Child’s Play or Child Pornography: The Need for Better Laws Regarding Sexting

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Jessica Logan was an 18-year-old high school girl in Ohio. One night, she sent some nude pictures she took of herself with her cell phone to her boyfriend. When they broke up, the boy sent the photo to four other girls who forwarded it on to many others in her high school. Once Jessica found out about the incident, she became withdrawn and depressed (Kranz, 2009). Going to school became a challenge because she was taunted and teased by other students. She was called a whore and a slut repeatedly. She was kicked out of parties for having a bad reputation. Text messages to her cell phone and messages to Facebook and MySpace accounts continually called her names. The taunting, name-calling, and cyber bullying eventually became too much for her and she hung herself in her bedroom. This is an extremely tragic (Continued on pg 3)

Statistics: A Loan with Different Terms

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With an inherently interdisciplinary approach, criminologists regularly borrow ideas and principles from various fields. Because theory exists in the purely metaphysical, it is possible to borrow and integrate multidisciplinary lines of thought while ignoring discipline-specific traditions. In the pursuit of more inclusive theoretical models and understanding, in fact, liberal theorization (e.g., theory elaboration) is encouraged; few consequences arise from modifying incompatible ideas or leaving differences across theories unresolved (Thornberry, 1989, pp. 56-60; 2005, pp. 230-231; Kubrin et al., 2009, p. 254)

While such an enterprise may be especially characteristic of criminology, the incorporation of mathematics and statistics is common to theory tests across most fields, and borrowing these ideas deserves careful consideration. Transplanting products from the somewhat boundless theoretical world into statistical (Continued on pg 10)
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BJS Launches Redesigned Website

The Bureau of Justice Statistics (BJS) website has been redesigned and is now available at:

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Many new features and tools have been added, and the site’s content has been completely reorganized to allow users to quickly find the information they’re seeking. New features include enhanced search capabilities, prominent placement of new products and announcements on the homepage, RSS feeds, and more. Tutorials are available to help users become familiar with the new site and its features.
Sexting, a relatively new, and potentially disastrous trend among juveniles. It is young people taking sexually explicit pictures and videos of themselves and sending them to their boyfriends and girlfriends via a cell phone. This behavior has become so common, it has its own name – sexting – combining “texting” with “sex.” Sexting is a part of a larger trend among adults and teenagers alike known as self-exploitation. These are acts where people take sexually explicit pictures or videos of themselves and make them available electronically. The Internet is replete with homemade images of people engaged in a variety of behavior, from the mundane photograph to explicit videos. A growing industry has emerged consisting of websites like HotorNot and DoYouLikeMyNudeBody where people post, often sexually explicit, images of themselves for others to view and rate.

Sexting, and the larger category of self-exploitation, creates several problems for criminology, law, and the criminal justice system. First, to this point, these images fall within the definition of child pornography and can subject teens to severe legal consequences, including prison terms and sex offender registration. Next, the images are sometimes forwarded to others (especially after the couple breaks up), which can have disastrous results such as with Jessica Logan. The current federal law and the laws in most states do not have appropriate reactions for this kind of behavior. Technically, it is considered possession and/or distribution of child pornography; but practically, it is often just children acting in ill-advised, and potentially disastrous, behavior.

This article addresses the issues surrounding sexting as it applies to child pornography. It addresses the implications of child pornography laws and policies for young people sharing sexually explicit images of themselves. We make two primary arguments related to adolescent self-exploitation. The first is a First Amendment argument of freedom of expression: whether these teens are engaging in child pornography or exercising their constitutional rights of freedom of
expression. If the images are not depicting sexual content, and are not obscene, arguably they are protected speech. The second is whether laws that prosecute teens for child pornography and/or require them to register as sex offenders are contrary to the spirit of the laws that were originally designed to protect them from predators. When these laws were created, it is likely no policy maker envisioned a situation in which teens would voluntarily take pictures and send them to other teens, or that a teen may be required to register as a sex offender for possessing or sending the pictures to others. Both arguments are discussed below. The article also presents policy implications and a call for research and changes to the law related to sexting behavior.

Background
Sexting has become a common word in a short period of time, appearing in newspaper articles, news accounts, and as the subject of legally-oriented television shows. The problem is so prevalent that a school officer in Ohio told a newspaper reporter that if he were to go through the cell phones of 1,500 students in his school, half to two thirds would have indecent photos of other teens on them (Ahmed, 2009). The true extent of sexting, however, is not currently known. Only one major study existed at the time this article was written (National Campaign to Prevent Teen and Unplanned Pregnancy, 2008). That study was administered online in partnership with cosmogirl.com. Teens responding to the survey were questioned about how common it was to engage in this kind of behavior and why they did it. A total of 653 teens aged 13 - 18 and 627 young adults aged 20 - 26 responded. The study showed that 20% of teens had sent or posted nude or semi-nude photos or videos of themselves via cell phones or the Internet, and 33% sent sexually suggestive messages. Almost 30% of respondents stated that images or videos meant for someone else had been shared with them. Peer pressure seemed to be a principal reason for engaging in self-exploitation behavior, with over 23% of teens responding they were pressured by friends and over 50% of teen girls responding they were pressured by their boyfriend to send or post sexually explicit material.

Given that the consequences of sexting cases, for both parties, can be severe, courts and legislatures appear to be struggling with the best response to the incidents. Some state and local justice systems are taking a hard line on sexting, arresting and prosecuting teens for such behavior. Other state and local justice systems are arguing this kind of behavior is not consistent with child pornography laws. For example, in a recent case in the Middle District of Pennsylvania, a federal judge blocked six students from being charged with felony child pornography (Miller v. Skumanick, 2009). This case arose when a public school district confiscated several students’ cell phones and discovered scantily clad photos of teenage girls. The school district turned the phones over to the district attorney who began a criminal investigation. The district attorney planned to charge the students with possessing and distributing child pornography. The defense in this case argued that the photos did not rise to the level of pornography because they were not obscene. One photo showed two girls from the waist up wearing their bras. One girl was talking on the phone and the other was making a peace sign, therefore not constituting provocatively or sexually explicit poses. The other photo depicted a girl wrapped in a towel just below the breasts who appeared to have just gotten out of the shower. Neither photo depicted any sexual activity. The Section 1983 suit filed by the parents argued, in part, that the charges were a violation of the boys’ First Amendment rights to free expression. The parents argued that, because the photos were not obscene, they were protected speech. The US District court ruled in favor of the parents for the temporary restraining order, stating they had set forth sufficient constitutional grounds.

An example of legislators attempting to address this behavior is from Utah. The legislature, in House Bill 14 in 2009, added language to their state statute involving child pornography to change the punishment from a Third Degree felony to a Class A misdemeanor for persons 16- or 17-years-old and a Class B misdemeanor for anyone under 16. These changes appear to be an effort on the part of the legislators to craft penalty provisions that are more closely related to the age and mindset of those engaged in this activity rather than applying laws to adolescent behavior that was passed to protect children from sexual predators.
Not all state laws, or the federal law, have such provisions. In many instances, adolescents are being charged with felony child pornography charges, often carrying long prison sentences and up to a lifetime of registration as a sex offender.

**Legal and Policy Implications of Child Pornography Laws**

We propose there are three problems with current child pornography legislation as it relates to sexting. First, we argue that much of the material involved in sexting does not meet the standard of obscenity outlined by the U.S. Supreme Court. We argue from a policy perspective that material possessed or distributed by adolescents that is not obscene and does not include any child abuse should not be classified as child pornography. Second, we argue that this behavior is largely the result of ill-advised but not criminal behavior on the part of the adolescents. From a legal perspective, we argue that an age gap clause should be included in any child pornography law involving sexting behaviors between minors and persons older than 18. Finally, we argue that sexting in which all parties involved are juveniles should be decriminalized. Each of these are further explored below.

**Obscenity and Sexting**

The first issue addresses whether or not the content of many sexted messages fall within the definition of child pornography messages (we are not under the illusion that all sexted messages do not contain sexually explicit behavior that may constitute obscene material). Child pornography laws are written necessarily broad to cover many behaviors that would constitute sexual exploitation of a child. This includes language such as in the Virginia law where simple exposure of the genitals, buttocks, or breasts can rise to the level of illegal behavior. The relevant portion of that law follows:

Section 18 -2.390 “Nudity” means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state. This statute goes beyond the standard federal laws and most state laws use to identify something as obscene. This law was most likely passed in an effort to reach the broadest possible range of behavior where a child could be the victim of sexual abuse related to the production of child pornography.

Virginia has the right to set its standards of obscenity. That issue was decided in *Miller v. California* (1973), where the Supreme Court ruled the appropriate standard for determining obscenity was “contemporary community standards” not a national standard. The significance of the holding in *Miller* was that only material deemed to be obscene could be denied First Amendment protection. In making that determination, courts were required to examine contemporary community standards. In cases involving sexting, the argument can be made that the contemporary community standard involved is a teen community of consumers. As Justice Stevens stated in his dissent in *Bethel School District No. 401 v. Fraser* (1986), a student giving a speech to his own peers was in a better position to determine whether an audience composed of his contemporaries would be offended by the use of certain language or sexual metaphors than a group of judges at least two generations older and many miles away. The same argument can be put forth with images involved in sexting. Since the teens are typically taking the photos of themselves and sending them within their own peer group, the fact that a young girl may be topless is not necessarily indicative of an attempt to create an obscene image. Further, the Internet is replete with images of young girls (often as young as 8 or 9) posed provocatively, often in provocative adult dress, and occasionally topless or otherwise displaying various levels of semi-nudity. These websites are not brought under legal prosecution because they are modeling websites for the young girls displaying their professional work. If these are not considered obscene, and if the teens who engage in sexting do not see the images as obscene, then an argument can be made that images of teens not engaged in sexually explicit behavior should not be considered obscene when exchanged within their peer group.
Also important in determining if images are obscene is the intent of the behavior. Again, taking a picture of oneself indicates a form of self-expression. Case law that addresses child pornography specifically limits chilling self-expression unless the material involved is either obscene or related to the sexual abuse of children.

In *New York v. Ferber* (1982), the U.S. Supreme Court determined that sexual exploitation of minors for monetary gain provided a compelling reason to limit speech that might otherwise be protected. The Court allowed New York to craft a state statute that prohibited the dissemination of such material, even when not found to be obscene, without violating the First Amendment. The statute in question prohibited a person from knowingly promoting a sexual performance by a child under the age of 16 by distributing material that depicted such performance. Opponents of the law argued that, under *Miller*, only material that was obscene could be excluded from First Amendment protection. The Court in *Ferber* held that states have greater leeway in the regulating pornography involving children because of five factors.

First, the New York legislative decision was compelling that using children as the subject of pornography harms them. The Court held that sexual exploitation and abuse of children is serious enough to provide a compelling state interest in limiting speech that was not obscene (*Ferber*, 1982). The second reason was that the *Miller* test for determining obscenity was not sufficient in cases of child pornography because, even when not obscene, child pornography was directly connected to child abuse. The Court held that materials depicting the exploitation of children, even if the material does not meet the definition of obscenity, should be prohibited in an effort to control the underlying child abuse that created the materials. The third factor considered by the Court involved advertising and selling child pornography. They held that these activities provide an economic motive for producing child pornography; thus, they are intertwined with the production of illegal materials. Addressing the fourth factor, the Court ruled that typical arguments that the material has serious literary or scientific value were not supported. If an educational or scientific need existed for such depictions, an older person could be used to portray a child. Finally, the Court ruled classifying child pornography as unprotected speech is not inconsistent with other decisions. The Court determined that certain classifications of speech can be restricted because the potential harm so overwhelmingly outweighs the benefit, if any, so a case by case determination is not necessary.

In *Ferber*, the Court allowed states the authority to regulate child pornography. The Court also held, however, the distribution of descriptions of sexual conduct not otherwise obscene and not involving live performances or other visual reproduction of live performances of children retains First Amendment protection. Given this limitation, we propose the *Ferber* case is distinguishable from most sexting cases in two ways.

First, when youths voluntarily participate in taking photos of themselves and sending them to others in their peer group, while not advisable, one would be pressed to argue that child abuse has occurred. Admittedly, if there is some coercion on the part of the other party in the dating relationship, it is possible to consider it falling within the purview of child pornography since it was undertaken for a prurient interest; however, the ages and true intentions of the youths should be considered at that point, as will be discussed below when addressing the issue of the ages of those involved.

When an image is retransmitted to someone other than the intended recipient, greater consideration may need to be taken of the motives and actions of the sender; but the intentions (*mens rea*) and age of the sender should be carefully considered. In child pornography cases, a common defense is that the child victim is not harmed by simply possessing or even distributing an image already taken. This argument was rejected in *Ferber*, but is differentiated in sexting cases. First, while it is true the consequences of retransmitting the behavior may be substantial, and such behavior exhibits lack of judgment and immaturity, it may not represent the type of child abuse child pornography laws and cases try to prevent. The retransmission is not about distributing child pornography, it is about hurt feelings, revenge, and the actions of young people. A comparison can be drawn from a similar, and common, teenage behavior. When a teenage couple breaks up, the boy may make a very public habit of calling the girl a slut, saying she slept with the
football team, etc. The response is typically not to arrest the boy and charge him with slander however. Such actions may result in the same kind of embarrassment, ridicule, and even worse than what takes place in retransmitting a sexted image, but the legal responses are almost universally different.

Age Gaps in Laws

The next policy consideration is that an age gap clause should be considered when one of the parties involved is over 18. Precedent for this sort of age gap requirement exists in other laws involving sexual conduct between two parties. For example, the Georgia statute already provides for a three year age gap between those involved in computer transmission of pornographic images. The statute states that “any person who violates the law is guilty of a felony…; provided, however, that if at the time of the offense the victim was 14 or 15 years of age and the defendant was no more than three years older than the victim, then the defendant shall be guilty of a misdemeanor of a higher and aggravated nature” (Georgia Code Annotated, 2009).

Furthermore, most statutes regulating sexual intercourse where at least one party is a juvenile include language relevant to the age difference between the parties. For example Louisiana Revised Statute 14:81.2 defines child molestation as follows:

Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense (emphasis added).

These statutes illustrate an attempt on the part of state legislatures to take into consideration the sexual development of adolescents. Many teens in junior high and high school have boyfriends or girlfriends who are two to three years older than them. These laws are designed to take that into consideration.

We propose that sexting laws should not be any different from other laws related to the sexual behavior of young people. When all participation is voluntary on the part of those involved, even if one party is over the age of 18 and one is under the age of 18, where no predatory activity has occurred, and where no abusive behavior has occurred, an age gap provision such as the two relayed above would be a sensible limitation on prosecution of young people for felony child pornography. Currently, juveniles sending to and receiving images from other juveniles are treated the same as a predatory adult who takes pictures of young people and possesses or distributes them. The two offenses hardly seem comparable, and applying the same penalty to both runs contrary to the spirit of the laws designed to protect them from predators.

Decriminalization for Juveniles

Finally, we recommend that when both the sender and receiver of texted images are juveniles, the offense should not be considered child pornography. We argue for decriminalization of this offense. Decriminalization makes sense for many reasons. Possibly most important, both federal and state statutes require a component of “knowledge” (mens rea) as an element of the crime. For example, in Title 18, Crimes and Criminal Procedure, Chapter 110 – Sexual Exploitation and Other Abuse of Children. Subsection A of the federal statute, it states:

(a) Any person who (1) knowingly mails, or transports or ships in interstate or foreign commerce by any means, including by computer, any child pornography; [or] (2) knowingly receives or distributes (A) any child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer; or . . . (3) knowingly (A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or . . . (5) knowingly possesses any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including
by computer, or that was produced using materials that have been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer [is guilty of possession and/or distribution of child pornography] (emphasis added).

Arguably, Congress meant that the knowledge required was more than the fact that a child was involved in the activity, but also knowledge of what child pornography entails. Additionally, legislatures and courts fashioned laws against child pornography to protect children from predators. Granted, predators can be found in both adults and children, but predatory activities are not typically involved in most sexting cases. The taker of the photo is often not asked to take or send the image, and no economic gain comes from the activity. The young people involved know each other most of the time. They are not being exploited by someone in a position of power and forced into their behavior (other than through peer pressure). The photos and images are not being sold for monetary gain, so no industry promoting child pornography is involved. Simply stated, this is not the sort of activity the Court envisioned in Ferber. In that case the Court was concerned with the way in which the images were produced, and the child abuse that lead to their production, more than the content of the images. In the production of sexting images, they are largely unsolicited and taken as a result of immature teen judgment, not as a result of child abuse.

While, in general, ignorance of the law is not a defense for breaking it, one would be hard pressed to think that a young girl who takes a sexy picture of herself and sends it to her boyfriend is considering her actions to be child pornography. Likewise, when the young man to whom she sends it forwards it to some of his buddies, we are again hard pressed to make the leap that he considers his action dissemination of child pornography. The basic intent to break the law seems to be absent from these youthful actions. Courts seem to recognize this level of immaturity and poor judgment in other cases. For example, in Roper v. Simmons (2005), the Court recognized that “a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities are often responsible for ill-considered actions and decisions.” The Court recognized that, because of this, almost every state prohibits those under 18 from voting, serving on juries, or marrying without parental consent. Further, the Court stated that the susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult” (Roper, 2005, p. 569). In this case, the Court was making a determination of whether to impose the death penalty on juveniles. They determined that such a penalty was too harsh given the immaturity of juveniles. Surely the same argument would apply to the immature behavior of sexting photos and ending up a long-term registered sex offender.

Conclusions and Recommendations
The behavior included in sexting (young people sending sexually explicit images of themselves to others, or forwarding those images, without the intention of engaging in child pornography) did not exist, nor was it possible, when most child pornography laws were written. The cases and statutes discussed above illustrate that sexting behavior does not neatly fit into the laws promulgated to control the sexual exploitation of children. These activities are becoming extremely common, however. If the findings of the only major study to this point were to be generalized to the US population of adolescents, it could mean that several million youth would fall under the purview of current child pornography laws. If that is true, this is not a problem of the “abnormal criminal” but the “normal behavior of youth.”

As a result, we argue that current laws related to child pornography be reexamined as they may apply to sexting behavior. Whether or not the image and behavior in sexting is obscene and falls within the purview of these laws should be considered and the law potentially changed to decriminalize youthful indiscretions and bad decisions. Age gap provisions should also be implemented for those instances where one party may be over 18 but within 2-3 years of the other party’s age. Finally, we call for states to begin to examine better methods of dealing with this kind of behavior – both in terms of prevention methods and in crafting appropriate reactions after the behavior is discovered. Instead of focusing on punishing youthful
offenders with severe sanctions, efforts should be placed on educating teens about the risks of such behavior. After an incident has occurred, interventions should be carefully crafted to address the harm to the victim and best educate the “offender.” The current efforts of the National Institute of Justice to examine the prevalence of sexting behavior is a strong start. States should further these efforts and fund similar programs to better understand and deal with this potentially devastating behavior.

References


Georgia Code Annotated Title 16 Section 12-100.2 (2009).


Louisiana Revised Statute Title 14 Section 81.2 (2009).


United States Code, Title 18 Section 2252 et seq (2009).


Virginia Code Annotated Title 18 Section 2-374.1 (2009).

* * *

**Haiku For Statisticians in Love**

**John Klofas**

You caused me to love
Or was it correlation
Don’t they feel the same?

******************************************************************************

Random sampling
Brought us together for now
Can tear us apart

******************************************************************************

Random selection
Made you look my direction
p value is high

******************************************************************************

You’re the very worst
dependent variable
R squared is zero
models is not a smooth conversion (Blalock, 1968). Theoretical violations in theory integration and theoretical elaboration, to some extent, are less obviously damaging than violations to statistical boundaries which almost always have verifiably problematic consequences. Given the growing amount of panel data (see Thornberry & Krohn, 2003) and the developmental or life-course perspective currently dominating criminology, this essay focuses on the incorporation of lagged dependent variables in linear regression models and addresses what lagged dependent variables accomplish and what they do not.

When one has time-series data (i.e., measures on relatively few units across relatively many time points), including a lagged dependent variable in the model can be a straightforward way to allow for serial correlation. Once one estimates such a model complete with theoretically important independent variables, the model is said to be dynamic (as opposed to static), and time plays a central role. In this realm are difference equations allowing for partial adjustment and the more familiar distributed lag models (Fisher, 1925) in which a given independent variable’s total effect is partitioned into an immediate effect and an effect distributed over time (Ostrom, 1990, pp. 58-74; Greene, 2000, pp. 713-730; Enders, 2004, pp. 1-47).

One might, for example, investigate the effect of the recent increases in unemployment rates on the length of time necessary to receive unemployment benefits. To allow for effects over time, one could include lagged values of unemployment. Should one begin with the lagged values of the independent variables approach, however, two problematic issues can arise. First, degrees of freedom are lost for each included lag, which can be a true practical concern since time series samples tend to be small. Second, one must basically know the correct lag length in order to avoid model misspecification or the omitted variable problem which results in biased and inconsistent estimates (Greene, 2003). By incorporating only a single lag of the dependent variable, one estimates a geometric distributed lag model and allows for the notion that a unit increase in job-loss incidence is met with an immediate but partial effect on the application process. The remaining effect or the adjustment in the dependent variable fades infinitely over time while approaching zero. With regard to the way the effect decays over time, one can estimate more complicated models. Imposing the assumption that the effect diminishes geometrically (exponentially), however, is usually theoretically reasonable and consistent with the first-order autoregressive process.

In addition to allowing for these substantively interesting dynamic effects and conclusions, including a lagged dependent variable can be helpful in detecting nonstationarity (i.e., a unit root or integration). Fractional coefficient quantities (i.e., less than unity in absolute value) for the lagged dependent variable support stationarity in the mean; that is, the series meets a fundamental assumption of the existence of a long-term mean or equilibrium, a type of point attractor. Other coefficient quantities suggest nonstationarity, but the values are also helpful in revealing the nature of the nonstationarity as opposed to simply whether evidence for nonstationarity exists. A quantity of unity, for example, is evidence for a linear trend while greater coefficient quantities are consistent with explosive series that increase exponentially. Negative quantities of unity follow a limit cycle, not equilibrium, while decreasingly negative values suggest increasingly oscillatory series.

Of noteworthy mention is that nonstationarity and cointegration (Engle & Granger, 1987) is an area that has received considerable attention and debate, and this essay gives only a superficial treatment of the topic. Inferential conclusions concerning stationarity and the data-generating processes in general can depend heavily on ways in which the observations being analyzed are spatially and temporally aggregated and simply the sample of analyzed time points (see McDowall, 2002, p. 728). Many methods exist for detecting nonstationarity. The point here is that coefficient quantities of a lagged dependent variable can be useful in this process.

These same coefficients are also used to address the extent to which a series remains stable over time. Stability effects, as they are called when one takes this perspective, represent a way to quantify the proportion in the current observation \(y_t\) that is due to the previous observation \(y_{t-1}\). These effects are straightforwardly interpreted as a measure of
stability or the intuitive notion that a variable is influenced by its past.

Incorporating lagged dependent variables, in sum, is useful for the variety of reasons mentioned thus far. That lagged dependent variables are useful in modeling serial correlation alone justifies their value. Allowing for independent variables’ effects to be distributed over time as well as being able to speak to stationarity and stability makes the inclusion or at least the consideration of including lagged dependent variables, should they exist in the data, almost a substantive requirement.

Lagged dependent variables do, however, have some theoretical shortcomings. The fundamental question of behavioral science is what causes behavior? Involving lagged behavior presents a basically circular and rather atheoretical answer: behavior causes behavior. Indeed, a variable’s past tends to be a strong predictor of its current or even relatively distant-future value (Lopes et al., 2009). However, lagged dependent variables speak neither to the origination nor etiology of behavior. Limitations to such answers have been noted elsewhere. In linguistics, for example, structuralism is dismissed on similar grounds. This movement is an effort to explain behavior in terms of the topography or form of behavior without appealing to prior causes, and such an approach is considered to be a hopeless task (Skinner, 1972, p. 346).

And while lagged dependent variables are popular, especially with the growing amount of panel data mentioned earlier, we might confuse some goals. We might inadvertently borrow a forecasting mentality from econometrics, which is of limited use in understanding the etiology of behavior and behavioral patterns. Take shoe sizes as a crude but clear example. Using lagged shoe size to predict current shoe size produces much better than chance-accuracy predictions, but appeals to neither a genetically derived explanation for shoe size nor the production component of the establishment of causality.

With regard to a statistical model, consider the following with simplifying assumptions including standardized measures.

\[ Y_t = \beta(Y_{t-1}) + e \]

Assuming perfect measurement in the lagged dependent variable, a usual assumption with right-hand variables, one can rearrange the equation as follows.

\[ Y_t - \beta(Y_{t-1}) = e \]

This illustrates the “difference” equation but also helps clarify what including a lagged dependent variable may achieve. Albeit resembling an overly restrictive change score model (Chronbach & Furby, 1970, p. 78; Allison, 1990), the remaining variation is random error. If delinquency is relatively stable over time, in other words, scientists will find themselves seeking systematic (i.e., structural) explanations for random variation. Systematic variation in the outcome is accounted for by the lagged outcome, and the remaining variation is error.

Scientists are fully aware of the no doubt elementary statement correlation, while an integral component, does not alone prove causation (Kish, 1959, p. 329; Blalock, 1991, p. 326). It is possible, however, to lose sight of rudiments while considering advanced methodology and models (McCleary et al., 1980, p. 20), and still confuse a highly predictive model with a highly explanatory model guided by theory. Explanatory power, in the sense of identifying causal mechanisms, is superior.

This is not to imply that lagged dependent variables have no theoretical value in the pursuit of understanding behavior. Knowing that delinquents tend to remain delinquent over time is useful for describing the phenomenon, and lagged dependent variables may speak to the degree to which behavioral patterns exist over time. Being able to identify and describe the nature of the outcome variable, however, is a separate issue from explaining why the behavior and variation in it exist in the first place.

For completeness, it is also possible toconceptualize lagged dependent variables as being a collective summary of influences and side with the notion that the lagged dependent variable is simply a manifestation of its underlying causal factors. One would then consider lagged dependent variables an especially strong control variable. A popular viewpoint is that,

We do not have a simple event A causally connected with a simple event B, but the whole background
of the system in which the events occur is included in the concept and is a vital part of it (Bridgman, 1927, p. 83). By including a lagged dependent variable, the model might be controlling for theoretically important influences, but they remain unknown. It remains necessary to model sources of covariation (Loftin & Ward, 1983) to speak to the omitted variables and process problem mentioned above; even if causal mechanisms themselves remain unknown and the included variables in their stead have no substantive content (Raffalovich, 1994, p. 493). However, one would still prefer to identify the causal factors correctly.

In closing, this essay argues for neither the inclusion nor the exclusion of lagged dependent variables. Different circumstances and hypotheses call for different models. Social scientists should instead pay careful attention to the gap (i.e., specification error) between the theory represented in the measurement model and the theory implied by the statistical model. Statistical models tend to impose functional form and distributional assumptions. When analyzing counts of offenses, for a related example, most would agree that the difference between the absence of offending and the presence of offending (from 0 to 1 time) is a larger theoretical difference than the difference between a seasoned offender engaging an additional offense (e.g., 16 to 17 times). A legal distinction exists too between never offending and offending once or more; one is criminal.

Conventional measures, of course, impose a continuity assumption or at least an assumption that unit differences are equal across values. Regardless of legal or substantive distinctions, linear models too assume unit increases in independent variables affect changes in the outcome variable identically. Such a model is not consistent with the theoretical treatment of the onset of behavior.

It is possible to emphasize the limitations of lagged dependent variables or theoretically inconsistent statistical assumptions to the point of making a convincing case for the abandonment of theory testing or calling all evidence into question (Freedman, 1991). Indeed, examples exist in the literature where published misuses of estimation procedures are discussed (see Bushway et al., 2007). A better way to move forward, therefore, is to balance theory testing and elaboration with an awareness of obeying the sometimes strict assumptions of statistical models (Blalock, 1991; Thornberry et al., 1994, p. 65). Just as there is value in an awareness of the gap between the causal model and the measurement model (i.e., measurement error), an equally noteworthy gap is introduced when translating the measurement model into a statistical model.

References


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2 To not simplify the matter too much, note that beyond the current scope are more elaborate ideas such as (1) the incorporation of multiple lags in order to move toward Granger causality; (2) the more challenging ideas of discrete dynamical systems and dynamical systems in general, which also have uses regarding motion in the natural sciences; and (3) partial differential equations.
Book Review


Currently, over two million people are incarcerated in the United States, allowing the U.S. to claim the highest per capita incarceration rate in the world. Through the media, movies, and television, we are constantly bombarded with stories of the brutal conditions and violence present in state and federal prisons. However, excluding those who have spent any significant amount of time incarcerated in a correctional facility, it is often difficult to completely comprehend the violence, fear, and horrific institutional conditions that inmates are forced to confront on a daily basis. Numerous academic books and journal articles present data on the rate of prison assaults or the number of inmates who are sexually victimized. Many of these sources view inmates as nameless, faceless bodies devoid of human emotion. In Lethal Rejection the authors do not present detailed statistical analyses or empirically evaluate the effectiveness of rehabilitative programs. Instead, they focus on a fictitious representation of the (often neglected) emotional, physical, and mental trauma that prisoners encounter while incarcerated.

Edited by Johnson and Tabriz, Lethal Rejection: Stories on Crime and Punishment is a collection of fictional works focusing on the deficiencies of the justice system. The pieces are written by a combination of prisoners, academics, and students who use fiction in an attempt to communicate their view of the justice system and prisons. The narratives are presented in various formats, including short stories, plays, and poetry. Some of the stories are satirical and humorous, while others are blunt in describing the hardships faced by prisoners and others involved in the justice system. Many are written in the first-person, with the prisoner narrating his or her thoughts, emotions, and actions, while others are written from the prison staff’s point of view.

The narratives are divided into six sections based on the theme of the story. The first section, Cautionary Tales, is an introductory chapter covering a wide array topics. “The Farmer and the Fly” is a parable about a farmer who cripples and then kills a fly that was buzzing around the farmer’s head. Before dying, the fly pleads that his legs are broken and his wings crushed; he can no longer bother or harm anyone. Why, then, must he be killed? In the satirical short story “Bad Actor,” the author describes how inmates use prison to move up the criminal levels. The protagonist, a young boy in a reformatory school, is a “Junior Criminal, Class II, Thug in Training.” During his current incarceration, the boy is hoping to move up to “First Class Felon” so that he can fulfill his duty of causing fear in the streets when he is released. The author uses humor in this story to describe how prisons are often breeding grounds for violent offenders.

The second section, Variations on Violation, consists of five pieces concerning the contradictions and deficiencies in prosecution and sentencing. For example, “Settling Scores” is a one act play detailing the “name game” played during plea bargaining in which an accused drug offender is offered a lenient sentence for giving up the names of his (supposed) co-conspirators. During the plea bargaining process, the prosecutor admits that she does not have any physical evidence linking the defendant to the crime; instead, he was named as an accomplice by the original person who was arrested. The prosecutor goes on to state that, if the defendant named any relatives as co-conspirators, she would deduct an additional 20 years off of the defendant’s sentence, as well as a “bonus” 40 year deduction if he named at least two family members. Although the story may seem fantastic, some current plea bargaining practices are not far removed from this level of absurdity.

The third section is devoted to the living conditions and daily routines of prisoners. In “Dances with Dragons,” the author describes the innumerable negative effects of solitary confinement in a maximum security prison. In the story, the narrator describes the guards as “savage demons” who terrorize his life. He feels trapped, tormented, and wants his life to end. Another story in this section, “Christmas in a Prison Visiting Room,” focuses on the negative impact of a boy growing up only seeing his incarcerated father once a year in the prison visiting room. The narrator posits that it is sometimes worse if children bond with their
incarcerated fathers because the children may view them as typical male role models and see incarceration as a normal aspect of life.

Working in Prison, the book’s fourth section, opens with “The Prison Librarian.” In this story, the authors describe a prison inmate nicknamed Murder and Mayhem (M&M for short), the most intimidating and terrifying inmate in the prison. The other inmates learned to leave him alone, fearing their own safety. M&M, who enjoyed reading, developed a friendship with the prison’s librarian, Sophia, who, unlike the staff and other inmates, treated him like a normal person. Once released from prison, M&M earned a college degree, married, and created a successful business. When a reporter asked him what changed during his incarceration, M&M stated that it was the positive message contained in one of the books that the prison librarian had given him. Here the authors argue that it only takes one person to help even the most hardened of convicts.

The emotions and thought process of a death row prison guard are the focus of “Convicts in the Attic.” In this story, the author describes how difficult and emotional it can be for guards to interact with inmates who have been sentenced to death, a truth that cannot be observed through data and statistics. The fifth section, Prisons and Pop Culture, begins with “Wheel of Torture,” a satirical rendition of the popular game show Wheel of Fortune. The first “contestant” is a poor single mother who left her children at home while working two minimum wage jobs. While home alone, the children were killed when an arsonist set blaze to their house. The contestant is strapped to the wheel with leather bindings while different sentence lengths and types (probation, home confinement, etc.) encircle her. The audience cheers as the assistant spins the wheel, which lands on 15 years. The story is obviously farcical, but the message is clear: oftentimes society does not care about the personal background of the defendant as long as some form of “justice” is obtained. In “Saint Burnout,” the protagonist becomes a prison guard after viewing a movie, Saint Francis of the Cell Blocks, that portrays correctional officers as saintly people who save the lives of incarcerated criminals. Before long, however, the constant struggles of prison life began to weigh on the officer, transforming him from an idealist who hoped to save lives into a cold-hearted guard who enjoyed using violence to maintain order in the prison.

The final section, Visions of Prisons to Come, consists of four pieces pertaining to the future of prisons. For example, in “Brave New Prison,” a short story set in the year 2200, prisons have become “pleasure palaces.” In the early 20th century, prison officials noticed that inmates who were allowed television viewing privileges were the best behaved and, as a result, television were installed in every room in the facility. Following this line of thought, prisons were eventually stocked with video games, music, and recreational pharmaceuticals – anything that would keep the inmates docile. In this alternative future, the focus of prisons switched from retribution and/or rehabilitation to employing any measures that kept the inmates manageable. Although the story is meant to be sardonic, its message is illuminating.

Lethal Rejection is unique in that it uses fiction to convey the perceived deficiencies of the justice system and prisons. One cannot read the narratives contained in the book without feeling angry, sad, or dumbfounded with the failures the authors believe are often present in the correctional system. Because the book contains little complicated legal jargon, it is easily readable for students, academics, and correctional professionals. The book, however, would be of limited utility in an academic course. The major limitation of the book is that it sensationalizes complicated criminal justice issues, many of which are already addressed in other types of popular culture such as television and movies. Those reading the book, especially students, could be misled into believing that the stories are true and accurate, which is dangerous from both a political and policy standpoint. Our job as criminal justice educators is difficult enough already to overcome false assumptions and misinformation that is relayed through popular culture about the complexities of the criminal justice system. This book adds to that difficulty instead of providing information based in reality. If the book is used in an academic setting, its best use would be as a supplemental reader in a corrections course to inspire discussion among students about complex topics not typically discussed in traditional corrections textbooks.

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CRIMINAL JUSTICE POSITIONS
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