Structuring Sentencing Decision-making and Equality. Defining 'Like Cases' Through Numerical Sentencing Guidelines

Recent decades in USA and in Europe exhibit widespread legislative attempts to structure sentencing decision-making in criminal courts. While sharing this trend, jurisdictions differ in the kinds of structures implemented. Such differences bear upon the meaning that general principles attain in substantive sentencing law.

The paper explores how the use of *numerical* sentencing structures bear upon the meanings that a rule based principle of equality attains in sentencing law. To do so, the paper compares Minnesota numerical sentencing guidelines with the *narrative* statutory sentencing principles in Denmark. Both represent dominant contemporary sentencing structures.

Most importantly, the paper displays how numerical sentencing guidelines detach a rule based principle of equality from the processes of case-level decision-making. The individual offender is left behind as the primary penal subject and the operation of defining 'like cases' is relieved from the normative judgments of case-level decision-making. Instead it is assumed that 'like cases' can be defined categorically on an aggregated level. On this level, a rule based principle of equality develops from a principle of sentencing like cases alike into a principle of sentencing uniform categories of cases uniformly.