Moral Communication in Court

Johansen, Louise Victoria; Laursen, Julie

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Introduction

This chapter compares moral communication in low penalty-range common assault cases with serious cases where the prosecution has called for a harsh indeterminate sentence in Denmark. Indeterminate sentences of imprisonment are rare in Denmark, but possible if the crime caused serious harm to others and if a fixed term sentence is insufficient to protect the life, health or freedom of other people; whereas cases of common assault constitute one of the most frequent types of offence in the Danish criminal system. Our research is based on several long-term fieldwork studies conducted in criminal courts in Denmark and institutions affiliated to them (such as the Department of Corrections, the Prosecutor’s office and prisons). When comparing our field notes from these studies, we were struck by how different the written and oral communication about defendants, and between defendants and the judges seemed in the two kinds of cases. We use this observation to engage in a systematic analysis of differences and similarities in order to address critical aspects of courtroom communication. Our ethnographic
approaches and thorough organised comparison between our fieldnotes and interviews allowed for a nuanced understanding of important communicative differences. In both studies, we followed a significant number of cases from their initial phases in other institutional settings, such as the Department of Corrections or remand prison, and thus before they were presented in the courtroom, through to the execution of the sentence. We interviewed convicted persons and/or the legal actors both before and after the trial. We thus view the criminal court cases from a processual perspective, and one of our conclusions is that in order to understand moral communication in the courtroom, it is necessary to take an ethnographic approach to its study which situates it as being interconnected with other institutions surrounding the court.

According to penal philosopher Anthony Duff (2001), trials, convictions and punishment are communicative processes. They are also a locus for the expression and interpretation of emotions (Bergman Blix and Wettergren 2018; Flower 2019). Bandes (1999) explores the role of emotions and morality within criminal justice systems, arguing that although morality plays a crucial role for judicial decision-making, legal professionals often regard morals as being incompatible with objective justice. This resonates with our own findings in the Danish judicial context where legal actors such as judges, prosecutors and defence lawyers hesitantly and ambiguously embrace the idea of sentencing having moral aspects.

In this chapter, we narrow these moral, communicative and emotional aspects of judicial decision-making down to only include moral communication about the defendant’s criminal actions, abilities and behaviours as expressed through expert documents, such as the pre-sentence reports and psychiatric evaluations that feed into the sentencing process, and in judges’ communication of the final verdict to the defendant. Morality may be expressed through the evaluation of defendants’ remorse for deeds committed, in explanations of how the crime could occur, and in the judges’ communication of the intention of punishment (Hawker-Dawson 2021; Scheffer 2010; van Oorschot et al. 2017). We analyse moral communication as both oral and written communication, with a view to emphasising that it is not possible to strictly delineate between speech and text communication. In court cases, various documents are read aloud in the courtroom, i.e. the text is ‘spoken’ and sometimes commented upon during the trial by either the prosecution or the defence: conversely, much of what is expressed orally during the trial itself is documented in writing (cf. Scheffer 2010). The texts may also be ‘performed’, in the sense that defence lawyers or prosecutors may
engage more or less enthusiastically with the documents that communicate the defendant’s moral abilities (Johansen 2015).

The court’s verdict also conveys assessments about the defendant’s moral status in relation to punishment. In Denmark, this written verdict consists of a very brief statement seemingly devoid of emotion (Wandall 2008), but we argue that the prosecution and appellate courts are able to ‘decode’ this legalistic information. Judges’ communication is thus partly directed outwards and upwards at audiences, institutions and actors other than the court (such as the public), or to a court of higher instance, or even the prison that eventually gives host to the sentenced person (Gubrium and Holstein 2009; Hawker-Dawson 2021; Innes 2014). Finally, we argue that moral communication in the courtroom is dependent on the type of criminal case in question. Literature on communication in criminal trials has tended to emphasise different communication styles according to jurisdictions and legal traditions (e.g. Field 2006; Field and Nelken 2010; Scheffer et al. 2010); we add to this research by highlighting internal variations within the same jurisdiction depending on the kinds of criminal cases, legal documents and professional actors involved.

Methodology

We draw on two separate long-running ethnographic fieldwork studies. Ethnographic methodologies are particularly well-suited for studying morality in the court (and beyond) because ethnographic fieldwork enables long-term and ‘deep’ involvement in a particular field (Hastrup 2004). Long-term observations and conversations with central actors in the courts were particularly important for the purposes of these studies because asking direct questions about morality and sentencing is often difficult and yields ‘thin’ answers (Ievins 2023). Ethnographic studies in court thus allows the researcher to observe ‘morality in action’ (Hawker-Dawson unpublished Ph.D. thesis) and facilitate conversations about subtle, convoluted and difficult topics such as morality, personhood and dangerousness. The first research project was conducted from 2009 to 2011, as a multi-sited study in three different institutional settings within the Danish criminal justice system: the Prosecutor’s Office, the Probation Service and the District Courts (see Johansen 2018). The study focused on violent crimes in the form of common and aggravated assaults. Johansen studied the practices surrounding pre-sentence reports with a focus on the editing process as well as interactions among investigators, defendants and judges. 32 cases of common assault were
followed from the Prosecutor’s office through to the probation service where 32 conversations between defendants and probation officers were observed. The cases were then observed in court, and additional participation during judges’ deliberations was granted in order to assess the significance of particular pieces of information in the reports for the judges’ understanding of the case and the defendant (see Chapter 3; this chapter). Interviews were conducted with 12 judges, 12 prosecutors, 11 defence attorneys and 19 probation officers immediately after they had interacted with the case and defendant in question.

The second research project analyses the connections between the wider aims and functions of the penal state and the everyday practices, experiences and interactions in prison. It consists of an ongoing examination of the experience of being indeterminately sentenced by a court and of serving an indeterminate sentence in prison. Indeterminate sentences of imprisonment are only given in cases where the crime caused serious harm to others, if the defendant’s characteristics make him dangerous and if a fixed term sentence is insufficient to protect the life, health or freedom of other people. The latter categories are difficult for the courts to determine, so the judges lean on forensic expertise in determining the personality traits and dangerousness of a defendant. We draw on fieldnotes, informal conversations with legal actors in courts, written trial transcripts and rulings as well as observational and conversational data from 10 cases brought forward between 2021 and 2022. The written transcripts and rulings across these diverse sites are usually devoid of emotive language. Thus, the judges’ feelings or moral sentiments are never included in sentencing remarks, such as they may be in the court systems of, for example, England and Wales (see Hawker-Dawson 2021). Rather than relying solely on direct remarks in the preventive detention cases, we have paid particular attention to the mental health reports made by psychiatric experts and to language deployed by the prosecution when they (try to) justify preventive detention.

The analysis in this chapter stems from a systematic comparison of our fieldnotes and interview excerpts as well as lengthy conversations about our key ideas and themes. We also observed a few preventive detention cases together in court, which stimulated fruitful dialogues on similarities and differences in our data material. The names of persons and places in our empirical examples have been anonymised.
Moral Communication

Hawker-Dawson (2021, 14) argues that communication in sentencing is important both for “our understanding of the nature of punishment and because it may impact the extent to which punishment is perceived to be legitimate and morally justifiable”. He develops a fourfold typology of communication: the first is communicative aridity, which demonstrated little attempt to engage with defendants—including on the moral level—and wherein judges used technical language, obscured by professional codes. The second typology, counselling communication, entailed some verbal censure and offers of respectful and supportive advice, albeit in a way which may involve warning or challenging a defendant. The third typology, specific deterrence, involved censuring defendants verbally in a fierce tone intended to shock and ultimately deter. Finally, ritual denunciation was emphatic, condemnatory verbal censure which resembled intense morality lessons. We draw primarily on the counselling and deterrence typologies found in common assault cases and the communicative aridity of judges in indeterminate sentence cases since Danish judges seldom make use of strong denunciatory communication.

Talking openly about any moral dimensions of crime and punishment during a trial was not prevalent among the judges we observed in the Danish courtroom context, although prosecutors and defence lawyers sometimes engaged more actively in this kind of communication. Research from other countries and jurisdictions tell different stories about judges’ explicitness in their communication about a given defendant’s moral status. Field (2006), for instance, compared communication about the defendant’s character in French courtrooms to their English and Welsh counterparts. He found that judges in France put effort into relating a particular crime to the life of the defendant as an ordinary French citizen, whereas courts in England and Wales put less emphasis on personal ‘character’. While German courts (similarly to Danish courts) allow the defendant to have the ‘last word’ before closing arguments, English Crown Courts do not grant the defendant this opportunity of ‘self-moralising’ by accounting for their deed in court (Scheffer 2010). Scheffer et al. (2010) identified differences between German, English and American communicative styles in the courtroom, attributing these differences to procedure and cultural expectations. Judges’ roles may be influenced by these different legal cultural contexts, but our own studies show that important variations even exist within our own national jurisdictions depending on different types of cases and sentencing options that judges are considering.

Both direct, indirect and ‘self’ moralising may take place in the courtroom (cf. Luckmann 2002; Scheffer 2010). Through direct moralising, judges and
other legal actors may ask defendants to explain why they acted as they did at the time the crime was committed thereby probing into their moral reactions. Defendants are encouraged to ‘self-moralise’ via these questions. Indirect moralising, on the other hand, is often offered by the ‘expert’ documents that feed into courtroom knowledge, which include pre-sentence reports and psychiatric reports that also convey information about the defendant’s (in)appropriate emotional and moral reactions. In what Scheffer (2010) calls ‘indirect moralising’ or ‘moralising outsourced’, other professions and institutional bodies thus convey knowledge to the court, which can be used to assess the defendant’s moral character.

**Institutional Translations of Knowledge**

Knowledge about a case as conveyed through either speech or texts often passes through several institutional settings, such as the prison and probation service, the Board of Forensic Medicine, or even from the court of first instance to appellate court. The legitimacy of this knowledge is dependent on the level of trust that these institutions and their actors have in each other. Documents are not only read based on the facts they communicate, but also based on the knowledge and trust that consumers of these documents may have about their origin (Gubrium and Holstein 2009; Cicourel 1976). In his study of the French ‘Conseil d’État’, Latour (2010) analyses the ‘career’ of cases by following them through different phases of the legal process. He shows how documents are issued with the purpose of being used in other legal settings than the courtroom, and the institutional interests in the documented information may thus be translated according to these interests. Translation contains both spatial and professional dimensions because knowledge is translated between institutions as well as localities and professions (Latour 1999). While judges may be interested in certain aspects of the defendant’s case, subsequent institutions such as the prison and probation service will need other kinds of information conveyed via the document. Documents should be seen as having been issued in order to enable these different institutional needs.

A similar point can be made regarding judges’ verdicts that convey information and justification to both the defendant, the victim, the wider audience and possible appellate courts. In this sense, the court also tries to legitimise its decision ‘upwards’ and ‘outwards’ (Hawker-Dawson 2021).
Between Speech and Text: Performance and Silence

Documents concerning the defendant’s actions and their social, personal and psychological situation are pivotal in modern jurisprudence. Aided by these documents, judges are able to reach decisions by, among other things, referring to this written information. Scheffer (2010, xxxiii) characterises documents that are used during trials as being hybrid forms of “written speech and spoken texts”. Texts are not just read aloud; they are often activated when legal actors draw the court’s attention to specific, important parts of information in the document. Documents thus shape courtroom interaction and communication (Latour 2010; Prior 2003). The defence attorney may hone in on a pre-sentence report or a medical report, while the same documents may go uncommented upon in other cases. To judges, this shifting engagement may indicate some important characteristics of the defendant and whether they are ‘worthy’ of an extra engagement or not, just as it points to the dynamics of courtroom communication in relation to speech and text: it is not just about what is being read aloud, but how it is done. Flower (2019), for instance, notes that documents may be used as ‘props’ for impression and emotion management in the courtroom.

Research on communication in courts has predominantly focused on the way in which language shapes meaning and constructs information (e.g. Atkinson and Drew 1979; Conley and O’Barr 2005; Garfinkel 1967), while much less attention has been given to the absence of information and its impact (Johansen 2018). Foucault (1978) highlights silence as ‘an element that functions alongside the things said’ (1978, 27). Foucault urges us to look at what is not being said and the ways in which it connects with power relations in authorised discourse. This points to the fact that certain aspects of defendants’ persons and personalities may be cut out and silenced even before documents reach the court. On a slightly different note, research on emotions in Swedish courtrooms has shown how professional emotions and performances function as silenced backgrounds in the daily work of courts (Bergman Blix and Wettergren 2018; Flower 2019). In the following analysis, we focus on both the textual and performative aspects of silence in moral communication in court.
Modes of Moral Communication in Courts

Our analysis falls into three different categories, reflecting different modes of communication in the court cases we observed. Firstly, we discuss moral communication stemming from other professionals and institutions, such as pre-sentence reporters and psychiatrists, which feeds into the courts. The second analytical category describes the performance as well as silencing of moral information about the defendant, while the last category focuses on sentencing communication directed to and taking place with the defendant, and communication upwards—to the court of appeals—and outwards to a wider audience, including victims and the media.

Moral Communication Outsourced

It is difficult and uncomfortable to sentence someone to imprisonment in general (Tombs and Jagger 2006). Foucault’s (1991) genealogy of the fusion of the court and the psy-sciences shows how the issue of imposing a penalty became increasingly ‘embarrassing’ for the judiciary during the nineteenth century, which compelled them to lean on ‘new’ disciplines such as psychiatry to aid them in their decision-making. By extension and in order to explain how Danish judges draw on other sources of expertise when they sentence a person, we utilise Scheffer’s (2010) concept of ‘moralising outsourced’, describing how psychologists, psychiatrists and other experts feed courts with additional information about defendants.

In order to advocate for an indeterminate sentence, the prosecution has to request a psychiatric assessment of the defendant, which includes the Board of Forensic Medicine’s recommendation to the court regarding whether an indeterminate sentence is required. In cases of common assault, on the other hand, the prosecution or subsequently the defence will only request pre-sentence reports from the Probation Service if they estimate that judges might instead consider a suspended sentence with possible treatment conditions or community service. Another important difference that surfaced through our ethnographic observations of different criminal cases was the fact that these documents contained quite diverse moral meanings and content. Legal professionals regard pre-sentence reports as an asset to the defendant, aimed at giving context to the crime in question by constructing the defendant as a person rather than an abstraction of traits (cf. Tata 2019). The defendant’s childhood and parental situation, school trajectory, etc., were described in detail even for defendants of mature age, and their life story was framed within a wider social context. The pre-sentence reports that were read aloud
in the cases we observed conveyed normative ideas about childhoods and homes through sentences such as “a mother who was normally at home”, or “an ordered economy”, just as reports may mention if defendants come from “a broken home”.

Mental health assessments in indeterminate sentence cases, on the other hand, seemed to focus purely on problematic and anti-social aspects of the defendant, framed in a medical-technical language devoid of personal tone (Board of Forensic Medicine Annual Reports 2005–2008, 2009, 2013). We noted psychiatric and psychological specialist terms such as defendants’ lack of “regret, shame and empathy”, emphasis on their “grandiose self-image” and their “difficulties in understanding other peoples’ emotions”, mentions of “deviant personality”, ‘aggressive and sadistic personality traits’, ‘anti-social narcissistic traits’, ‘rigidness’, ‘immaturity’, ‘self-centeredness’, ‘lack of empathy’, ‘affective instability’, ‘superficiality’, ‘lack of the ability to establish and maintain social relationships’ and traits such as ‘tendencies to blame his surroundings for his problems’ (Fieldnote, September 2021). We found it surprising that little mention was made of defendants’ childhood situation and wider social context. While pre-sentence reports tried to portray the defendant as a social person, the mental health assessments almost seemed to break the person down into purely psychological dispositions.

In line with the different values attached to these documents, the defence tended to read aloud and comment on pre-sentence reports, while the prosecution presented the mental health assessments and elaborated them during their closing remarks. This also means that moral communication was not only outsourced in the sense that documents were issued through other institutions and professionals—even within the courtroom itself, the presentation and performance of these documents was outsourced to legal professionals other than the judge. Since judges were merely presented with this extralegal knowledge by other legal actors, they were able to uphold a notion of judicial impartiality and objectivity. The result of this outsourcing of moral communication also meant that it was not always clear where punishment came from; in other words, communication about punishment came from many different directions and not just the judge representing the State.

Performing and Silencing Morality

Our different courtroom ethnographies showed variations in the ways in which the defence and prosecution communicated documentary ‘evidence’ of the defendant’s moral abilities (see Chapter 9).
In common assault cases, the defence would often just read the *abstract* of the pre-sentence report aloud without further comments. We observed that this was the case when defendants had had difficult upbringings or a life riddled with criminality and social deprivation. These defendants’ life stories often remained ‘written’ texts because they were only read aloud relatively neutrally and not activated in any other way in the courtroom. On the other hand, defence lawyers would make an ‘extra’ effort if they sensed that the defendant might be close to receiving a suspended sentence because of their personal circumstances and appropriate emotional and moral reactions:

The lawyer starts reading excerpts from the *extended* part of the report, which is quite unusual. Every time he cites from it, he mentions the page number, and both the judge and the prosecutor start leafing through their copies of the report in order to read along with the defense. In this way, the lawyer prompts the other legal actors to engage in this story of a person who despite difficult social odds had succeeded in living an otherwise irreproachable life. (Fieldnote, May 2009)

Another, related way of handling these reports concerned the ways in which the defence would capitalise on any sign of possible remorse in the reports:

Erhan is charged for threatening a public servant. The report states that he tried to apologize to the victim several times. In the courtroom, his defence lawyer reads this aloud and then asks Erhan if he feels sorry? Erhan says, ‘of course I do’. The defence looks at him and then at the judge while Erhan says this. In her sentencing remarks, the judge explains her mild, suspended sentence with the fact that Erhan apologized repeatedly. (Fieldnote, May 2009)

If the report did not mention some kind of repentance, on the other hand, the defence would seldom ask the defendant to elaborate their feelings about the case in the courtroom.

As aforementioned, mental health reports were devoid of any signs of possible mitigation, relying instead on a range of psychological parameters to explain the supposed dangerousness of the defendant. The prosecution read these assessments aloud in court and re-narrated them during their closing remarks in which they often gave speeches filled with highly emotive remarks, as this excerpt from our fieldnotes demonstrates:

The prosecutor is about to present her final submissions and tells the ethnographer that she will be more *emotional* than usual. She seems quite nervous. During her final remarks she uses bombastic pronouncements, and changes her
tone of voice so that it is light and childish when she enacts the abused child’s perspective, and dark and severe when she cites the defendant. She raises her voice when she tells about the severe child abuse and how she has “never seen such a definitive statement from the Board of Forensic Medicine”. (Fieldnote, May 2021)

In another case of indeterminate sentence, the defence left the mental health report uncontested and instead proceeded to ask the defendant, who was charged with a brutal murder, some quite trivial questions about his present mood in prison, which he answered by saying that he felt good and slept well. Considering the severity of the case, this dialogue was somewhat bizarre and hinted at the defence lawyer’s total resignation and even silencing of the defendant’s possible remorse about the deed.

Summing up, the performative aspect of moral communication was most prevalent in indeterminate sentence cases. Prosecutors tended to perform in a way that highlighted the defendant’s immorality and dangerousness. The performative aspect seemed much more downplayed in cases of common assault and became most evident in the gap between what details were highlighted and which were left uncommented upon. The ethnographic examples show different aspects of silencing in the sense that silence can take the shape of a performative or textual absence and can also be expressed in the total absence of mitigating aspects of defendants’ persons in cases of indeterminate sentence that serve to shut down any redeeming aspects of morality or humanity. These silences and absences can only be grasped ethnographically since they will not surface in any court transcripts and also require in-depth knowledge of what usually occurs in the courtroom.

Communicating the Sentence

In common assault cases, judges utilised a fusion of what Hawker-Dawson (2021) coins as counselling style with a sharp form of communication aimed at deterring defendants from future crime. In this context, counselling should be understood in the sense of “giving advice respectfully and supportively, albeit in a way which may involve warning and challenging someone” (ibid., 98). Counselling entailed some verbal censure and the most concerted attempt to engage with defendants. Judges attempted to communicate to offenders that their actions were wrong, perhaps especially so when a harsh penalty was not imposed, but were also oriented towards the future good of the defendant. The judge in the following example explicitly referred to the pre-sentence report, which acted as a mitigating factor in Brian’s case:
Judge (raising his voice and looking directly at Brian): This is the last chance […] Brian; you need to learn to control your temper. Your pre-sentence report shows that deep down; you’re a really nice boy. You ought to be more like him. This is such a shame!

Brian: Yes.

Judge: Try to stay away from situations where you know you’ll struggle controlling yourself. (Fieldnote, August 2009)

The judge leveraged the pre-sentence report to remind Brian of his inner-self (“a really nice boy”) and spoke directly to Brian’s sense of morality. The judge’s evaluation of the shamefulness of the action framed the whole interaction in a slightly paternalistic, albeit benevolent, manner. Judges often addressed defendants directly without much space for the latter’s own self-reflection; this reflection is not the point of the judge’s sentencing remarks which are more a monologue than a dialogue. While we found that the judges condemned the assault as both a moral and legal wrong, they often spent an equal amount of time discussing the defendants’ future, as they sought to elicit change. The judges sentencing remarks would vary in their strictness, but did not generally degrade or exclude defendants from the moral community. For instance, in the following excerpt, a 16-year-old boy was charged with common assault against a fellow passenger on a train. The judge emphasised that the defendant would have received a much tougher sentence had he been an adult:

If you were an adult, you would have received 60 days or 3 months in prison just like that! Now you’ve been given 60 days whereof most is conditional. You’ll go to prison for 14 days – you exhibited a crude behaviour. The lady [who was assaulted] might have said something to you – but it is still not right to put your shoes on the train seat – even though the lady was impolite, you have no right to behave like that. (Fieldnote, June 2009)

The judge in this particular example actually chose explicit, condemning moral language by addressing the “crude behaviour” of the defendant and framing the incident as a matter of rights and decency. She used a combination of denunciatory and specific deterrence communicative styles, but ultimately handed the defendant down a mild sentence due to his young age. In another case, Lars, a 35-year-old man, was sentenced to a 3-month conditional sentence including 80 hours of community service and treatment for alcohol dependency. The judge looked directly at Lars and explained that he gave him a relatively mild sentence, because he did not have any prior convictions and had suffered a difficult period with a bereavement and
alcohol abuse. This was said in a relatively soft tone of voice. The judge then raised his voice and went on to say more sharply that, ‘I would advise you to refrain from - in any way - repeating what you have done, because then you will go straight to [prison]’. Judges seemed to communicate through both language and intonation, speaking either softly or in accessible terms when ‘counselling’ the defendant, and shifting to a louder, sharper tone of voice when using the specific deterrence approach and emphasising the defendant’s proximity to custody (cf. Hawker-Dawson 2021).

In cases receiving indeterminate punishment, the judges’ communication remained technical and devoid of emotion with an overall neutral tone of voice. They often gave their sentencing remarks very quickly without additional explanation and hurriedly withdrew from court thereafter. All that remained was silence, which, according to a judge we interviewed, in this context means that all moral judgement takes place “implicitly”, hence unspoken in an indeterminate sentence. The judge goes on to say that his role in these cases was “not rehabilitative”, but to implicitly communicate “how seriously you [the defendant] misbehaved” purely through the sentence itself. Similarly, in the same case, the prosecutor we interviewed said that judges’ communication was clearer when “defendants get a chance and can be lifted upwards” which is not the case in indeterminate sentencing.

In Denmark, the written verdict constitutes a very brief statement devoid of emotion, but we argue that the prosecution and appellate courts are able to ‘decode’ this information. Other professionals understand certain expressions and technical language, which is incomprehensible to outsiders.

This upwards communication is characterised by highly ‘legalistic’ sections intended primarily for barristers and the Court of Appeal rather than defendants (cf. Hawker-Dawson 2021). In this communicative framework, there is little attempt to morally engage with defendants or other lay attendees in the court. Judges’ communication is thus—at least partly—aimed at institutions and actors beyond the specific courtroom (Gubrium and Holstein 2009). In some cases of common assault, and in nearly all cases with an indeterminate sentence, the Court of Appeal became “the unseen audience in sentencing hearings” (Hawker-Dawson 2021, 101).

In cases with an indeterminate sentence, judges’ sentencing remarks were often shaped by communicative aridity (Hawker-Dawson 2021; Walgrave 2003), which means they used highly technical judicial communication, especially when communicating upwards and outwards to audiences beyond the courtroom such as the wider public (including victims), the press and the Court of Appeal, especially in cases with broad media interest. Judges’
concern with the very real possibility of appeal in preventive detention cases culminated in the use of technical language obscured by professional codes:

Judge: “We have taken the Board of Forensic Medicine’s assessment into consideration who described Peter’s personality as anti-social, and found him to be dangerous to his surroundings. Beyond that, we have taken Peter’s previous sentences into consideration where he displayed what the law calls quick recidivism”.

In this particular case, no one explained what an indeterminate sentence is and what it entails and no one looked directly at the defendant or spoke to him while the ruling was read aloud. (Fieldnote, May 2021)

Both the written verdict and the judges’ oral remarks thus serve multiple purposes, in line with Latour’s (2010) point concerning the presentation of knowledge in court as a translation of different institutional interests. Furthermore, we argue that judges’ omission of moral explanations directed towards the defendant constitutes ‘silent’ communication about the deed and defendant as being beyond repentance, reform and reconciliation.

**Closing Remarks**

If we wish to understand communication in courts, we need to expand our analytical framework beyond the court’s parameters. Danish judges generally take on a reserved role during trial, and they depend on a range of other professionals to make their judgement. They ‘morally outsource’ their judgement to other experts such as psychiatrists, psychologists and probationers. Communication in the court cases we observed is thus shaped by affiliated professional actors as much as it is by what goes on inside court. These findings have implications for researchers embarking on fieldwork in courts in the sense that the richest data on moral communication might be found among what is written and said—and not least, how things are said. The tacit knowledge of the professionals in a court setting is intertwined with other experts’ knowledge and can thus not be understood in a vacuum.

Our comparative approach allowed us to highlight key differences in the ways in which written documents such as pre-sentence reports and the Board of Forensic Medicine’s assessments are utilised in very divergent ways. The reports have different purposes and cannot be compared directly with one another, but their influence on the court’s understanding of the defendant’s moral abilities is equally profound.
Communication in courts is important because it represents the ways in which the “state legitimates and justifies its power to punish” (Daly and Bouhours 2008, 502). In line with recent scholarship on the objective and subjective meanings of punishment and on sentencing as moral communication, we argue that it is important to pay attention to how communication in court targets different audiences, what judges’ aims are, whether the parties engage in a moral dialogue and how defendants absorb the messages. We add layers of complexity by taking other institutions and actors into account and argue that future research needs to develop this line of inquiry.

Suggestions and Guidance for Further Readings

   Latour’s ethnographic study of the French administrative Supreme Court analyses judges’ exchanges when preparing and deciding cases. Latour argues that law is created and shaped by the tension between legal reasoning, expert knowledge and common sense.

   Scheffer develops a transsequential approach to the preparation and decision of cases at the English Crown Court from the perspective of law firms, barristers’ chambers as well as the courtroom itself, particularly showing the interrelated role of talk and text in these legal processes.

References


