain offences, whereby non-Irish nationals receive longer sentences than Irish nationals. Additionally, it has been noted that non-Irish nationals are statistically significantly over-represented for certain offences. As suggested, these offences are principally theft and motoring related. Disparities in sentencing outcomes remained when gender and previous custodial sentence were controlled, with non-Irish nationals receiving statistically significantly longer sentences in both male and female groups. Although the findings of this study suggest that bias may be an issue of note within the Irish criminal justice system, alternative possible explanations must be considered.

O'Nolan (2013) considers that non-Irish nationals may be at a distinct disadvantage due to their lack of knowledge of the Irish system, which may result in a higher rate of conviction. Lammy (2017) notes a similar trend among ethnic minority defendants in England and Wales, positing that a lack of trust in the criminal justice system may create hesitancy to trust the advice of legal agents or magistrates, instead favouring the move to a jury trial by pleading 'not guilty'. As admitting guilt earlier in the criminal justice process can result in community punishment rather than imprisonment, or the reduction of custodial sentences by up to a third, disparities in pleas between groups may exacerbate disparities in sentencing outcomes. Additionally, O'Nolan suggests that non-Irish nationals may be treated with a level of impatience or may be viewed as

something of a nuisance both by the judge and by their defending solicitor. Although we cannot infer that this would automatically translate into discriminatory sentencing practices, it may impede non-Irish nationals' access to services and support which would otherwise be available, for example interpreters, and ultimately negatively impact their defence. This can further contribute to minorities' lack of a trust in the criminal justice system, creating an 'us and them' dynamic and weakening the structures of law and order in our societies (Lammy, 2017).

As noted, members of the indigenous Irish Travelling community are suggested to be substantially over-represented in the Irish criminal justice system, receiving harsher penalties than the Irish-majority community. However, to date they remain largely invisible in official criminal justice statistics and have not been categorized independently of majority Irish prisoners in the present data set. As a result, it may be suggested that the inclusion of their sentences as 'Irish' has significantly decreased the disparities observed. This may be particularly relevant to motoring offences, wherein Travellers have expressed feeling targeted by the police (Mulcahy, 2011). Future research would benefit from isolating Traveller sentencing data for comparative analysis.

It is estimated that 2.48 per cent of non-Irish residents and 2.6 per cent of non-Irish prisoners are of British nationality (CSO, 2017; Irish Prison Service, 2017). As such, their potential presence among the non-Irish sentencing data cannot be overlooked. Bracken (2016) suggests that British migrants would likely not be considered as 'foreign' as those from Eastern Europe or outside the EU, but rather as somehow more directly connected to the country. In contrast, O'Nolan (2013) comments that British nationals observed in the North Eastern Court—located in close proximity to the Northern Ireland border—were treated in quite a different manner to Irish defendants and appeared principally on motoring and minor public order offences. Based on either account, and without the ability to isolate their data within 'non-Irish' committals, it must be considered that their presence may have impacted the disparities observed and warrants further examination.

In an effort to remove non-resident non-Irish nationals from the data set, offences pertaining the immigration legislation were not included in analysis. However, it must be considered that some of those committed for the offence, 'possession of drugs for sale/supply (to the value of <€13,000)', may be drug traffickers, and not generally resident in Ireland. As the present data set does not provide this level of detail, future research should endeavour to address this issue.

This study availed of a large data set, comprising all cases that resulted in imprisonment from a consecutive 12-month period between 2015 and 2017. While this substantial data size enabled advanced statistical analysis, it may be pertinent to note that specific details regarding each case, for example, mitigating or aggravating circumstances were not provided. As such, the analysis of this data is based solely on the figures available and cannot consider other factors in sentencing. A similar issue was faced in the research conducted by Hopkins *et al.* (2016). They note that their analysis did not take into account all factors that are used in making sentencing decisions, including mitigating and aggravating circumstances. They recommend that future analyses could include more detailed measures of offence seriousness to provide a fuller picture of the associations between ethnicity and sentencing. The present authors echo this recommendation.

As noted, the absence of ethnic monitoring data in the Irish Prison System means that current analysis can only draw on national disparities. The authors acknowledge that many non-Irish nationals will not be 'visibly' different to Irish nationals and posit that future research along ethnic-lines may observe larger disparities based on the findings of international research and the over-representation of visible ethnic minority non-nationals in the Irish District Court, as discussed by [O'Nolan \(2013\)](#). Nevertheless, the authors suggest that differences relating to language and culture may negatively impact non-Irish nationals, regardless of ethnicity. This is supported by [Hopkins \(2015\)](#), who noted that the odds of non-UK nationals being imprisoned were 56 per cent higher than those for UK nationals.

Conclusion

In a letter to the *Irish Times* newspaper in 2003, Professor Tom O'Malley noted that 'it is imperative that a serious study be undertaken of race and the criminal justice system, and that effective data systems should be put in place to monitor the outcome of key decisions, especially in relation to bail and sentence, as they affect different racial groups'. To date, no ethnic monitoring system has been implemented and the present study is the first to examine disparities between Irish and non-Irish nationals. The findings of this study report that, even when controlling for factors, including previous custodial sentence and gender, non-Irish nationals receive modest, but statistically significantly longer sentences than Irish nationals for the same criminal offence. This suggests that in the years since the [Law Reform Commission \(2013\)](#) report on sentencing, concerns regarding sentencing inconsistencies remain valid.

Although this study is not without limitations, these findings suggest that bias is occurring within the criminal justice system and warrants further examination. Additionally, due to the modest nature of the bias, it may not fully explain the disproportionate numbers of non-Irish nationals in prisons for certain offences, and alternative explanations must be considered. When faced with structural disadvantages, are non-Irish nationals simply committing some crimes more frequently than their Irish national counterparts? Are the sentences reflective of a greater perceived risk of recidivism, perhaps due to less social support on release? Or are they over-policed, as alleged by some minorities? Furthermore, despite the increasingly routine diversification of defendants, their ethnic, cultural and linguistic differences are still often viewed as problematic and may directly impact the sentences received. Many challenges occur for criminal justice agents who are not used to dealing with such diversity, and few additional resources have been developed, often leading to tensions between ensuring fair procedure and getting through the heavy workload of District Courts. To this end, the discovery of modest bias in the present study does not provide a final answer, but rather opens the issue up to more questions and exploratory discussion.

Moving forward in Ireland's ethnically diversifying society, [Mulcahy \(2011\)](#) discusses the concept of the 'policing diversity agenda' ([An Garda Síochána, 2001; 2009](#)) with trepidation. Although the measures comprising this policy aim to improve relations between the police and ethnic minority communities, with a focus on increasing minority recruitment and ensuring that minority victimization is dealt appropriately, Mulcahy suggests that there is a danger that this agenda assumes a level of homogeneity that

does not exist across ethnic minority communities, and still less within them. Maguire (2010) suggests that we are now in a position to learn from the mistakes and benefit from the successes of other jurisdictions that have attempted to reform sentencing in an effort to increase the consistency and equality of outcomes. To fully learn and develop from the insights of this study, it is important to assess what further factors may impact sentencing, beyond those described in quantitative data.

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