Crime as Process -
an Exploratory Inquiry

Anna Sjöquist
ABSTRACT

The aim of the thesis is to theoretically discuss and problematizing the influence of gender and sex throughout the crime as process in Sweden. The issue of gender, criminality and a system for justice will be discussed from different angles to identify, understand and problematize the different parts of the process.

The research question has been: In what way may theories, research and knowledge give understanding regarding the socially constructed gender within the crime as process in an overall perspective?

Different theories and examples of research and other knowledge for each step in crime as process is presented in order to understand the impact of gender. The context is delimited to Sweden, Swedish law, crime fighting and courts as well as corrective instances in Sweden. In this project, the model used for the reflection is first and foremost allowing a systematic work through of the crime as process in order to identify and formulate patterns of interest. The model is used to drive the theoretical discussion forward.

The moving between sex and gender considering crime and criminality opens several challenges. They contest perceptions on crime and criminality, on its development, its extent and its appearance. The constructed systems and ideas on the importance of gender is probably of importance but are at the same time questioning, at a fundamental level, a strong tradition. Since the queries are at fundamental level it is probably hard to address theories’ accuracy built on these premises. There are too many, simultaneously effecting processes, of different directions, to understand neither good or bad nor right or wrong. What could be said is that biological sex does not suffice to understand neither crime, criminality, crime fighting nor its descriptions. If we assume the society creates all the above mentioned: how would it look if we fully accepted gender as a key variable?
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1 Introduction

Both the invisible and the visible criminality has been of concern for social science researchers for a long time since it says something of the societal order, the individual response and resistance to this order and could be said to be the epicentre of norms’ reproduction and creation. (Silvestri & Crowther-Dowey, 2008) The reported crime is therefore an established area for research on different processes within society. Within the gender research field the investigation of the criminal system for justice is partly focused on the underlying male hegemony and its consequences for gender equality, both formal and real. (Smart, 1992)

For a long time, women have not been either known perpetrators, recorded suspects or convicts to the same extent as men in Sweden. This has been explained with both phrenology and gender and there has never been a long-lasting understanding within e.g. criminology, sociology, feminism or law on this matter. The field is therefore entered with the basic assumption and understanding of visible criminality as a result of a social phenomenon, rather than an empiric unit for one to measure and investigate criminality and its causes. (Korsell, 2003, Andersson, 2011) The field is suffering from a poor differentiation between sex and gender and the implications of the two within use of e.g. statistics. (Gartner & McCarthy, 2014)

The visible criminality, defined by being both detected and reported, investigated and prosecuted, is shown in the official crime statistics of Sweden. This visible criminality shape the perception of both criminality and of reality but is in fact the result of a selective process on societal level expressed on a strategic and political, legislative and organisational level. (Smart, 1998, Silvestri, 2008, Korsell, 2009, Gartner & McCarthy, 2014.)

The legislation itself could be considered a product of a male hegemony and with a strong impact on the authorities’ compliance to directives and priorities. The hegemony is deeply normative with in crime fighting and in legislation. There is an element of non-compliance explained by the hegemony´s idea of what crime is supposed to be considered as a serious crime. This perception is not connected or dependant on the communication principle between crime and punishment as a thermometer of the difference of severity amongst different crimes. (Gunnarsson, 2000, Silvestri, 2008)
The thesis interest is not primarily crime in a traditional sense of actions, delimited in time and space, but rather as a societal process, highly formalized and played out in a system for justice consisting of both rules, laws, routines and operational directives. The system is also harbouring relations, contexts and counterproductive structures, goals and interests. (Mansell, 2015) The crime as process could be seen as a result of a construction process and it both upholds and recreate perceptions of order in society. The process itself is an ongoing negotiation in society of law and order, formed as an objectification (institutionalisation) and internalised (socialisation) as a social reality. (Berger & Luckman, 1989)

The research on the relevance of gender for the whole crime process in Sweden is rare. The thesis sets out to explore and discuss the process on an overall level. The used examples, knowledge and theories are often focussed on parts of the process. The task at hand is therefore of an exploratory kind.

The ontological basis is social constructionism - the concept of a reality created and shaped by social actors and interests. The constructivist ontology offers a possibility to describe negotiations of understanding and the epistemological consequence is that one may find completely different and contradictory results even if the questions and aim is the same. (Bryman, 2002) As is many exploratory attempts – another complex of problems is unfolded rather than a set of questions being answered.

1.1 Motives and interests of knowledge

The systematic work through of the crime process from a gender perspective has, to my knowledge, not been made within Swedish research even though there are many research projects on parts of the process or selected crimes. This is an attempt to map out a few key questions one could pose to understand the connections and the way the system/process is reinforcing e.g. stereotypes and different attitudes toward gender in a more holistic way. The questions should be characterized by seeking comprehension of the parts of something intimately interconnected and explicable only by reference to the whole.

To theoretically examine the issue of crime as process the address of criminology is valuable. There are multiple examples on gender approaches within criminology but it seems to get little consequences in the production of knowledge on crime, criminality and the processer of them. The gender aspect is malnourished in Sweden and it is my belief that criminology is the poorer for it. The gender aspect has been of great value to research in other countries in order to understand and design action upon that understanding of the process of crime. There are a
multitude of research fields, practices within the discipline and authorities that could gain from a gender perspective. In this, the thesis is only a slight attempt to map out a complex and complicated domain. The over all process perspective is my prime contribution, in all its insufficiency.

1.2 Aim and research questions

The aim of the thesis is to theoretically discuss and problematizing the influence of gender and sex throughout the crime as process in Sweden. The issue of gender, criminality and a system for justice will be discussed from different angles to identify, understand and problematize the different parts of the process.

My research question is:

In what way may theories, research and knowledge give understanding regarding the socially constructed gender within the crime as process in an overall perspective?

1.3 The researcher

With a background in criminology and as a practitioner in crime fighting, the concepts of crime and criminality and the processes around them has always been of great interest and source of confoundment for me. In my everyday environment the aspect of gender is at best something said in the passing and normally as a synonym to biological sex.

This project started out as a, traditionally criminological coloured, crime and gender design: why so few women?; relying heavily on official statistics. The insight was rather quick: why are there so few gender studies and so many sex studies in the matter of criminality and the processes to prevent, combat and correct it? Biological sex is seen as an uncontroversial, often used, factor in research, statistics, the authorities’ descriptions and facts.

The literature gave no real answers and I realised the extent of the question I posed – are the crime as process as a whole neglecting the gender aspect even though there seems as biological women are rare in the system. It should be of great interest that one of the central processes in the national governing of Sweden doesn’t seem to involve or concern women other than victims? My own need to clarify the paradox of sex and gender seemed to match a glitch in research. The law, gender and society discipline opened up a set of methods to give understanding through an acceptance of modern theories and approaches – hence an exploratory approach was possible.
The exploratory method, combined with the critical thinking from the scientific discipline law, society and gender gave the tools and structure to my own developed understanding of the mismatch of research on gender and sex within the criminological field. This project has lead me to important insights on both crime, sex and gender and the effects the design of the mind-sets and paradigms can have, but also how they can change.

1.4 Outline

The introduction is followed by a presentation of the main theories used in order to understand justice as a system, perspectives of sex, gender and body, and of crime and criminality. They have a base in understanding gender/sex as a dichotomy and a clear critical approach on how we formulate and act as society in a more general sense rather than specifically of crime. This critical approach is closely connected to the method of choice and the mind-set, models and approaches needed in this project. The thesis then moves on to a basic discussion on the crime as process. The chapter is a walk-through of the crime as process – its content, the gender aspects and examples of research and other knowledge. All together this should give a good enough background and material to follow the arguments and reasoning in an attempt to put the pieces of the process together. The chapter includes the main observations, brought together thematically for a more precise discussion. It is a schematic discussion on the commonalities of the process. The thesis ends with some tentative suggestions of understanding of the crime as process and the role of gender as well as thoughts on further work in field.
2 Theory and method

The question on women as a separate category of offenders is well researched within academic disciplines in Sweden with some interest in deviance, normality and society. The criminological understanding has an approach concerning sex and crime rather than gender and crime (Sarnecki, 2009). Sociology is concerned with societal structures’ impact on individuals and, like the health sciences approach, is underlining “mad” rather than “bad” of deviance (Giddens, 2003). The field of law and society (socio-legal) seems to address the issue as a question on access to justice, structural oppression with a strong emphasis on the discourse of women as victims (Gunnarsson, 2016).

Typically, the research approach is on crimes, victims and sex on this field. The combination reinforces traditional perceptions on crime as something delimited and possible to “detect” and define in both time and place. The feminist research on gender, organisation and crime, points in another direction: towards crime as a process, dialectic and characterized by a continuum and flow. Criminology have a long tradition of researching sequences, individual turning points and major shifts in society: the power perspective seems difficult to embrace. The feminist view on crime, sex and gender has during the last fifty years developed and challenged that view on crime. (Smart, 1992, Gartner, 2014)

2.1 Sex and gender

There are of course different ways to entry the discourses on sex/gender dichotomy and in this thesis Hirdman will be the scholar for departure. Hirdman describes gender from the perspective of something one does: its socially constructed and socially reproduced. This construction is continuously developed and the base for what we currently have agreed on being male/female and even man/woman. She states that the concept gender is clear and with small room for misunderstandings. (Hirdman, 2001)

Butler complicate the sex/gender dichotomy in a fundamental way with the concept of gender creating sex as well as gender. She questions the pre-existence of sex to gender. She points to the (now an accepted fact) that there may not be only two, but several sexes. The idea that a sex is determined by a gender, and the other way around, is strange to Butler. (Butler, 1990)

Tseëlon problematizes the consequences of the gender/sex dichotomy for women in five different paradoxes. The paradoxes show clearly how biological women are under a double standard in every aspect of everyday life concerning modesty, duplicity, visibility, beauty and
death. The mere construction of feminine embodiment and the roles thereby given is putting women in impossible situations. If a woman doesn’t accept the roles defined by the ideology of the woman as an object and a being of sex, she is denied access to possibilities and spaces. (Tseëlon, 1995)

Grosz concept of the inscriptive surface (the female body) is in line with Tseëlons. Gender is, according to Grosz, impossible to consider as a complement to sex since its feature as a superstructure is useless. The sex/gender dichotomy undermines our capacity to consider the relevance of the body for the societal structures – sometimes reflected in the academic theories. Since the body isn’t a carte blanche to gender in a neutral way: different gender attributes will be interpreted different depending on which body inscribes with them. The sexual body’s neutrality is neither neutral nor essentiality. (Grosz, 1994)

Since the construction of the two opposite sexes in the 18\(^{th}\) century led to the binary sex system as a normality the sex is now unchangeable. It has become a fixed variable. The concept of gender could be seen as a solution to this lack of space to be something else. The most flexible part of a human in this tradition is the mind and hence the space for options. (Lander, 2003, Grosz, 1994) Gatens lies close to Grosz in her thinking of the body as giving different meaning to actions the body takes depending on which body does them. This is not by accident or random, its downloaded by history and culture in order to understand our present. (Hekman, 2014, p 159) The body of the woman could therefore be understood as “a phenomenon produced by language, science, technology and apparatuses (Hekman p 159)” rather than a defined by a male hegemony’s norms and ideals. (Hekman, 2014)

The term of gender is both complex and complicated. In this project the interest is not primarily to define the terms of gender/sex/body for use study objects but rather as a base for methodological tool. The dichotomy of feminine/masculine, gender/sex, are both used in a binary understanding. I have chosen to lay close to a current binary logic in crime, mostly due to feasibility, secondly due to adequacy for making my points in this project.

The theories have been used in two ways in this project. First, the use of the theories is of understand the connections between the system for justice in action, the crime as process and the body committing different unlawful acts. The theories are important because they can put structures for analysis on underlying identification of attributes and categorizing based on biological sex. The alignment with stereotyped gender ideals in the interpretation of
situations throughout the process and the individualisation connected to this perception. They also systematise the reciprocal production of stereotypes.

Secondly, the theories facilitate the identification of a reflexive use of biological sex in descriptions and explanations for offender’s motives and causes to crimes. The theories are of importance to formulate the unmotivated difference between women and men as categories in prison – mainly based on stereotyped ideas, as well as the difference in treatment in courts. The theories help comprehend how missing out on all other aspects than biological sex leads to a malnourished description of both sex/gender and body.

2.2 A system for justice

As said, the thesis is concerned with a holistic approach on crime, sex and gender and the processes rather than the actions and rules chosen by the society to manage deviance.

One main issue is weather the law is independent and self-sufficient in order to fulfil its function or if there are additional functions, lying before and after the law of the book, with floating borders between politics, societal norms, economics and mental models of the society? (Svensson and Gunnarsson, 2012)

There are a few basic elements within a system for justice. One is the law as political in the sense of being structured by policies. This implies that law needs more than law to avoid lawlessness in a society. Another element is a functional coercion with force connected to it. This doesn’t necessarily need to be exclusive to the formal system for justices but needs to act within the accepted rules. The system also need rules so there is no confusion on what is allowed and not. Some of these rules are found in print and are thought to ensure transparency. This separation of law-rules from everyday-rules creates the idea of a system for justice separate from other social systems. This clarifies a need for a social problem to be transformed into a policy-problem in order to become a law as well as the independence of law from society in order to be neutral, just and objective in the usage of law: to be obeyed. The law must also be just through its application of the laws. (Mansell, 2015) Gunnarsson and Svensson states that a doctrinal view of law is a way to see law as defined and restricted within a field. In this approach law is an independent, well-defined, area of society, strictly separated from other fields of society as economics, politics and societal norms. (Svensson and Gunnarsson, 2012)

Law is, in a law and society perspective, not only law but also existent within human’s relations in the entire society. These relations create concepts and attitudes towards the
creation, the upholding and the sanctions of the laws. These laws do not have to be within the strict legal system as the doctrine defines it, but embraces the law of the tongue as well. In this approach, a legal system is wider and deeper than in the doctrine. (Svensson and Gunnarsson, 2012) The system has deep notions of ideology, norms and are a strong actor in construction and upholding of reality and the perception of social reality. It distributes power in society through defining what and whom should be protected, defining freedom and safety as well as for who this is valid substantives. (Mansell, 2015)

Law and society is flow oriented. The perspective recognises that people in their relationships both to each other and to society is active in the enactment, enforcement and sanctioning of undesirable behaviours. The benefit is that law and power will be clearer and more visible but the predictability is lower. As the approach allows a beginning to compensate for unevenness not even perceive by the majority it tends to be so complex that it is perceived as unfair. The mind-set is radically different from the traditional criminological and sociological. (Mansell, 2015)


The theorization of choice in this project is based on an assumption that there is a discourse with in the justice process and this discourse reveals a connection between law and policy both about sex and gender and that it is an unarticulated problem within the system for justice. The theories are also of importance to notice a basis for the governmental systems planning and organisation to lay on biological sex instead of gender as categories. The theories are helping to observe and understand the capacity within the system for justice´s to approach new knowledge and use it in a constructive way.

2.3 Crime and criminality

It`s though motivated to mention both crime and criminality in order to understand the importance of the research and knowledge and, firstly, define what is meant by the term.

Committing crime is one type of deviant behaviour, typically and traditionally, a male area, both in research and in experiences. The difference between biological women and men´s perception, experiences and roles with in criminality is remarkable. I almost every book on violence, crime and abuse, the woman is an exception as offender. The researchers have
focussed on the category of women’s criminality as an abnormality, a distancing from femininity and as a marker for masculinity. There are numerous examples of research designs in order to single out a “female/woman crime, criminality or offender” as different both to the Woman and to the Criminal. (e.g. Sarnecki, 2003, Pettersson, 2003, SCB, 1998, Kordon, 2010)

In short, all theories on crime is based on men’s behaviour, crimes, nature and nurture. All theories (since the 1980ies) have a minor section on women as a category’s criminality as different to the men’s. (Lindgren, 1998, Williams & McShane, 1993) The poor focus on gender issues in crime gives a research field rich of hypothesis and poor on empirics. (Silvestri & Cowther-Dowey, 2008)

Women as a category’s criminality has been explained with: women don’t commit crime, if they do, they don’t get caught, and if they get caught no one wants to be ungentlemanly towards them so they let them go and the women that do eventually get in front of a judge, is either too masculine to be a woman or a monster of a woman. (e.g. Gartner & McCarthy, 2014, Silvestri & Cowther-Dowey, 2008, Williams and McShane, 1993)

The theoretical approach on crime is of a process rather than of an isolated aspect and concept. Its basis is of deviance rather than of illegality. In this way, the theories may give the possibility to see crime as deviance – both as output and as input. These theoretical approach is grounded in an idea of the way one describes the reality is the way we will eventually perceive it. The emphasis of the theoretical concepts is therefore of the perceptions of deviance relying on a perception of a defined normality to differ from, articulated in categorisation of, in this case, biological sex to facilitate this understanding.
2.4 Method

The main research strategy is qualitative. The study is of exploratory character and could be seen as a pre-study for an upcoming thesis. As such the method is focused on finding insight and knowledge in order to formulate over all key questions in a more precise way.

I will use theories and examples of research and other knowledge for the different steps in crime as process in order to understand the impact of gender. The context is delimited to Sweden, Swedish law, crime fighting and courts as well as corrective instances in Sweden. The main formal interest here is the written law of the Penal Code of Sweden. It consists of three clusters of crime and additional legislation of special crimes. The code defines crimes against physical security (chap 3-7), crimes against economic security, (chap 8-12) and crimes against democratic security and it´s upholding functions (chap 13-20). (Department of Justice, 1999) These are the three main domains, identified as highly valued protective areas for the society.

I have built a model of the process for reflection. In this project, the model first and foremost allows a systematic work through of the crime as process in order to identify and formulate patterns of interest. Every step in the process will be addressed on three main perspectives: the content of the step, theories and relevant empiric examples. The model is used to drive the theoretical discussion forward.

Below is a visual representation of the outline for the crime process; a process resulting in management of crime, corresponding with the societal idea of internationalised and socialized law and order through law perceived as common sense. (Mansell, 2015)
2.5 Delimitation

In this project, neither the full understanding of femininity and masculinity, sex and body, nor the extensive understandings of gender can be covered. Both the discussion and material has an emphasis on femininity but as a pair or contrast to masculinity as a methodological grip.

One key aspect of gender is masculinity. Men are responsible for 80% of the crimes reported in Sweden. (BRÅ, 2016) There are research suggesting that the criminal trajectories for men and women (as categories) are very much alike, if one disregards the difference in volume. (Marklund, 2003) This points to a construction of crime and crime fighting as a structure, gendered by masculine norms and with a feminine opposite in the dichotomy and a possible and fruitful entry point for understanding and discussion. Even if masculinity is of great importance to the gender aspects of crime, the thesis will not, other than as reference, cover masculinity due to the limited space of the project.

I am neither concerned with self-declared nor hidden criminality in this project since the fields deserves more attention than possibly can be given. The theoretical approach both complicated, complex and rich, the empirics are hard to come by and the thesis is limited to its extent.
3 Crime as process

The crime as process spans from “committed a crime” to “convicted and recidived”. This means that the process covers both before, under and after the formal crime fighting process. This is done in order to highlight the tight interdependence and interaction between the legal system and other societal processes and systems.

3.1 Committed crime

An illegal action could be seen as a starting point for the criminal process since it is an answer to the societies negotiated deviant behaviour where an illegal act is formulated based on different assessments of protective worth. (Mansell, 2015) Illegal actions have two different legal aspects; subjective requisite and objective requisite – both have, normally, to be identified even if the subjective requisite is a matter for the police and prosecutor to identify and prove in a later stage.

Women as a category is known to commit fewer crimes than men and there is numerous research on causes and most of them concerns sex rather than gender. Women as a category do commit many different types of crimes but to a far lesser extent than men. They are less violent and dangerous to others when they commit the same crimes as men. (Silvestri & Crowther, 2008)

There are several attempts to explain both why biological women commit crimes and why they are not. Even if there is no general theory for biological women’s criminality the research has some commonalities: their criminality is often explained and defined by characteristics of the sex when other criminality is explained by characteristics of the action itself. This implies that the first is base for identify a new type of biological women’s crime and the latter that crime is a domain for men. (Daly, 2001)

There are both rejection theories, control theories, gender role theories and routine activity theories to explain the criminality of woman as a category but always as a different breed than men. (Lindgren, 1998) Box is one theorists who explains the low criminality for girls with the level of control they are subjected to from men and family. This gives less degrees of freedom and hence power than for boys and this lingers. The result according to Box is that biological women choses other arenas for deviant behaviour such as drugs, alcohol abuse, suicide and physic illness. (Box, 1983) He have some support in this from Braithwaite’s research on
shame as a reintegrating force, inspired from the Japanese restitutive approach on crime. (Braithwaite, 1989)

Example

Korsell shows in his thesis the importance of identify and formulate the selective process behind the detection of crimes. (Korsell, 2003) In some cases, it is obvious there is a crime committed, there is a defined victim and a defined and delimited place/space/time to which the action is connected. The crime itself, is so to speak, simultaneously with the action. Other criminal activities are of a more fluid kind, may have several or no clear victim, is detected long time after its been committed and it may not even be perceived as a crime of the victim. (SECA, 2016) Again other crimes are not reported at all and others are only detected and reported due to police activities decided in an action plan or in a directive. (Andersson, 2011) In the latter examples the time of reporting is to be seen as an administrative hook rather than about a crime being committed. (BRÅ, 2002)

3.2 Detected, defined and reported

The mere existence of an illegal action is not enough to start a criminal justice process: the action must also be both detected, defined as a crime and reported. In a legal meaning the crime is not existing until its detected and in an official statistical perspective it exists only when it is reported. In order to report the crime a definition of it must be made: a paragraph must be identified who match the action.

There are different views on why so few women are reported for involvement in criminal activity. It is often the idea of undetected woman, the unreported woman and the woman deviating in other ways than committing crimes. There is also gendered process to detect, define and identify a woman as offender, attention has been given primarily of masculine crimes such as some violent crimes. (Lindgren, 1998, Weinehall, 2011)

The split between ideal and facts can be too great for the actors in the process to handle and therefore the women are made invisible. Violence is not a way to be a girl and violent girls are considered unsecure and weird. Karlsson and Petterson shows clearly that the violent behaviour has the same structure – no matter boy and girl as offender. The attitudes and explanations differs though deeply with the crime fighting actors. An indicator used by police for the girls is e.g. an early sexual debut, the boys who also have this is not mentioned in the context. The masculinity does not clash with biological boys planning, seriousness of the
crime, impulsiveness and blindness for consequences even if the behaviour is quite alike for boys and girls. (Karlsson & Pettersson, 2003)

When it comes to corporate and occupational crime (white collar crime) it is a quite common model to use a kind of argument built on the poor presence of women in positions where they are accessible for committing economic crimes. The models consist of a basic assumption on the combination of opportunity, authority and control, the routine activity theory. (Daly, 2001)

In the doing of detection, defining and reporting the processes of propensity to report an experienced crime is of central meaning and importance. The perception of a committed crime is common for both organisations and individuals even if the motives may differ.

In short, the propensity depends on different circumstances such as the relation between victim and offender, the seriousness of the crime, an expectation of what the police may do and how one is expecting the police to treat you. Organisations and individuals react almost the same in these matters concerning crimes against physical security, in crimes against the economic security they differ. For an individual, it is of importance if an object, stolen or broken, is insured or not. For an organisation, it also matters whether the image of the company will be altered in an unwanted way. For the victimless crimes, the propensity is equal to the prioritisations of the different authorities. (BRÅ, 2006)

Example

Violence is a strongly male–marked criminality. It has been researched as such and there are traces in this research that could be basis for questions on other crimes. The use of violence could not only be seen as an act of masculinity but also as an act of femininity in the staging of gender (Butlers term). An empiric study of reported but not investigated violent crimes committed by girls in Stockholm in 1995, showed three main clusters of importance: The homogeneity of sex: girls are using physical violence towards other girls, there are often no boys present. Cross-over behaviour: cases where a girl is corrected due to a behaviour not accepted by other close related girls/women. Heterosexual marking: When girls marks a boy as her own and uses violence to enforce this. The research is primarily interesting to understand the dominant perception of the close connection between violence as a masculine attribute and violent crimes. The results suggest that violence may also be used as a feminine attribute. (Pettersson, 2003)
3.3 Investigated, prosecuted and tried

When a crime is defined, and reported the preliminary investigation starts. It is conducted by police and managed by prosecutors from the point a defined person is a suspect. If it is a less serious crime the police manage the investigation.

The investigation aims at finding a person connected to the crime (suspected offenders) and to find evidence if this to prosecute. The management’s prime task is to limit and direct the investigation within a decided domain – often the limits of a specific act.

When the investigation is done the decision to prosecute or not lies with the prosecutor. If the evidence is good enough the prosecutor must prosecute. There is no plea bargain system in Sweden. The decision can be reconsidered if needed.

One way to consider the legal system is as a system of legal policy standpoint, norms and values directing all legislation and not be seen as directed or based on facts. The picture of a gender-neutral legislation and jurisprudence is also a way to make inequalities invisible. The main issue is the perception of a set of universal and durable values able to define and delimit facts in a value neutral way and with it the impact of other societal systems and processes. (Svensson, 2012, Diesen, 2005)

The investigative techniques and methods differ depending on the crime to investigate and there are different aspects with different underlining in the work of both the police and prosecutors. I have found no Swedish research on the police’s work with biological women as offenders, only journalistic product. Both Kjöller, Kordon and Wetterqvist have as a side product of their work described experience of the police. Kordon and Wetterqvist are mainly suggesting that the police do use stereotyped models of female extensively and that this colour their work in the investigations. (Kordon and Wetterqvist, 2006) Kjöller is touching upon it but more implicit in discussion the culture and fear and silence of the police. (Kjöller, 2017) Both are refereeing to biological woman and creates the category from that point.

The process step is curiously enough a core activity but un-researched from a gender aspect. I can’t seem to find any real motives to the lack. Police research are normally focused on contacts between citizens and the police but strangely little is systematically addressing gender issues.

The investigation and prosecution part of the process in the deepest connection to justice process one may find. In these steps the objectivity, autonomy and the coherent judicial
system cannot be questioned. This is the core. But even in this core there are numerous examples of investigations and judgements filled with pre-assumptions on gender, sex and criminality; a discourse of its own. (Burman, 2006)

To investigate a crime, exact limits are of great importance: time, place, action and severity on a pre-determined scale. All to ensure the legislators intent and coverage of the penalty scales in a predictable manner.

Example

In year 2007, the Development Centre of the Public Prosecutors Office in Sweden made an analysis of convictions of biological women offenders of violent crimes. It shows that they are systemically convicted to lower and milder penalties than biological men committing the same crimes. (ÄM, 2007) The discount was conditioned with an alignment of the offender to a more traditional and stereotyped role. Women who didn’t adapted to this ideal got a harder penalty. (Diesen, 2005) There is also research suggesting that the judge could be an important factor in the gendering of the system. Diesen claims it to be commonly known that the judged personal ideals and norms do affect their work. He leans on the fact that a fair share of the judgements in a lower court is altered in a higher instance. The influence is probably only of real relevance in cases with a weakness in evidence rather than a common occurrence. The judges” fill in the gaps” to execute their responsibilities. In most cases, it doesn’t matter who the judge is. (Diesen, 2005)

3.4 Penalty served and recidivism

The penalties of the Swedish system are: fine, probation, prison, care and community service. The penalties vary in both time and in different combinations. All cases can be appealed in at least two instances of all parties, it’s only the Supreme Court having special entry criterions for cases being of pre-judiciary value.

In the years of 2012-2015 there were about 600 women imprisoned in Sweden, about half of them for a crime according to the penal code. The women’s crimes distribution amongst themselves deviate towards the men’s: against economic security the women deviate by + 5% and against physical security with -7%. During the same period, there were about 8500 men imprisoned per year; fourteen times more than women. During the period the men was imprisoned for in average 56% penal code crimes and women in average 53%. The deviation is of course being affected by the fact that the women constitute a 12% of the full population:
the impact on means is therefore harder to address. (Official criminal statistics, table 5.16 and 230, yrs. 2012-2015)

As seen, a woman who is aligning with the feminine stereotype the risk of a penalty is smaller and if she is found guilty its milder than for a man in the same situation. But even in the correction phase of the process the gendering continues. One important question is the correlation between the civil status and the penalty’s length. In American research the correlation between these two variables are stronger then between the crime and the penalty. (Gartner, 2014)

*Example*

The research on gender in prisons are based on sex. In Sweden, there are two prison facilities exclusively for women. No women are currently at a male prison but waits in the custody for a free place in one of the two. There is one study on the interns and the staff of a woman prison and it shows mostly the same problems and issues as at a male prison with one main exemptions: physical violence. (Lindberg, 2005)

A prison is per default a destructive environment: it creates great difficulties for the persons in the system both during and after the sentence. The prisoner is effectively cut out economically, relational and from the labour market. The environment is competitive, dangerous and destructive. (Nilsson, 2002) The risk for relapse in criminality is lower for women but only until the fifth time, then the difference towards men is gone. (Marklund, 2003)

Even if the prisons are alike in structure, hierarchies and drug use the prisons for women seems to embrace the stereotyped version of femininity: pink doors to the cells, decorations, make-up. There are also fitted adaptations after genuine biological needs such as menstruation and childrearing, birth, family rooms and free access to telephone call to the inmate´s children. (Kondor, 2010)

Prisoners are not representative for criminals. They are the result of continuous selection in the criminal justice process. In prisons one finds therefore the most active offenders and the persons committed the gravest offences (theft, violence and drugs). The group is also one of the poorest living conditions. The offenders can be described as crooked pyramid. The farther up in the pyramid the stronger the selections and the more from a lower socio-economic section. At the top one finds the imprisoned: the group with the weakest resources. (Nilsson, 2002, www.caefs.ca)
Prisoners have a background that differs remarkably from others. The difference is especially large when you cluster welfare-indicators\(^1\) and other factors such as youth criminality, alcohol- and drug abuse. From as good as every perspective inmates can be considered as marginalised in a welfare state, most exposed and vulnerable are women. Their abuse is bigger and their clustered problems of different welfare indicators are larger. (Nilsson, 2002)

\(^1\) Such as education, work, economy, housing, health, political resources and security.
4 Discussion of crime as process

If the entry point is a construction and upholding negotiation by society in a process like Berger and Luckman describes, both sex, gender and body are vital parts of the understanding of that society: How it works, what it does and what it achieves. It is probably not possible to connect the system in a system scientific way or measure neither causality or correlation with any precision or accuracy. But it should be possible to create illustrations of the system from different perspectives. In this thesis, the illustration has had a emphasis on the sex, gender and body perspective of the negotiations.

If we accept the crime as process as a construction, the theories on sex, gender and body helps us to identify and formulate stereotypes and ideals. The templates we use to apprehend our world are supposedly objective. Context, content and the idea of construction through negotiations could help us increase awareness of this.

When considering the connections of the different steps of crime as process, there are three main relations standing out. First the base of biological sex and the essentialism connected to the basic understanding of the system. Second the perception of reality this implicit essentialism gives – and not. Thirdly the effect this have on an effective and just execution and production of knowledge.

4.1 A common sense

The first observation is the adoption of a concept of sex as common sense. The basic assumption biological sex seems to be a base for practically all knowledge and management in the process. From a theoretical point of view the crime as process could be said to have difficulties to manage a concept of the body defined by language, technology and tools or even because of masculine norms and hegemony. Both the fixed base of biological sex and the categorization in women and men as offenders and victims affects the way women are seen as born with a crime preventive mechanism within. A split could hence occur in the system when a woman commit a crime. The essentialist way of interpretation is facilitated by the reflexive use of biological sex. The usage also results in generalizations with no face value of women’s criminality and women’s crimes is legitimised. The connection between sex and crime weakens throughout the crime as process. The selection process narrows down the variety of offenders but seems to be ignored. The management of crime prevention, crime fighting and correction is based on a paradigm of narrow and limited facts concerning sex, gender and body.
Since before de Beauvoir the woman has been defined as deviant, different and with difficulties to fit in in the western society. In 21th century most disciplines and their products address gender as a separate analysis added to existent knowledge and theories. In a way, this only accentuates the difficulties of fitting in. Women are identified as additive rather than an original component in society. Deviant, non-violent, deviators is supposed to be treated as “anyone” and it is a true challenge on several levels: methods, attitude, approach and information management – both for science and practitioners with a fundamental understanding of crime as a male domain.

It seems as most descriptions and research on the area departs from sex as gender – the body committing the act is of great importance for designs as well as analysis but not as a result of a process but as a biological given. The statistics describing crime, suspects and the criminal justice process is relying on a quantitative method with its base in a dichotomy of offenders as well as victims primarily by age and sex. (Olsson, 2000) There seems to be questionable reasons for the dichotomy in the statistics concerning sex. Most is focused on biological sex, extended to sex roles but no real problematizing is made of the implicit essentialism. (see e.g. Crime Prevention Council, 2016, 2007)

The biological sex aspect is in general well researched but not problematized to any larger extent in Sweden. The gender perspective is almost not present at all. The process seems to uphold and reproduce stereotypes of sex e.g. of parenthood where welfare-indicators probably are more fruitful aspects from a gender perspective. The body is of decisive matter but is not mentioned. The body also seems to have a paradox meaning in the crime as process. There is an unproportioned importance of the biological body who commits the crime, not the crime itself. Intersectional analysis is a malnourished part in the theoretical development on women´s criminality and there are probably bigger differences between different women who commit crime than between men and women.

The limits between male/female and the dominating norms are both visible, reinforced and questioned when women commit crimes. Especially clear is this when biological women commit crimes with a strong masculinity coded to it and almost impossible to rationalise with femininity. (Svensson 2004) It is obvious that the differences between women and men as offenders isn’t very significant, especially visible are the commonalities in prison. The different conditions for women and men in the prisons seems to partially, be based on stereotyped understandings. The women are seen as mothers because of their biological sex;
the idea of a biological man needing facilitating measures in order to better fathers seems not as self-declarant.

There seems to be quite a blindness, probably due to the difficulties to problematize biological sex with concepts as gender or body as result of processes with in society, instead of a given fact. Sex is used almost reflexively as a variable and is seldom problematized in its role as constructing and recreating gender roles and attitudes. This goes for both institutions and for crime as process.

4.2 A created objectivity

The objectivation of the biological sex definition of categories in Sweden is shown with help from Tseël on thought on paradoxes, forcing individual to align to different ideals and roles or miss out on opportunities. The paradoxes of Tseël is visible in the process but seems seldom be recognised.

It is as if a binary biological sex is an objective truth based on something outside man and not a negotiated and constructed objectivity. This involves a paradoxal experience of factual objectivity where the man-made made is invisible. “The product acts back on the producer.” (Berger & Luckman, 1979 p 61). The expectation on women’s responses, actions and needs is a result of the descriptions based on biological sex. Even the critique is assuming a basic difference due to sex in development, extent and causes, hence the possibility to talk of a specific type of female criminals and crimes of women. The execution in the system for justice and the production of knowledge is consequently missing out on valuable awareness to act on when excluding gender. The paradoxes as forces for women to align to or be punished harder, poses an impossible choice for an individual and seems to be deeply embedded in the system. Crime as a deviant behaviour – as a contrast to conform - could be seen both as input to the system as well as its result.

Sex and gender stereotypes seems to dominate the process. It tends to become a personal responsibility to live up to it or not. Tseëlons paradoxes and the effect it has on everyday lives could be one way to put light on this.

In order to understand the process of committing a crime it is of importance to understand the difference between deviant behaviour where women tend to be perceived mad and men bad. If this is a result of stereotyping in the process or if it is a result of high gendering in deviance is a key question. Are there real differences between different gender doing in crimes or is it a crime fighting interpretation? Women seems to be less violent and they seem to have different expectations put on them through their bodies. Are expectations low on violence or are
violence low to expect? It would be valuable to nuance the understanding of sex and gender since there is a lot of research on violence but not theft, joyriding or tax crimes from this perspective. Could there be a difference in the basic assumption on gender and sex in different crimes?

It is probably safe to say that women, as a body, is central throughout the process: defining and producing stereotyped actions, decisions and as base for descriptions of experiences, causes and consequences. There seems to be an overall presence in and between the steps of the process of an ideal victim/offender and of men/women based on appreciations of masculinity and femininity only connected to a man/woman body. Investigation and prosecution is deeply affected by the doctrinal environment as objective, autonomous and coherent. The space for other aspects seems small even when it can be described as a non-factual perception. What are the context and reasons for closing the system for other knowledge than the dogmatic? During the step a link between the crime and an individual is made safer and clearer than in any other step. In the previous steps focus is on the crime and in the latter on the individual. The gender analysis should be interesting for the police and prosecutors themselves since it would increase the objectiveness, independence as well the coherence with in the investigations and courts. It’s a logical somersault with valuable insights to map out and develop.

How is our understanding of deviance affected when the information is structured (man-made) in a way, only cementing the objectivity in the existence of two biological sexes? How is our perception of reality affected when there are small possibilities to describe it in other ways than based on biological sex?

4.3 An external reality

Finally, the idea of the biological sex is intertwined to such an extent it is perceived as a reality. It is no longer not a part of an individual, no matter external to the individual, regardless of argument to the contrary. The change of this being must be searched for actively on the outside, the introspection is not sufficient. “He cannot wish it away” (Berger & Luckman, 1979, p 60). The objectivity of biological sex as the only categories could be described as a part of the state governments execution of crime prevention, crime fighting and correction. These are affected of the use of sex as base and the perception of reality its creates and reproduces. The criminality is detectable as a social system, embedded in the crime as processes’ all steps – on some occasions more formalised than in others. The base for the
descriptions and questions feasible to pose to the system is consequently limited to the data existing in the system – based on sex, not gender, and not body as Grosz sees it. In this process, a common truth is established slowly transforming into a common sense.

One can twist and turn the question of the extent, causes and development of women’s criminality but there are two facts that undermines all conclusions, suggestions for solutions and descriptions of the development: the women is still extremely few in relation to men in the process and they do not use violence to the same extent as men by far. The actual number is low in all aspects of the criminal statistics: offenders, suspects, actions, convicts in prison and in relapses. The further in the process one goes, the fewer the women are. The selective process is rapidly decreasing the count of women as a category throughout the crime as process.

The statistics on women and men in prison doesn’t say much either of women’s criminality or gender aspects, but it does reflect the directions of the investigations and of the courts work. The distribution of prison penalties for women and their crimes may say something, indirectly, of the police and prosecutor’s interaction with the court as a process, rather than of criminality or of a certain type of offender. Sex-based stereotypes could probably both be seen as result and input to this part of the process.

It hasn’t been possible to separate the crime fighters understanding from the individuals who commit crimes: the hierarchy is a dominant attribute in the system. There is probably a reciprocal production of the stereotypes. The accused reproduce stereotypes because they interpret the expectations of demanded behaviour and the employees in the system uses stereotyped templates to identify correct attitudes and actions in different environments, such as e.g. a women’s prison. The linking of similarities between women and men (clearest as convicts) maybe greater than the differences, doesn’t seem to be very present.

In the detection and reporting phases it would be of interest to increase the understanding of gender stereotyped for the propensity to report a crime. The split in stereotyped ideals on women committing masculine crimes are significant and the knowledge and methods on mapping the contexts would benefit from a gender perspective. What are the neutralisations and rationalisations at hand and are they perceived as un-controversial by e.g. crime fighters, victims and offenders? Since there seems to be a blindness to gender in the process and the empirics on the mechanisms in the system is not gender- sensitive, what would change if gender instead of body would be the main analytical variable?
The criminality has probably more with sex stereotypes to do than an actual increase of women committing crimes. Misogyny of the crime fighting organisations and the “women discount” in courts shows the importance of a discourse within the system for justice. (Kjöller, 2016) This is shown in the statistics since it defines what a criminal woman is and not (Burman, 2016, Gartner 2014). It also shows in the perception of men, when victims of violence in close relations; they are not, by themselves or others, identified as victims; but rather the women as offenders. (Gartner, 2014)

In this thesis, the focus is not on women as a category of offenders, it’s on gender in a crime as (fighting) process. In this area the knowledge is sparse, scattered and heavily relying on the authorities’ capacity to firstly acknowledge a gender perspective at all and secondly to prioritize the subject in the organisations for a durable facts and analysis task to be formulated. (e.g. Swedish Police, planning document 2017-2019, Swedish Public Prosecutor Authority, 2016, Swedish Economic Crimes Agency, 2016)

How may one understand the body as a giver of meaning, its changeability and its connection to the crime as process? Are women simply unable to comprehend when they commit crimes? From a processual point of entry, the binary sex system is of little and all importance. The gender as an alternative to sex fails to question the functions in the systems on a fundamental level and the body as denominator and base for reactions is left out. This leads to a blindness and an attitude towards facts that is simplifying and cover up the stereotyping and make women invisible. (Grosz, 1994, Lindgren,1998)

Gender and crime could be understood in relation to both sex and gender as description of activities, behaviours and processes. These could be valid for individuals, groups as well as for organisations and processer of different kinds. In the meeting of individuals and systems the formation and the making of invisibility is one of the patterns. In a systemic level in Sweden biological sex is the only entity used and hence misses all gender based indicators. Furthermore, an adaption of the information management and IT systems could benefit from an update in order to handle master data in a different way. (RIF, web site 2016) In this aspect information management and IT solutions are of great importance to develop track records of variables congruent to the needs for descriptions, evaluations and planning for e.g. crime fighting activities. (Pearlson & Saunders, 2013) What would one use if not binary sex-based nomenclature in statistics?
5 Conclusion

My aim with the thesis is to theoretically discuss and problematizing the influence of gender and sex throughout the crime as process in Sweden. The issue of gender, criminality and a system for justice will be discussed from different angles to identify, understand and problematize the different parts of the process.

My research question is:

In what way may theories, research and knowledge give understanding regarding the socially constructed gender within the crime as process in an overall perspective?

One of the main conclusion of this thesis is the irrelevance of both sex and gender as explanatory and descriptive categories of offenders. In order for a gender category to be meaningful it should instead of within the victim or offender be placed within the definition and construction of the crime. The dependence of the body as a signifier to gender is the main reason for this argument. If the body, as e.g. Grosz states is not neutral enough, the traditional attempts to understand the shift in sex distribution will neither give information of value to the understanding of women’s participation in committing crime nor of their status as a victim. The way forward seems to be in a turn towards an analysis of the norms and ideals placed on certain types of bodies. As the statistics and the information is built to stress the importance of the assigned sex roles for all included in the crime as process’ different steps, the gender as “a phenomenon produced by language, science, technology and apparatuses (Hekman p 159)” is lost and unmeasurable. Maybe even invisible.

In an overall reflection on the crime as process is that it could benefit from a gender analysis on crimes: Are all crimes gendered or only the individuals committing them? Should they be? The approach would make it possible to suggest what to use instead of sex as an indicator of the efficiency, results and effects of the system for justice as well as of the crime as process. What should one use instead of sex? Gender-labelled crimes? Which are the impacts for the information management strategies of tomorrow? How is it possible to build a governing system based not on biological sex?

The possibility to label different crimes according to doing gender could be an interesting approach to the understanding of crime as process as well as jurisprudence. If gender is a construction it could be possible to turn the argument around and examine process on feminine crimes committed by biological men. In the current official statistics, this is
concealed and unrecognised. The research on women and crime is still built on an assumption of the biological sex and gender as a one-to-one relation. It is not obvious how to handle a basic biased approach. How could one see gender as a real alternative and not only as a complement or synonymously to biological sex? The insights, knowledge and understandings, both on crime prevention, crime fighting and corrective practices could probably be of a different kind, non tinted by biological sex as denominator. It seems as the body committing the crime makes a difference in the entire crime as process. The process could benefit from a corresponding study with emphasis on the masculine part of gender.

Through all, the arguments and theories tend to create an ideal offender in need of an ideal victim. The ideal offender tends to be seen as essentially a man and the ideal victim is essentially a woman. (Christie, 2005) This does not necessary or logically connect to guilt and responsibility for a woman: no matter victim or offender. (Burman, lecture, 2016) Even when women are offenders they tend to be perceived as victims. This seems to be a common denominator in criminological theories, the general perception of law as well as in the legal community. (Christie, 2005)

The empirics on women are very much concerned with sex rather than gender. Either the research is dodging the gender issue, equals sex and gender or limits itself to certain highly gendered crimes - maybe in order to gain clarity? The body as an output of a process is nowhere to be found other than in some theoretical perspectives. The difference between women and men as categories have an unproportioned underlining in the research: the men/women problems are much alike, as well as their criminal trajectories.

Speaking with Butler, it is possible that gender defines sex. Speaking with Grosz— there is a shift in the dichotomy itself, due to the bodily harboured and socially constructed, oppression, facilitated by the dichotomy. Tseëlons paradoxes makes it clear: it’s not about sex or gender at all, but mastery strategies and techniques. The implicit hierarchy of crimes could be understood in this sense.

There could be need for further development of methods to understand and describe the crime as process´ input, attitudes and information management as a unit rather than in bits and pieces. One key aspect is of statistics as a base for planning, organising, leading and controlling the authorities. It seems to be gender blind to an extent. Another key aspect is of the individualisation the sex stereotyping produces and its impact on law, the rule and the
justice. In this thesis, this has only been touched upon theoretically and would need a larger research project to be done properly.

The justice process is affected in every step by e.g. interpretations, definitions, delimitations, classifications and detection competency. Added to this impacts inside the process, there is also an outer pressure in forms of relations, damages, risk assessments, contexts, allocation of resources and policies directing the including organisations. (Andersson, 2011)

The moving between sex and gender considering crime and criminality opens several challenges. They contest perceptions on crime and criminality, on its development, its extent and its appearance. The constructed systems and ideas on the importance of gender is probably of importance but are at the same time questioning, at a fundamental level, a strong tradition. Since the queries are at fundamental level it is probably hard to address theories’ accuracy built on these premises. There are too many, simultaneously effecting processes, of different directions, to understand neither good or bad nor right or wrong. What could be said is that biological sex does not suffice to understand neither crime, criminality, crime fighting nor its descriptions. If we assume the society creates all the above mentioned: how would it look if we fully accepted gender as a key variable? Theories, research and knowledge could give valuable understanding regarding the socially constructed gender within the crime as process in an overall perspective.
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Statistics (as reference rather than use)


Table 230 – suspects and convicted, all crimes, ys 2011- 2016

Table 220 –suspected reported for a crime, ys 2011-2016

Table 5.16 –imprisoned persons, ys 2011-2016

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