



**Sentencing & Penal Decision-Making in Chile, Scotland, and Spain**

**Thursday 13<sup>th</sup> July 2023, 12.30-15.30**

**University of Strathclyde, Collins Building Committee Room 1.**

## Schedule.

**12.30-12.40: Welcome and Introductions – Cyrus Tata (Chair), University of Strathclyde, Scotland**

**12.40-13.20 Jay Gormley, University of Glasgow, Scotland: *What is the Point of Sentence Discounting?***

**13.20 – 13.35 Break**

**13.35-14.10 Alicia Montero, Universidad Castilla-La Mancha, Spain: *Exploring Plea Bargaining in the Spanish Juvenile Justice System.***

**14.10-14.25 Break**

**14.25-15.10 Javier Velásquez, Universidad de la Frontera, Chile: *The Use of Remand in Chile: renouncing discretion.***

**15.10-15.30 Closing Discussions**

**15.30: End.**

## **What is the point of “sentence discounting”?**

**Jay Gormley, University of Glasgow, Scotland.**

This paper reflects on the struggle to find a rational and evidence-backed basis for how criminal systems approach pleas (guilty or not guilty) in sentencing. The aim is to re-problematise taken-for-granted assumptions about so-called sentence discounts/reductions. Firstly, the “discount” will be considered through a legal-normative lens. Secondly, it will be considered through a social and empirical lens. In each case, the result is that the point of sentence discounting cannot be what it is purported to be.

## **Exploring Plea Bargaining in the Spanish Juvenile Justice System**

**Alicia Montero, Universidad Castilla-La Mancha, Spain**

Nowadays plea bargaining has been implemented as a daily practice in Spanish juvenile justice system. Despite its popularity and prevalence, this practice has been criticized for its lack of transparency and its potential influence on young people, who have deficiencies ascribed to their immature socioemotional, cognitive and neurological development. This research analyses the juvenile decision-making and the role of the different legal actors during plea bargain. Specifically, we have analysed whether there are variables that may influence this decision and to find out the different positions of professionals and juvenile offenders on how they face this process. This research includes a mixed methodology: we reviewed 532 judicial records of children prosecuted and interviewed 32 legal actors (judges, prosecutors, public defenders) and 12 juveniles serving a half-open custody measure. It is observed that through a plea bargain the adolescent agrees to plead guilty to the charges in return of a lenient sentence. Professionals defend plea bargaining; and juveniles, advised by public defenders, tend to accept the plea agreement thinking that it is their best option before the hearing, unaware of the future implications of having taken this decision. Likewise, the importance of youths' experience of procedural justice who accept the plea and the possible practical consequences of plea bargain are discussed in this study. The importance of integrating procedural justice norms into plea bargaining is discussed in this study.

## **The Use of Remand in Chile: renouncing discretion.**

**Javier Velásquez, Universidad de la Frontera, Chile**

The use of remand has been constantly criticised in Chile during the last decade. However, Chilean legal academia rarely relies on quantitative or qualitative methods to study and understand the Chilean judges' practices. This has provoked an important gap between the "law in books" and the "law in action". And therefore, very little is known about why and in which cases the Judges decide to impose remand.

The Chilean law allows the use of it in four cases: (i) there is a substantial risk that the person might abscond or fail to appear at diet; (ii) there is a substantial risk that the person might obstruct the course of justice; (iii) there is a substantial risk that the person might assault or threaten the victim; (iv) the person can be considered dangerous to public safety. The most used reason for imposing remand is (iv). However, (iv) is not determined by the risk of reoffending—normative categories offer some guidelines on who and why can be deemed dangerous for public safety.

The current research project (2022-2024) involves non-participant virtual and in-person observation of 6 courts in two regions south of Chile. During 2022 three courts from región (a) were observed three days per week for six months. I am currently starting the observation of region (b) courts. This data is supplemented with interviews of judges, prosecutors and public defendants.

Preliminary findings: The judges of both regions seem to favour the formalist interpretation of the law. And thus, unlike Scottish Sherrifs, who sheriff discretion above all, Chilean Sherrifs seem to use formalistic interpretations to protect themselves from external criticism. This application of the law is highly problematic, as it will be explained during the seminar.