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Exploring sentencing: Sentencing theory and practice in contemporary criminal justice. Introduction

Refleksje nad wymiarem kary: teoria i praktyka współczesnego wymiaru sprawiedliwości. Wstęp

Abstract: Sentencing, imposition of punishment and possibly other measures as a consequence of committing a crime is the fundamental goal of criminal law and the process of doing justice. This formulation, while essentially self-evident in practice, is linked to a vast number of problems that have preoccupied the theory and practice of criminal law for centuries. Problems that were never satisfactorily resolved. From that point of view it is paradoxical, that both, in the theory and practice of criminal law, much more attention is paid to the rules of criminal liability than to the rules of sentencing. It is also noteworthy that justifications for court judgments regarding guilt are usually detailed and elaborate, while justifications of sentences imposed are in most cases brief and schematic. This is particularly important in Europe, where detailed sentencing guidelines are unknown, and judges have significant discretionary powers when it comes to sentencing. This is true even though the theoretical discussion on the purposes and functions of punishment was much richer over the centuries, as evidenced by the perennial dispute between retributive and consequentialist (utilitarian) rationalizations of punishment. However, these disputes are often conducted at a relatively high level of abstraction, and not always easily translated into the language of judicial practice. This issue of the "Archiwum Kryminologii" presents studies on the normative and empirical issues of sentencing in several European countries. They do not concern directly theoretical concepts of punishment, but more down-to-earth problems and challenges that the contemporary criminal justice systems in various countries have to deal with. This does not mean that they are devoid of theoretical context.

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Abstrakt: Orzekanie kary, czyli wymiar kary i orzeczenie ewentualnie innych środków w odpowiedzi na popełnione przestępstwo, to podstawowe cele prawa karnego i działalności określanej mianem wymiaru sprawiedliwości. Z tym sformułowaniem, mającym w zasadzie oczywisty charakter, w praktyce łączy się ogromna liczba problemów trapiących od stuleci teorię i praktykę prawa karnego. Problemów, które do dzisiaj nie znalazły satysfakcjonującego rozwiązania. Z tego względu jest swoistym paradoksem to, że zarówno w teorii, jak i praktyce prawa karnego o wiele więcej uwagi poświęca się regułom odpowiedzialności karnej niż regułom orzekania kar i innych środków. Również uzasadnienia wyroków sądowych w zakresie sprawstwa i winy są najczęściej szczegółowe i rozbudowane, a uzasadnienia wymiaru kary – najczęściej skromne i schematyczne. Ma to szczególne znaczenie w Europie, gdzie sędziowie dysponują znacznymi uprawnieniami dyskrecjonalnymi, jeśli chodzi o wymiar kary. Jest tak, nawet jeśli dyskusja teoretyczna nad celami i funkcjami kary jest od wieków o wiele bardziej bogata, o czym świadczy odwieczny spór między retrybutywnymi a utylitarnymi jej racjonalizacjami. Ale są to często spory toczone na relatywnie wysokim poziomie abstrakcji, nie zawsze łatwe do przełożenia na język praktyki wymiaru sprawiedliwości. Niniejszy tom „Archiwum Kryminologii" zawiera opracowania dotyczące normatywnej i empirycznej problematyki wymiaru kary w kilku krajach Europy. Nie dotyczą one bezpośrednio koncepcji teoretycznych kary, ale bardziej przyziemnych problemów i wyzwań, z jakimi współcześnie boryka się wymiar sprawiedliwości w różnych krajach. Nie znaczy to jednak, że analizy te są pozbawione kontekstu teoretycznego.

Słowa kluczowe: wymiar kary, kara, prawo karne, ocena normatywna, praktyka sędziowska, architektura instytucjonalna

Sentencing as the heart of criminal justice

The most immediate answer to the question of what criminal law is about would likely be punishing wrongdoing. Punishment, in turn, materialises institutionally through sentencing: the imposition of penalties and other measures provided by criminal law. In this sense, sentencing may be regarded as the ratio for criminal law's existence, the culminating moment of criminal justice, the point at which the authority of the state responds formally to the commission of a crime – an association reflected in the very language of penal law.

At the same time, sentencing is of course not a purpose in itself. Criminal law represents a highly formalised societal reaction to conduct that the state considers sufficiently harmful or dangerous to warrant public condemnation and a coercive response. In other words, criminal law operates as an instrument of formal social control under the fundamental assumption that crime implies punishment and that punishment is usually imposed to achieve certain purposes or tasks.

What those purposes and tasks are and how sentencing is meant to realise them is a contested issue. What is clear, however, is that they are expected to be fulfilled through the act of sentencing itself. These seemingly simple and commonsensical

statements quickly unfold into what Ernest van den Haag (1975) once described as "a very old and very painful question." The meaning and justification of punishment as a way for society to control crime have been the subject of never-ending debates for centuries. Such debates constitute the essence of theoretical discourse in criminal law, penology and criminology, and they pose serious dilemmas for the practice of contemporary criminal justice systems.

At the same time, one may observe a certain paradox in both the realities of criminal justice and public perceptions of it. There is little doubt that "doing justice" (von Hirsch 1976) ultimately involves punishing offenders. For punishment to be imposed, however, the fact that a crime has been committed must first be established, the perpetrator found, and guilt proven. Criminal proceedings therefore devote considerable time and institutional effort to investigation, prosecution and trials (often over months or even years) in order to make sentencing possible.

However, these often lengthy efforts, involving months or even years of collecting and evaluating evidence, have only one ultimate purpose: to make possible the imposition of punishment and other penal measures. From that perspective, sentencing constitutes the crowning achievement of the entire process, although the final stage of sentencing and imposing punishment and other measures usually takes only a small proportion of the time and effort involved in deciding criminal cases. Moreover, it is often among the least visible parts of the criminal procedure. Trials devoted to establishing guilt are in most instances public, and in notorious cases widely reported on by the media. The facts of certain crimes are therefore often broadly available, and the reasoning behind findings of guilt is, at least in principle, open to scrutiny. Decisions on punishment, by contrast, often take place largely in the privacy of judicial deliberations, and the reasoning behind them is frequently not made public, or only in an abbreviated form.

A further dimension of this relative invisibility concerns differences between procedural traditions. In Anglosphere systems, criminal proceedings are often formally divided into two phases: one devoted to the determination of guilt and a separate one devoted to sentencing. This structure may give sentencing and sentencing-related evidence a higher degree of prominence, although in practice this may be substantially diminished by the widespread use of plea bargaining and other simplified procedures. In most continental European systems, by contrast, decisions on guilt and punishment are not separated but are taken and announced jointly (Plesničar 2017; Roberts, Petzsche 2025). Where judicial decisions follow this "two in one" formula, the question arises of which of these two aspects receives greater attention.

It is striking that in many jurisdictions the justification for guilty verdicts provided orally in court or in written judgments are lengthy, detailed and even sophisticated, whereas the parts devoted to sentencing outcomes are often much shorter, less detailed and comparatively superficial (Drápal 2024). What is supposed to constitute the crowning achievement of the criminal procedure thus frequently attracts relatively minor attention. This tendency is aggravated by the

broad discretion that continental judges typically enjoy in sentencing: the way this discretion is exercised often escapes precise reconstruction or transparent justification.

A similar imbalance can often be observed at the appellate level. In many continental systems, higher courts devote the overwhelming majority of their attention to questions of fact, the determination of guilt and the interpretation of substantive and procedural rules governing criminal responsibility. Comprehensive appellate reasoning concerning punishment or discussing the choice of sanctions, their severity, proportionality or rehabilitative and deterrent effects remains comparatively rare, and is often limited to technical questions of sentencing law.

It is somewhat different for jurisprudence. The legal, penological and criminological literature on punishment is sometimes extensive (less so for sentencing), and controversies in this area have often been intense. Yet, especially in continental European contexts (or some of them), many academic lawyers have traditionally treated questions of criminal responsibility as the primary subject of doctrinal debate, while paying comparatively less attention to punishment and sentencing. Moreover, discussions of sentencing principles have frequently remained relatively abstract. Against this background, the relative marginality of sentencing is not only a feature of judicial practice, but also of criminal law scholarship itself.

Given the key role of sentencing in criminal law, however, sentencing should be placed at the forefront of criminal-law scholarship. Such a move would constitute a significant shift, as doctrinal debates within substantive criminal law would then be both theoretically and empirically evaluated in light of the outcomes they produce. Discussions about what constitutes attempt, negligence, continuation or joint enterprise (and almost any other substantive law principle) should thus be guided by what sentence is considered appropriate, since sentencing is the ultimate – and often the only tangible – outcome of criminal law.

Even the stigma attached to criminal justice intervention is inherently linked to the sentence that is imposed. That stigma does not simply depend on the conduct being formally classified as criminal, but on the severity and nature of the resulting sanction. Some countries, for example, place administrative offences such as speeding under criminal law, although there is little stigma attached to such conduct. This relative absence of stigma is likely due to the sentences that are typically imposed. If driving above the speed limit regularly resulted in several months' imprisonment, being charged with such an offence would almost certainly carry the stigma traditionally associated with criminal law.

An emphasis on punishment should come naturally, particularly to continental criminal lawyers. In many continental European countries, there is no exact equivalent to the term *criminal law*; instead, the discipline is labelled *penal law*, deriving from the Latin *poena*, meaning "punishment." In Czech, punishment is *trest*, and criminal law is *trestní právo*. In Polish, punishment

is *kara*, and criminal law is *prawo karne*. In Slovenian, punishment is *kazen*, and criminal law is *kazensko pravo*. The same seems to be true for many if not all non-English language systems (e.g. *droit pénal* in French, *diritto penale* in Italian, *derecho penal* in Spanish and *Strafrecht* in German). The very name of the discipline and of the penal codes themselves reflects the centrality of punishment. Yet it seems that the discipline has, to some extent, forgotten this origin. Scholarly discussions of individual criminal-law institutions are often vague when addressing their implications for sentencing, if such implications are addressed at all.

The lack of such discussions inevitably affects practice. When criteria other than sentencing outcomes guide the design of individual criminal-law institutions, attention is drawn away from punishment. If the legal scholarship does not develop principled guidance on how variations within these institutions should be reflected in sentencing, judges are left with little concrete direction. The burden of principled sentencing is thus placed on judges' shoulders, but judges frequently lack the necessary resources (e.g. time, theoretical frameworks and empirical data) to develop and test coherent approaches to how variations within criminal-law institutions ought to influence sentencing. The situation is further complicated when those institutions are themselves designed without sufficient regard to their sentencing consequences, thereby undermining a coherent, principled approach. The inevitable result is a certain degree of fragmentation and inconsistency in theory, jurisprudence and practice.

The comparatively limited reasoning and legal argumentation devoted to sentencing in judicial practice arguably reinforces a degree of scholarly neglect. If judgments provide little detailed reasoning concerning punishment, criminal-law scholars may ask what there is to analyse. A vicious circle emerges: limited scholarly engagement with sentencing leads to limited doctrinal development, which in turn contributes to limited judicial reasoning. This circle is unlikely to break by itself. Judges are unlikely to begin systematically articulating sentencing theories or specifying the precise weight of individual factors without conceptual tools and frameworks to rely on. It is therefore the responsibility of criminal-law scholars to intervene by refocussing attention on punishment and sentencing.

Such an approach does not require that criminal-law scholarship be reduced to the study of sentencing alone; rather, it requires recognition that sentencing is the crowning achievement of the criminal process and, as such, should guide deliberations concerning the structure and content of individual criminal-law institutions.

Retributivism, consequentialism and the normative blueprint of sentencing

It is within this broader neglect of sentencing that the tension between retributive and consequentialist conceptions of punishment continues to structure sentencing thought and practice. The controversies surrounding punishment became particularly intense in the second half of the 19th century, when the classic school of criminal law encountered the challenges posed by emerging criminological positivism. The resulting dispute between retributive and consequentialist conceptions of punishment has since provided the central normative blueprint for modern sentencing systems, shaping how courts understand proportionality, prevention and the purposes of penal severity.

Retributive approaches assume that the infliction of pain or hard treatment is essential to any punishment and is justified as a response to past wrongdoing. Punishment fulfils a social need for retribution; it is meant to "fit the crime." From this perspective, proportionality becomes the central organising principle of sentencing. As Andrew von Hirsch (1976) argued under the banner of "doing justice," punishment must reflect the gravity of the offence and the blameworthiness of the offender. This assumes that "there exists a broad moral or practical equivalence or comparability between two different phenomena: a wrongful act and a punishment" (Lacey 2021: 80). Yet even within this seemingly straightforward framework, the practical problem remains formidable: how is proportionality to be determined? Apart from the *lex talionis*, no obvious metric exists. How many months or years of imprisonment are proportionate to the theft of a given amount, to a burglary committed by a repeat offender or to a violent assault? Proportionality is indispensable, but its operationalisation is rarely self-evident.

Consequentialist approaches, by contrast, regard punishment not as an end in itself, but as a means to further goals – most prominently the prevention of future offending. Here punishment is to "fit the offender" rather than solely the offence. Franz von Liszt famously formulated this approach by emphasising that punishment is imposed on the offender, not on the offence (Liszt 1883). In this view, sentencing requires forward-looking assessments of risk, of rehabilitative potential and of deterrent impact. Such assessments often presuppose knowledge drawn from the behavioural and social sciences.

This move, however, has long been viewed with scepticism by many lawyers. Retributive reasoning appears closer to traditional legal thinking: judges and other legal professionals may feel institutionally competent to assess the gravity of an offence and impose proportionate punishment, whereas preventive approaches are often seen as requiring broader expertise and predictions about the offender's future behaviour. After all, lawyers are not psychiatrists, psychologists or social workers. The involvement of experts, envisaged by the founders of criminological positivism (Pifferi 2016: 13–35), complicates the criminal process and challenges the traditional boundaries of legal reasoning. As Karl von Birkmeyer (1907)

provocatively asked, "What does von Liszt leave of criminal law?". The implied concern was that an expansive preventive approach might dissolve criminal law, undermines its retributive core, and transform it into something amounting rather to social work. Penal law, in this view, is about justice and retribution, not about broader projects of social intervention.

The impact of these competing paradigms differed significantly across jurisdictions. The controversies between retributive and consequentialist conceptions of punishment exploded in the second half of the 19th century and shaped penal law and sentencing on both sides of the Atlantic in distinct ways. In Europe, despite the development of the Italian *scuola positiva* and related criminological concepts (Radzinowicz 1991a; Pifferi 2016; 2022), lawyers often remained sceptical about consequentialism. This scepticism limited its progress and the adoption of its penological ideas on the European continent. Consequentialist approaches therefore tended to strike compromises with retributive principles, and European penal codes and sentencing policies developed in an eclectic and pragmatic manner, combining preventive aims with enduring commitments to blameworthiness and proportionality (Weigend 1982). Sentencing never completely abandoned classical principles of desert, even where preventive rationalities gained influence.

By contrast, the United States went through a much longer period dominated by indeterminate sentencing grounded in utilitarian and rehabilitative ideals. Punishment was expected to be adjusted primarily to the goals of reforming the individual lawbreaker and preventing future reoffending. In Europe, indeterminate and preventive principles were expressed mainly in more limited forms, such as dual-track systems in which purely consequentialist measures were reserved for special categories of offenders – incorrigible, chronic or professional lawbreakers – and their application remained relatively narrow and restrictive.

Growing dissatisfaction with the effectiveness of the rehabilitative ideal in the United States eventually led to a profound critique of indeterminate sentencing and to a decisive swing of the pendulum in the opposite direction. Consequentialism was criticised not only for its alleged ineffectiveness in reducing crime, but also for producing disproportionate sentences and unequal treatment of similar offences. This reaction implied a return to the classic language of "doing justice" and "just deserts," grounded in proportionality between the harm caused by an offence and the punishment imposed (von Hirsch 1976). In this phase, desert-based reasoning appeared to promise both fairness and restraint.

However, subsequent developments in American penal policy did not simply restore classic moderation. Increasingly, the emphasis shifted from proportionality to deterrence and incapacitation. As Michael Tonry observed, "policy makers in the mid-1980s lost interest in procedural unfairness, sentencing disparities, and racial injustice. Instead, they enacted rigid, severe laws that promoted personal, political, and ideological agendas" (Tonry 2021: 4). In practice, this amounted to another form of consequentialism, albeit one far more punitive in character. If the earlier rehabilitative model could be described as a comparatively "'benign'

consequentialism," then the post-1980s orientation prioritised crime control and risk management with far less regard for proportionality constraints. This transformation of penological paradigms had profound consequences. It contributed to sustained increases in sentencing severity and to the unprecedented growth of prison populations, phenomena that reached particularly dramatic proportions in the United States (Garland 2001a; 2025).

These developments have been variously described as "mass imprisonment" (Garland 2001b), the "culture of control" or the "punitive turn" (Garland 2001a) and the "new punitiveness" (Pratt et al. 2005). Their influence extended beyond the United States to other countries of the Anglosphere, and to some extent also affected European sentencing practices (Snacken, Dumortier 2012; Dünkel 2017). Nevertheless, the European continent is often characterised as displaying "penal moderation," albeit unevenly distributed, with notable differences between Scandinavia and parts of Central Europe (Krajewski 2023a; 2025). Legislative frameworks frequently remained eclectic, and sentencing rules were rarely organised around a single "pure" penal ideology. Sentencing practice in Europe has therefore often been less susceptible to abrupt ideological swings than in the United States, shaped instead by a more restrained and pragmatic blending of principles.

From penal ideologies to sentencing outcomes: The translation problem

There is probably no way to trace back in detail the many changes in sentencing provisions across European countries over the last fifty or sixty years, or, if one attempted to do so, it would prove nearly impossible. The precise influence of American "neoclassicism" and the "punitive turn" on European criminal codes, and especially on resulting sentencing practice, is therefore very difficult to measure.

More generally, the impact of penal law reform on sentencing outcomes is rarely obvious or direct. Our own national experiences illustrate this complexity. Several examples from Poland indicate that shifts in sentencing policy after World War II often took place independently of legislative intentions, and sometimes even against explicit legislative purposes (Krajewski 2019; 2023b). Importantly, these shifts developed in both directions, involving periods of increasing as well as decreasing punitiveness. Similarly, in Czechia the persistence of certain punitive punishment patterns appears to result not necessarily from any vigorously implemented punitive turn, but rather from legislative passivity (Drápal 2023). By contrast, in Slovenia a comparable legislative passivity appears to have contributed to the persistence of a comparatively non-punitive sentencing profile (Plesničar, Jankovič 2026).

Explaining changes in sentencing outcomes in Europe is further complicated by the substantial judicial discretion characteristic of many continental systems.

Statutory sentencing directives are often formulated in relatively general terms, and the manner in which they are translated into concrete sentences in concrete cases is by no means self-evident. Even where attempts are made to structure discretion (Drápal, Plesničar 2025), European jurisdictions usually refrain from adopting detailed sentencing guidelines of the Anglosphere type. This may of course generate sentencing disparities (Drápal 2020), yet in many countries – such as Germany – it does not necessarily provoke major concern or systematic intervention by appellate courts (Weigend 2001: 205–206). It is therefore no easy task to explain the differences in penal ideologies and sentencing outcomes between criminal justice systems, whether between Europe and the United States or within Europe itself. The impact of penal philosophy on legislation, and of legislation on the sentences imposed by concrete judges in concrete cases, may be mitigated by a plethora of institutional and contextual factors.

Let us imagine a hypothetical case of a 21-year-old burglar, with a prior record consisting of two convictions: one for drunken driving resulting in a fine and another for minor property damage resulting in community service. What would his sentence be under legislation guided by a consequentialist, preventive approach? And what would it be under an opposing retributive framework centred on proportionality? Judging from theoretical assumptions, one might expect quite different outcomes. But what if, in practice, sentences imposed under these ostensibly opposing penal ideologies turned out to be similar or even identical? Such a possibility would suggest that translating penal ideologies into sentencing rules, and sentencing rules into concrete judicial decisions, may be an extremely problematic process. Sometimes the causal relationships may be relatively direct and visible; sometimes they are far more complex and opaque. The papers included in this special issue explore selected sentencing-related issues largely independent of the grand penal ideologies outlined above. Yet they also invite broader reflection on how such ideologies continue to shape, constrain or refract sentencing practices in the jurisdictions examined in this volume.

Sentencing as normative design, judicial practice and institutional architecture

Against this background, examining sentencing requires attention not only to abstract penal ideologies, but also to the institutional settings, discretionary practices and procedural forms through which punishment is produced. The contributions assembled in this special issue engage with sentencing precisely at this intersection between normative design and institutional practice. They explore sentencing along three interrelated dimensions.

Firstly, several papers revisit the normative and structural foundations of sentencing, examining proportionality, penal meaning and the boundaries of punishment.

Secondly, a set of empirically grounded studies analyse how sentencing principles are operationalised in courtroom practice, highlighting the role of discretion, reasoning and disparity. Between these levels lies the question of translation: how legislative reforms and penal policy ambitions are mediated by judicial discretion and institutional practice.

Thirdly, the issue examines ongoing procedural and institutional transformations that redistribute sentencing power beyond the judge, particularly through prosecutorial influence and fast-track forms of criminal justice. These developments alter not only who participates in sentencing decisions, but also how penal rationalities are articulated, negotiated and implemented in practice. By shifting the loci and mechanisms of decision-making, such procedural innovations provide further insight into how normative frameworks are filtered, refracted or even reshaped before they become concrete sentencing outcomes.

Taken together, these contributions offer a layered perspective on sentencing in contemporary European systems, addressing sentencing as a normative project, a practical decision-making activity and an evolving institutional field.

The special issue

Within this broader debate, *Archiwum Kryminologii* has in recent years devoted sustained attention to questions of penal policy and sentencing. “Criminal Justice in an Age of Penal Populism” was the subject of Vol. 44 (2022), No. 1, edited by John Pratt and Magdalena Grzyb. It examined the rise of penal populism and its implications for contemporary criminal justice systems. “Changing Penologies and European Crime Policy: Theory and Practice in the Global Context” was the subject of Vol. 45 (2023), No. 2, edited by Joanna Beata Banach-Gutierrez, Tom Daems, Anthea Hucklesby, and Jarosław Utrat-Milecki. It focussed more broadly on developments in European penology and the penal ideologies underlying contemporary crime policy.

The present volume approaches sentencing from a more concrete and practice-orientated perspective. Rather than concentrating primarily on overarching penal ideologies or macro-level transformations, it brings together contributions that examine selected sentencing problems within specific legal contexts. While most of the papers focus on Austria, Czechia, Germany and Slovenia – jurisdictions which share broadly similar continental traditions – the questions they raise resonate well beyond these national settings.

Set 1: Normative foundations and the boundaries of punishment

The first group of papers turns to the normative foundations of sentencing, examining how proportionality is structured, how penal meaning is constructed and where the boundaries of punishment are drawn. Rather than treating proportionality as a settled principle, these contributions examine the assumptions and institutional forms through which it operates, thereby providing the conceptual basis for the later exploration of how sentencing rationalities are translated into practice.

Axel Holmgren's paper investigates the statutory architecture of proportionality itself. By analysing statutory penalty scales and the concept of "penalty value" within the Swedish sentencing framework – a system often regarded as a paradigmatic example of structured proportionality – the paper raises the question of how legislatures translate assessments of the seriousness of an offence into structured frameworks of penal severity. It thus invites scrutiny of whether proportionality can function as a coherent ordering principle within sentencing law, or whether the very scales designed to rationalise punishment already contain tension and ambiguity.

Matjaž Ambrož shifts attention from formal structure to normative assumption. By focussing on individuals' sensitivity to punishment, the paper challenges the idea that proportionality can be adequately captured through formally equal sanctions. If the burden of punishment is experienced unevenly among convicted people, sentencing systems must confront whether justice requires attention to the varying impact of punishment as well as abstract comparability.

Rita Haverkamp and Johannes Kaspar extend this inquiry beyond the formal sentence imposed by the court, examining collateral consequences as an increasingly significant dimension of contemporary punishment. Their analysis problematises the boundaries of sentencing itself, showing how the effects of conviction often reach far beyond the penalties articulated in criminal codes or pronounced in court. In doing so, the paper challenges conventional distinctions between sentencing as a judicial act and punishment as a broader field of legal and social burdens.

Taken together, these contributions depict sentencing as a normative project shaped not only by doctrinal principles of proportionality, but also by deeper questions about coherence, experience and the expanding reach of penal sanctioning.

Interlude: Legislative toughening and the pathways of translation

Sebastian Gölly's contribution occupies an important position between these normative debates and the realities of sentencing practice. Examining processes of legislative "toughening" through the example of Austria – a jurisdiction often

underrepresented in broader sentencing discussions – the paper analyses how policy ambitions to reshape penal severity are received and operationalised within courtroom decision-making. In doing so, it highlights the buffered and indirect pathways through which normative frameworks travel from statutory design into judicial outcomes. The analysis thus illustrates the translation problem at the heart of sentencing: the gap between the rationalities embedded in legal reforms and the discretionary practices through which punishment is ultimately produced.

Set 2: Discretion, reasoning and disparity of sentencing in courtroom practice

If the first group of contributions investigates the normative blueprint of sentencing, the second turns to sentencing as it unfolds in the courtroom. These papers examine how abstract principles – proportionality, deterrence and culpability – are translated into concrete decisions through judicial reasoning, evidentiary assessment and discretionary judgment. They reveal sentencing not as the mechanical application of statutory frameworks, but as a socially embedded practice shaped by interpretation, institutional routines and evaluative assumptions about defendants.

Lora Briški and Mojca M. Plesničar's analysis of sentencing for sexual offences in Slovenia provides a detailed empirical study of how courts construct penal severity in a particularly normatively sensitive field. By examining judicial reasoning and sentencing patterns, the paper exposes tensions between statutory frameworks and actual practice, including compressed sentencing ranges, formulaic reasoning and disparities in the treatment of aggravating and mitigating factors. It shows how proportionality is not simply applied, but actively interpreted and negotiated within courtroom practice.

Nina Kaiser and Ida Leibetseder's contribution focusses on the role of specific deterrence in sentencing decisions. Although preventive aims are formally embedded in sentencing doctrine, the empirical findings suggest that their practical implementation is often limited and opaque. Courts invoke deterrence rhetorically, yet tend to rely heavily on past conduct, especially prior convictions, rather than forward-looking assessments of rehabilitative prospects. The paper thus illustrates how consequentialist rationales persist in judicial discourse, but are translated into practice in selective and uneven ways.

Nicole Bögelein, Dyana Rezene and Levin Reichmann's ethnographic study of German magistrate courts deepens this perspective by examining the central role of "social prognosis" in sentencing decisions. Based on extensive courtroom observations, the paper shows how judges assess defendants' employment status, housing situation, education, family ties and demeanour when determining probation or imprisonment. While these criteria appear formally neutral, their

application disproportionately disadvantages racialised and marginalised defendants. Judicial assessments of credibility, emotional expression and "stability" become decisive in shaping outcomes. The study thus makes visible the micro-level processes through which discretionary judgment and structural inequalities intersect in sentencing practice.

Taken together, these contributions illuminate sentencing as a practical activity in which normative principles are filtered through social evaluation, institutional culture and discretionary reasoning. They demonstrate that sentencing ideologies are not translated into outcomes within a vacuum, but within courtroom settings structured by implicit norms, expectations and power asymmetries.

Set 3: Procedural transformations and the redistribution of sentencing power

But sentencing decisions are not shaped solely through judicial deliberation. Contemporary criminal justice systems are marked by procedural innovations and institutional transformations that redistribute sentencing authority and restructure the pathways through which punishment is determined. In this sense, sentencing can be understood not only as a matter of judicial reasoning, but as part of a broader sentencing architecture, an institutional configuration that allocates power, defines procedural shortcuts and determines at what stage and by whom penal severity is effectively decided.

The final group of contributions in this issue examines these structural shifts. Rather than focussing on how judges apply sentencing principles, these papers explore how sentencing power may migrate beyond the traditional courtroom setting, altering both the actors involved and the dynamics through which punishment is produced.

Alena McClure's contribution examines the expanding role of prosecutors in shaping sentencing outcomes. By analysing the extent to which prosecutorial discretion influences penal severity, whether through charging decisions, plea negotiations or informal practices, the paper challenges the assumption that sentencing remains primarily a judicial function. It demonstrates that key determinations of punishment may very likely occur earlier in the process, often outside public scrutiny, thereby reshaping the balance of power within criminal proceedings.

Tomáš Vanča's study of penal orders in Czech criminal proceedings further illustrates this institutional transformation. Fast-track procedures and simplified forms of adjudication allow punishment to be imposed without full trials, streamlining case resolution but simultaneously altering the procedural safeguards and deliberative structures traditionally associated with sentencing. The paper raises

important questions about transparency, participation and the quality of justification in such contexts, highlighting how procedural efficiency may reconfigure the sentencing architecture itself.

Taken together, these contributions reveal sentencing as an evolving institutional field in which authority, discretion and accountability are redistributed across actors and procedural stages. They underscore that the translation of penal ideologies into sentencing outcomes is shaped not only by judicial reasoning, but also by the institutional design of criminal process.

Conclusion

Sentencing remains one of the most consequential yet least transparent dimensions of criminal justice. It is the point at which abstract penal rationalities – proportionality, prevention, desert and rehabilitation – are converted into concrete decisions that shape individual lives and broader patterns of penal severity. Yet, as the preceding discussion suggests, this translation is rarely straightforward. Sentencing outcomes emerge not only from normative principles embedded in law, but also from discretionary judicial practices, institutional routines and evolving procedural architectures that redistribute power across actors and stages of the criminal process.

The contributions assembled in this special issue illuminate sentencing from these complementary angles. By engaging with the normative foundations of punishment, the realities of courtroom decision-making and the institutional transformations reshaping contemporary criminal justice, they offer a layered account of sentencing in contemporary Europe. Importantly, the special issue brings together perspectives from a range of continental jurisdictions, voices that are still too rare in dialogue within the broader, often Anglosphere-dominated sentencing literature. Creating such a shared space for comparative reflection is essential, not only for understanding national sentencing practices, but also for grasping the common challenges that European systems face in translating penal principles into practice.

Taken together, the papers collected here show sentencing as a normative project, a practical judicial activity and an evolving institutional field. They demonstrate that sentencing is not merely the endpoint of criminal adjudication, but a domain in which penal meaning, authority and legitimacy continue to be negotiated.

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architecture" and "Reconstructing sentencing." It is our hope that these contributions will stimulate further comparative engagement and encourage continued attention to sentencing as one of the most revealing and contested expressions of criminal justice in Europe today.

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