THE ALLURING PROMISE OF OBJECTIVITY: BIG DATA IN CRIMINAL JUSTICE

Mojca M. Plesničar

Big data: New challenges for law and ethics
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Objectivity in criminal justice

Objectivity as one of the basic tenets of criminal justice

- Decision on the verdict !!
- Decision on the sentence !?
  - rational thinking vs. intuition
  - equality (consistency) vs. individualisation (individualised justice)
The search for objectivity in sentencing

- How much discretion?

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<thead>
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<th>Less</th>
<th>More</th>
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<tr>
<td>Sentencing tables</td>
<td>Statutory ranges</td>
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<td>Sentencing guidelines</td>
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- Case law
  - criteria
  - methods

- Sentencing tables / grids
  - „sentence calculator“
Enter: Big data

The mythology of big data:

„the widespread belief that large data sets offer a higher form of intelligence and knowledge that can generate insights that were previously impossible, with the aura of truth, objectivity, and accuracy“

(Boyd & Crawford, 2012: 663)
Big data & the law

• *Lex Machina*: predicting the outcome and the cost of intellectual property litigation

• ‘crystal ball’ to predict the likelihood of settlement and the expected settlement amount for securities fraud class action lawsuits

• predict the outcomes and individual votes of the US Supreme Court than renowned professionals

• predict the decisions of the European Court of Human Rights with great accuracy based just on the textual content from the cases
Big data & criminal justice

• Three levels:
  • Bail
  • Sentence
  • Parole

• Probabilistic aids based on Machine learning:
  Using large amounts of previously decided cases to build a strong algorithm able to predict the best possible answer to the given question in a specific case (i.e. how likely is the offender to reoffend should she be released on bail/parole or given a community sentence)
Great promises

• A fairer system: informed decisions devoid of bias and any kind of subjectivity

• Decisions could be much more accurate and based on a sound analysis of predictive factors

• Seen as more objective, such algorithms could instil the long-lost trust of the public in the fairness of the criminal justice system

• An opportunity to purposefully re-shape the penal system in order to reflect progressive values and support a more humane outlook
However...

- Training sample
  - Size
  - Variety

- Attributes
  - Race?? → ProPublica vs. Northpointe
  - Deliberate vs. incidental bias

„an algorithm is only as good as the data it works with“ (Barocas & Selbst, 2016: 671)
However... (2)

- Adapting & evolving (quickly!)
- Validity & verification
  - USA: 10/50 (EPIC, 2016)!!
- De-humanising?
So...

- A mirror.
- Deliberately slow.
- Never instead, but in addition.