CS 182: Ethics, Public Policy, and Technological Change

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Today’s Agenda

1. What are we trying to achieve with a criminal justice system?
2. Deciding to use an algorithm in the real-world
3. Interrogating the idea of efficiency gains
4. One approach: simulating outcomes
5. Second approach: implementing and measuring outcomes
6. When are algorithms useful for public policy?
7. Who should decide? How? When?
Hold On a Second!

Mass Incarceration

U.S. State and Federal Prison Population, 1925-2014

Number of People

Source: Bureau of Justice Statistics Prisoners Series.
Incarceration by Race

Prison population per 100,000 people by race

Source: US Census Bureau, Bureau of Justice Statistics
A Moment of Reckoning

Source: Brett Sayles
First Principles

• What is the purpose of the criminal justice system? What is punishment for?
  • Preventing crime and protecting public safety (deterrence)
  • Holding perpetrators responsible for crimes committed (retribution)
  • Helping offenders return to society as law-abiding citizens (rehabilitation)

• More narrowly, why do we have a bail system at all? What criteria would you use if you had to make a decision about whether someone should be released on bail?

• Can algorithms help us make better decisions? What problem are we solving?
Benjamin warns about the dangers of discriminatory designs that:

“explicitly work to amplify hierarches...”

“ignore and thus replicate social divisions”

“aim to fix racial bias but end up doing the opposite”

She calls this: the New Jim Code.
# Algorithms are Only the Beginning

<table>
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<tr>
<th>Intake and Assessment</th>
<th>Ongoing Support</th>
<th>Supervision and Oversight</th>
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</thead>
<tbody>
<tr>
<td><strong>Assess Risks and Needs</strong>&lt;br&gt;We evaluate each participant to understand their needs and any risk they may pose to the community.</td>
<td><strong>Care Team Communication</strong>&lt;br&gt;Care Plans include scheduled calls and meetings between Care Coordinators and participants. Participants can also chat with our Care Team through the app whenever they need more support.</td>
<td><strong>Total Transparency</strong>&lt;br&gt;We provide our government clients with a sophisticated set of tools for monitoring our programs and the progress of each person they have entrusted to our care.</td>
</tr>
<tr>
<td><strong>Develop Care Plan</strong>&lt;br&gt;Based on our assessment, we develop an Individualized Care Plan (ICP) with the appropriate level of support and supervision to ensure success.</td>
<td><strong>Service Coordination</strong>&lt;br&gt;We connect participants to support services based on their individual needs and adjust their Care Plans as those needs change.</td>
<td><strong>Dashboard and Analytics</strong>&lt;br&gt;At any time, clients can view a participant’s progress, including compliance with court orders and their Care Plan.</td>
</tr>
<tr>
<td><strong>Care Kit</strong>&lt;br&gt;As part of their Care Plan, we provide tools and information to help guide participants through the program, including our mobile app and GPS monitoring devices when needed.</td>
<td><strong>Calendar and Reminders</strong>&lt;br&gt;Through the app, we send reminders for upcoming events to be sure participants will attend and arrive on time for all their court dates and other Care Plan appointments.</td>
<td><strong>Reports for Court</strong>&lt;br&gt;We also provide participants with written reports for court appointments to demonstrate their progress in required supervision and support programs.</td>
</tr>
</tbody>
</table>

Source: Mike Barry (CC-BY-2.0), Y Combinator (Public Domain)
“Promise... is dangerous and insidious precisely because it is packaged as social betterment.”

“But if this company is to genuinely contribute to decarceration, it would need to shrink the carceral apparatus, not extend it and make it more encompassing.”

-- Ruha Benjamin, Race After Technology

We should be careful to avoid a situation in which technical fixes undermine the impetus toward more far-reaching aims.
Flipping the Script

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California’s SB 10

Senate Bill No. 10
CHAPTER 244

An act to amend Section 27771 of the Government Code, and to add Section 1320.6 to, to add Chapter 1.5 (commencing with Section 1320.7) to Title 10 of Part 2 of, and to repeal Chapter 1 (commencing with Section 1268) of Title 10 of Part 2 of, the Penal Code, relating to pretrial release and detention.

[Approved by Governor August 28, 2018. Filed with Secretary of State August 28, 2018.]

LEGISLATIVE COUNSEL’S DIGEST

SB 10, Hertzberg. Pretrial release or detention: pretrial services.
In 2018, California legislators debated and voted on a bill that would:

- Eliminate cash bail and replace the system with “risk assessments” that would determine whether defendants are released and under what pre-trial, non-monetary conditions
- Require each county to set in place a system (either its own or one from a third party provider) to make this risk assessment
- Review the system in 2023 to check for bias

How would you vote? Why? What criteria would you use to make your decision? Take 5 minutes to discuss.
Criteria

1. Does it improve public safety? (Efficiency)
2. Is it fair? (Fairness)
3. Can people understand how it works? (Transparency)
4. Can people appeal its judgment? (Due Process)
5. Does it use information that an individual might reasonably expect to remain private? (Privacy)
A Victory for Fair Treatment?

- “Today, California reforms its bail system so that rich and poor alike are treated fairly…”
  - Governor Jerry Brown, Aug. 28, 2018

Source: California Governor’s Office
1. Does it improve public safety? (Efficiency)
2. Is it fair? (Fairness)
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Rob and Mehran focused on issues of fairness, and whether there might be a trade off between accuracy and fairness.

Today, we are going to introduce an additional focus on efficiency – how would we know if we achieve better outcomes (for safety) by using an algorithm?

On Monday, we will talk about transparency and due process.
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Efficiency Gains

What is the promise of using algorithmic decision-making to make bail decisions?

• It might reduce crime by more effectively/efficiently keeping dangerous criminals off the streets

• It might reduce bias by limiting the degree to which judges take extraneous or protected characteristics into account in making their judgments

How do we know if the use of an algorithm more effectively keeps dangerous criminals off of the streets?
Two Questions about Efficiency

1. Does the algorithm make more accurate decisions?
   • Issue of predictive validity
   • How it compares to other decision-making approaches

2. When introduced into the judicial process, does the use of an algorithm translate into better outcomes with respect to crime and recidivism?
   • Question of real-world impact
   • Depends a great deal on implementation
More Accurate Decisions than What?

Source: www.blackcommentator.com
More Accurate Decisions than Who?

Source: Rob Curran (Unsplash License)
Better Outcomes?

Observed Status
County uses algorithmic risk assessment

Observed Outcome
County experiences lower rates of crime and recidivism

Big question: did the use of the algorithm cause the outcome? Perhaps it would have happened anyway? The challenge is an “unobserved counterfactual”.
Detour on Causation

What are the other plausible explanations for the correlation?

Source: Stanford University (Public Domain), Flag of California, Anonymoususer (Public Domain), Christian Bowen (Unsplash License)
**Counterfactual Approach**

**Observed Status**
County uses algorithmic risk assessment

**Observed Outcome**
County experiences lower rates of crime and recidivism

**Counterfactual**
County does not use algorithmic risk assessment

**Unobserved Outcome**
Crime and recidivism rate?
Strategies of Causal Inference

- Gold standard: randomized controlled trial (RCT)
Everything Else in Social Science...

Is trying to get as close as possible to a clean measure of the counterfactual. We need to estimate the impact of one variable on another, *ceteris paribus* (“other things equal”). Strategies include:

- Regression: comparing the treated and control group with the same observed characteristics
- Instrumental variables: exploits partial or incomplete random assignment to identify the effect of the treatment
- Regression discontinuity: take advantage of arbitrary rules that occur in the world
- Difference in differences: leverage fact that treatment and control groups may move in parallel in absence of treatment
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Beyond Predictive Accuracy

• We typically evaluate machine learning algorithms in terms of their accuracy. We do this by making predictions “out-of-sample”: using part our data to train and part to test.
• But there is a problem in the risk assessment case: we only observe outcomes for those individuals who are released by judges. We do not know whether those who are not released would reoffend or not.
• The implication is that the algorithm may perform well for some test data, but perhaps not in the real world.
• This is especially plausible in the bail case if judges have access to information about defendants that the algorithm does not (e.g. judges see gang tattoos on young people and only release those without them, who are less likely to reoffend).
Comparing Algos & Judges

• The right question is whether the algorithm improves upon *judges’* decisions. But how can we evaluate this when we don’t know whether a jailed defendant would have committed a crime if released?

• Kleinberg et al (2017) focus on defendants who were not jailed, and ask whether the algorithm could do better in those cases (by jailing additional defendants released by lenient judges) as compared to strict judges.

• The results are pretty compelling:
  • The riskiest 1% of defendants, when released, fail to appear at a rate of 56% and 62% are rearrested – yet judges release nearly half of them.
  • Stricter judges tend to jail defendants from throughout the risk distribution; if they jailed those with higher risk scores, they could jail half as many people and achieve the same predicted level of crime.
Algorithms vs. Anybody?

TECHNOLOGY
A Popular Algorithm Is No Better at Predicting Crimes Than Random People
The COMPAS tool is widely used to assess a defendant’s risk of committing more crimes, but a new study puts its usefulness into perspective.

“Imagine you’re a judge and your court has purchased this software; the people behind it say they have big data and algorithms, and their software says the defendant is high-risk,” says Farid. “Now imagine I said: Hey, I asked 20 random people online if this person will recidivate and they said yes. How would you weight those two pieces of data? I bet you’d weight them differently. But what we’ve shown should give the courts some pause.” (A spokesperson from Equivant declined a request for an interview.)

Source: Atlantic Logo, Public Domain
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Algorithms in the Real World

Why might the effects we estimate in simulations not be realized in the real world?

There are many reasons, but we will focus on two today:

• Implementation
• Endogenous response
A critical question is how algorithmic decision-making interacts with human judgment.

“For algorithms to add value, we need people to actually use them; that is, to actually pay attention to them...” (Kleinberg et al)
Case Study: Kentucky

- I asked you to review a study by an economist about the impact of HB463 in Kentucky.

- What is this exercise about?
  - Examines the use of a pre-trial risk assessment tool in real life
  - Exploits a policy change that set a new recommended default for judges on the basis of risk scores
  - Policy change was implemented across the state of Kentucky
  - Measures outcomes including: (a) whether defendants were released with a non-financial bond (b) whether judges’ decisions to follow the recommended default varied by race.

- One of the very few systematic studies of algorithmic decision-making as deployed in actual criminal justice systems.
Suppose you have a really awesome machine learning algorithm that predicts recidivism and you want to make it available to judges. What decisions do you need to make if you want it to be used?

1. When in the judicial process to provide the information?
2. Who to provide the information to (e.g. pre-trial services agencies, judges, etc.)?
3. How to provide the information?
4. How much the information should be weighed in making the decision?

All of these choices could have HUGE effects on the outcomes.
### Ex. How to Present the Information

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Which approach do you prefer? Why?

Source: Tracy Elford (CC-BY), modified by cropping to focus on the stoplight; Public domain; Public Domain
Ex. How to Weigh the Score

Presentation to the Judge: Judge Call

- Typically handled through a phone call.
- Presents the defendant’s charge, risk-assessment score and recommendations on release.
- Judges are required to release low- and moderate-risk defendants before trial on their own recognizance or unsecured bond.
- Judge must document the reasons for denying release in a written order. Reasons include that the defendant is found to be a flight risk and/or a danger to the community.

HB 463 created a requirement to release, but left discretion to deviate. Why might discretion be valuable?
Measuring Outcomes

- The study of how judges interacted with the new policy revealed that:
  1. Many more people were released with non-financial bond after the implementation of the new law
  2. But white defendants benefited more from the policy change than black defendants
  3. And judges overrode the presumptive default (of non-financial bond for low and moderate risk defendants) more often for blacks than for whites

The bottom line: racial disparities for low and moderate risk defendants jumped even though the same treatment was recommended regardless of race
But is it just that whites differ in their underlying risk level distributions and are mechanically more likely to be released?

Even Worse News

Figure 12: Bond Outcomes Before and After HB463 by Race and Risk Level

Why might the effects we estimate in simulations not be realized in the real world?

There are many reasons, but we will focus on two today:

- Implementation
- Endogenous response
• Setting: Assignment of entering freshmen at Air Force Academy to peer groups designed to maximize the performance of lowest ability students
• Application of ML: Harness historical data on freshmen year performance to design “optimal” peer groups – critical insight was that low ability students benefit from being with peers who have high verbal SAT scores
• Experimental Design: Half of incoming students are assigned to peer groups randomly; the other half are assigned via the optimal matching algorithm that places low and high ability students together
• Empirical Results: Low ability students do significantly worse in optimally matched peer group
Results

Interpretation

• What do you think happened?

• Carrell et al (2013) argue that, when sorted into groups with only low and high ability individuals, each group segregated into its own “study” groups – eliminating the beneficial effect of being assigned to the same peer group.

• Can you imagine any endogenous response of introducing a risk assessment algorithm into the criminal justice system?
1. Look for policy problems that hinge on prediction
2. Make sure you’re comfortable with the outcome you are predicting
3. Check for bias
4. Verify your algorithm in an experiment on data it hasn’t seen, preferably in the real world
5. Remember there’s still a lot we don’t know, especially about algorithms as decision aids and the endogenous response
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Who Should Decide? How? When?

In Opposition to this measure:

Total amount of reported contributions to this measure: $10,181,122*

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Proposition 25: Sustain SB 10?

Source: Dai Sugano, Bay Area News Group
### Proposition 25: Sustain SB 10?

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<th>Proposition 25</th>
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Source: California Secretary of State, Statement of Vote (https://elections.cdn.sos.ca.gov/sov/2020-general/sov/complete-sov.pdf)