



UMEÅ UNIVERSITY

# **Bad or Mad?**

## A Qualitative Study of How the Gender of a Perpetrator Affects Court Decisions

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## **Abstract**

The purpose of this thesis has been to analyze Court cases determined in a Swedish context which included the crime gross assault against a closely related victim. The purpose has also been to investigate the possibility of identifying differences in Court assessments in consideration of a gender perspective and to examine how female and male perpetrators are described and characterized by Courts. The study has had a qualitative orientation and assumed a constructionist and a socio-legal perspective. The data material, consisting of ten cases with male offenders and ten cases with female offenders, has been examined by using a thematic analysis approach, where the results have been related to Nils Christie's ideal victim theory and to the concept of genus

The results of the study showed that Courts were constant in their decisions regarding male offenders, while decisions concerning female offenders appeared to be more varied. All of the male offenders were sentenced to imprisonment, while Courts' choice of sanction regarding female offenders to a high degree consisted of different measures of care. The study claims that there is an indication of that violent male and female offenders are treated differently by Courts and, in accordance to this viewpoint, that criminal men are bad and criminal women are mad.

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## Introduction

An important characteristic for democratic states and the Rule of Law is that citizens are treated equally by the authorities, regardless gender, sexual orientation or ethnicity for example. When it comes to a criminal aspect this means that Courts shall determine cases objectively and impartially from personal values or societal norms. In other words, all citizens are supposed to be equal before the law. In a Swedish context, these fundamental prerequisites are regulated in chapter 1 section 9 of the Instrument of Government, which states: “Courts of law, administrative authorities and others performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality” (SFS 1974:152). However, several previous studies (Weinsheimer et.al, 2017. Embry and Lyons, 2012. Rodriguez, 2006) indicate that women receive milder punishments compared to men when similar crimes have been committed. Similar indication has also been identified in studies conducted in Sweden. The 2012 report by the Swedish National Council for Crime Prevention compared punishments among female and male perpetrators with regard to age, previous crime record and crime classification. In all compared categories, apart from the crime fraud, female perpetrators received a milder punishment in comparison to male perpetrators (BRÅ, 2012, pp. 319-320). These circumstances indicate that there is a discrepancy in Courts` assessments with regard to perpetrators` gender and imply that the judiciary perceives, treats and categorizes female and male offenders differently.

Categorizing is a natural phenomenon that people learn from an early age and practice in everyday life. By categorizing information, the complexity is reduced to create a manageable basis for our assumptions and actions, and without this ability, it would be difficult to communicate with each other (Hinton, 2003, p. 38). In other words, we label objects, social phenomena or people to understand and interact with each other. A consequence of ascribing people, groups or genders to certain attributes, is that it creates expectations and stereotypes (Hinton, 2003, p. 11). In a gender perspective and according to Hinton (2003, p. 93), women are stereotyped with attributes such as caretaking, passive and emotional, while men on the other hand are labeled as aggressive, active and confident. In relation to a criminal context, a reasonable assumption is that attributes such as aggressiveness and activeness correspond to perceptions and expectations of violent criminals, while attributes such as passiveness and emotionality rather can be considered as an opposition of a violent behavior. With this in

mind, I find it interesting to investigate if expectations and perceptions concerning stereotypical gender attributes are factors that may have an effect on Court assessments. This leads to a description of the purpose of this study.

## **Purpose**

The purpose of this thesis is to analyze Court cases determined in a Swedish context which include the crime gross assault towards a closely related victim. The purpose is also to investigate if it is possible to identify differences in Court assessments in consideration of a gender perspective. In more specific terms the study aims at investigating how female and male perpetrators are described and characterized by the Court. This is concretized with two research questions.

## **Research Questions**

Does the gender of perpetrators have an effect when Courts are sentencing offenders?

Are female and male perpetrators described and portrayed differently by Courts?

## **Concepts**

In this section I will present and clarify certain concepts relevant for this study, which also to some extent will function as delimitations to his study. Further delimitations will also be processed in the methodology chapter.

Firstly, this study will consider *criminality* and *criminal actions* as behaviors which are statutory by sanctions within Swedish law. The next concept - *assault* - is defined in chapter 3 section 5 of the Swedish Penal Code, which states:

“A person who inflicts bodily harm, illness or pain upon another person or renders him or her powerless or in a similar helpless state, shall be sentenced for assault to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months” (SFS 1962:700).

Chapter 3 section 6 of the same law defines *gross assault* as follows:

“If the crime referred to in Section 5 is considered gross, the sentence for gross assault shall be imprisonment for at least one and at most ten years. In assessing if the crime is gross, special consideration shall be given to whether the act constituted a mortal danger or whether the offender was inflicted grievous bodily harm or severe illness or otherwise displayed particular ruthlessness or brutality” (SFS 1962:700).

A change of penalty value regarding gross assault was made from the first of July 2017. After this date, the minimum penalty is raised to 1 year and 6 months` imprisonment (Proposition 2016/17:108, 2017).

A *perpetrator* is a person who... “has committed a crime or because of his/her involvement is to be considered as participatory” (Nationalencyklopedin). Henceforth, this designation will be used alternatively with the term *offender* with similar signification.

Consequently, a *victim* is a person who has suffered a crime (Nationalencyklopedin). Since this study aims at investigating cases where perpetrators and victims are *closely related*, this also needs a clarification. In this study, a victim and an offender who are married, or live together as partners, or who have a relationship as a couple are defined as closely related.

When it comes to the concept *equality before the law*, this term can be defined with different meanings depending on what perspective one is asserting. I do not intend to give a complete review of this concept but primarily to highlight that there are different orientations within this term. This study will adopt a narrow definition of the equality before the law concept, meaning that the definition stated in chapter 1 section 9 of the Instrument of Government will serve as delineation for the continuation of the thesis. This definition states: “Courts of law, administrative authorities and others performing public administration functions shall pay regard in their work to the equality of all before the law and shall observe objectivity and impartiality” (SFS 1974:152). The definition is focused on how Courts, administrative authorities and others performing public administrations apply the law, which according to the legal text shall be performed in a neutral and objective manner. This means that public authorities like the Court shall determine similar cases equally, but it also means that different cases shall be determined in a different way if the Court finds objective reasons for such a decision (Diesen, 2005, p. 78). Further, this orientation does not take into account how laws are designed or if the design favors certain groups of people while others could be

disadvantaged. A critical legal perspective would certainly advocate a wider definition of the term equality before the law since “the Rule of Law ignore differences in wealth and poverty, but it also ignores, or purports to, class, race and gender” (Mansell, 2015, p. 9). Further aspects regarding this concept can be viewed from criminological studies, which indicate that different groups of people tend to be treated in a dissimilar way by the law. Results from criminological studies conducted in American societies imply that ethnic minority groups are more likely to get detected in comparison to the majority of people if the law has been violated (Diesen, 2005, p. 150). This is explained due to that authorities like the police, target their resources against people or groups who can be suspected of crimes (Ibid). Similar results have also been shown in a criminological study conducted in a Swedish context. This particular study found that immigrants, youths and people who looked shabby, were at a higher risk than other groups of people to receive attention from the police force (Diesen, 2005, p. 152). So, equality before the law can be defined differently depending on which perspective is advocated, but in this study, this concept will be used in accordance to the definition stated in the Instrument of Government.

### **Disposition of the Thesis**

This thesis consists of six chapters. In the next chapter previous research relevant for this particular study is introduced. The presented material from previous research mainly consists of results from quantitative studies but also to some degree from a qualitative orientation. In the third chapter the theoretical basis for this study is presented. The theoretical framework consists of Christie’s ideal victim theory and gender theories, which will be used to interpret the empirical material. In chapter four the chosen methodology for this study is presented. In this chapter I will discuss the methodological considerations made for the study, but also ethical principles relevant for this particular study. The results and analyses will be presented in chapter five, which will lead to discussion and conclusion in the last chapter. Ultimately, I will make suggestions for further research regarding this field.

## **Previous Research**

In this chapter an overview concerning previous research relevant for this particular study will be introduced. In searches of relevant material, it appeared that previous research regarding this field of knowledge to a high degree constitutes by quantitative studies. Consequently, this study can be considered as a contribution to fill the existing gaps in knowledge regarding this field. The chosen material is presented and divided in to quantitative and qualitative previous studies.

### **Quantitative Research**

When it comes to criminal actions in general, males have through history been overrepresented regarding this field compared to females (Steffensmeier & Allan, 1996). Recent statistics from the Swedish National Council for Crime Prevention show that males in Sweden still constitute the norm in this aspect. 83 percent of all condemned offenders in a Swedish context in 2016 were males and out of 98 400 sentenced offenders, 17 100 were females (BRÅ, 2018). In a gender perspective, this distribution of sentenced offenders has, according to BRÅ (2018), been stable over the last ten years.

Several previous studies conclude that gender seems to have an effect when it comes to sentencing offenders by Courts. Weinsheimer`s et al., (2017) study examined cases concerning perpetrators who were accused of sexual crimes against children. The result showed that female perpetrators received shorter sentences compared to males, despite the fact that the actions committed by both sexes were intrusively similar (Weinsheimer, et al., 2017).

Another study that focused on gender, sex-crimes and sentencing was conducted by Embry and Lyons in 2012. They used data from the *National Corrections Reporting Program* to examine if there was a discrepancy regarding sentenced sex-offenders and gender. Several categories of sex- crimes were included in the study, such as rape, child sexual assault and forcible sodomy. Embry and Lyons (2012) concluded that gender had an effect when sex-offenders were sentenced. A hypothesis conceived by the authors was that females who broke traditional gender patterns should be condemned more strictly compared to males. The hypothesis was not confirmed, and instead the results showed that males received harsher punishments compared to females in all categories (Embry & Lyons, 2012).

Wilczynski (1997) also argues in her study that the legal system seems to treat male and female offenders differently. Her study focused on male and female parents who had killed their child or children, and Wilczynski found that Courts seemed to treat offenders in accordance that “men are bad and normal, women are mad and abnormal” (Wilczynski, 1997, p. 419). This is claimed by the fact that males in the actual cases were to a high extent sentenced to jail, while female offenders were treated with other types of control mechanisms like psychiatric care or probation. When female offenders were sent to imprisonment, they were likely to receive shorter sentences in comparison to males. However, Wilczynski (1997) points out that these differences are to some extent justified when standard sentencing factors are considered but maintains that gender seems to have an effect within the criminal system.

A slightly more detailed study was conducted by Rodriguez et al. (2006). The purpose of their study was to examine if gender-sentencing association could be related to specific crimes. The authors found that female perpetrators were less likely to be sentenced concerning property and drug related crimes compared to males, but regarding violent types of crimes, the study did not find that gender had any major effect on the probability to be sentenced to jail. However, even though the probability to be sentenced to prison was relatively equal between the genders regarding violent crimes, males received longer sentencing in comparison to females in all studied categories (Rodriguez, et al., 2006).

The Swedish National Council for Crime Prevention presented in 2017 a report that investigated if it was possible to argue that District Courts in Sweden sentenced different penalty values when factors like age, seriousness of the crime, offender’s crime record and gender were taken into account. Results indicated that there was a discrepancy between the Courts and that the differences in sentenced penalty values could not be explained as a result of a natural variation. The analysis also showed that the probability to be sentenced to prison was twice as big for males in comparison to females. The authors state that a possible explanation to this could be that females in a higher extent have custody of children and that Courts avoid sentencing guardians with regard to the child or children. Another possible explanation could be, according to the authors, that there are differences in perceptions regarding gender and guilt. The study claims that Courts could possibly perceive males as more active and impulsive in criminal contexts, where females instead are perceived as participants who are passive (BRÅ, 2017).

Another study which strengthens the assertion that the judicial branch is affected by perceptions of gender stereotypes is demonstrated by Ahola (2010). In this study 323 persons participated (169 females, 154 males), who were all employees within the Swedish judicial system. The participants received the same description of a case but where half of the cases portrayed a female offender, and the other half portrayed a male offender. The participants were later asked to evaluate the case and prescribe a suitable punishment. When analyzing the data, the result showed that participants who evaluated an offender with the same gender as themselves seemed to sentence stricter punishments compared to participants who evaluated an offender of the opposite sex (Ahola, 2010). Results also showed that the male offender in general was sentenced harsher than the female offender by the participants. Ahola (2010) argues that a possible explanation of this phenomenon can be sought in stereotypical perceptions about males and females. According to Ahola (2010), women are less aggressive, less active and less powerful in comparison to the male gender and these attributes can make it more difficult to accuse females of crimes that traditionally have been associated with the male gender.

### **Qualitative Research**

Madriz (1997), who studied female constructions and images of stereotypical criminals and victims, conducted a qualitative research, which included interviews with 18 focus groups consisting of a total of 140 participants. Women with a different socioeconomic background, ethnicity and age etcetera participated in the study, which resulted in models of stereotypical criminals and victims. The participants' expectations of a typical criminal can be summarized to an individual who is a male, black, and poor. The criminal is also expected to look "weird", but is also described as big, tall and violent. The culprit is also assumed to be a stranger to the victim. The typical victim on the other hand was described as a white middle-class female, who is small, tiny and looks "normal". The stereotypical victim is also perceived as a passive, innocent and harmless individual, who has no relation to the perpetrator (Madriz, 1997).

Perceptions of stereotypical criminals and victims may also have an effect on a prosecutor's assessments when deciding which cases that are brought to courtrooms or which cases that are rejected. Frohmann's (1991) study focused on cases which included sexual assault and the study aimed at finding patterns of why prosecutors reject certain types of cases. Frohmann (1991) concludes that decisions by prosecutors are orientated by factors connected to the

victim, such as personal behavior, personal life and relationship between the offender and the victim. Cases with victims, who in behavior or in personal life broke traditional gender patterns and who were assaulted by an offender who was known to the victim were frequently denied by prosecutors. Stories from victims in this segment were more questioned and perceived less reliable compared to other victims, which implies that social norms and expectations may endanger the legal certainty (Frohmann, 1991).

## **Theoretical Basis**

In this chapter I will introduce the theoretical framework chosen for this study. Since the study aims at investigating if stereotypical gender attributes are factors that may influence Court decisions, and due to the fact that the study can be considered to pertain to a constructionistic orientation, I find it suitable, partly to use criminology theory but also gender theories, which will function as a complement to each other.

### **The Concept of Genus**

According to Hirdman (2001, p. 50), genus is described as a cultural-made gender but is also commonly designated as a social-gender. This perspective advocates gender as a social construction, emphasizing that women and men are ascribed definitions as masculinity or femininity (Lander, 2003, p. 27). This is also highlighted by Connell (2009, p. 15), who states that attributes which historically have been associated with the male and female gender, should be considered as socially created rather than given by nature. So, what attributes have historically been associated with the different genders? In an overall manner, attributes connected to the female and the male gender have been separated and categorized into femininities and masculinities. Femininities and masculinities are to a high extent each other's opposites, which exist and define in contrast to each other (Connell, 2005, pp. 67,71). In other words, feminine characteristics are non-masculine and vice versa. Masculine attributes have, according to Connell (2009, p. 86), through history been associated with the male gender, where attributes like aggressiveness, obstinacy and analytical capacity have been characteristic. On the other hand, and in contrast to masculinities, feminine characteristics have instead been featured as being emotional, caring and intuitive, and mainly associated (Connell, 2009, p. 86).

Constructions of femininities are, according to Lander (2003, p. 33), created and reproduced depending of context. This process takes place in interaction between people but also in relation to cultural perceptions of what is appropriate for a female (2003, p. 33) denotes this as normative femininities, which imply a control mechanism meaning that women's subjectivity is shaped and evaluated in correlation to perceptions and expectations. This reasoning can be deduced to what Hirdman (1988) refers as the gender-contract. This contract consists of conceptions regarding how women and men should interact with each other, how tasks are distributed between the genders (Hirdman, 1988, p. 54). This contract is also a part

of what Hirdman (1988) defines as the genus-system. According to Hirdman (1988, p. 51), this concept should be considered as a dichotomy, firstly meaning that female and male characteristics should be separated, and secondly, that the female gender is hierarchically lower in relation to the male gender.

Connell (2005) lodges a similar reasoning about how constructions of masculinities are created and reproduced in the social system. As an equivalent to Lander's normative femininities and to Hirdman's genus-contract, Connell (2005, pp. 101-103) describes hegemonic masculinity as a desirable position characterized by status. Although Connell (2005, pp. 101-103) emphasizes that hegemonic masculinity rather should be considered as an ideal that males can relate to than a position that individuals want to achieve, men in general will benefit of this structure. By ascribing gender to different attributes, positions or roles are consolidated to specific genders and by this, men can maintain to constitute the norm when it comes to positions in society associated with high status (Connell, 2005, pp. 101-103).

Males also constitute the norm as offenders when it comes to a criminal aspect and historically they have been overrepresented in this field compared to women (Steffensmeier & Allan, 1996). Little surprising is that a similar distribution between the sexes is also prevailing regarding violent types of crimes (Sarnecki, 2009, p. 110). Consequently, there is substance in why the male gender has been ascribed to attributes like aggressiveness and why males are perceived more violent than women. However, males are also overrepresented as victims in comparison to females (Sarnecki, 2009, p. 110) which is somewhat more surprising. The victim role is more associated with the female gender, which, according to Kordon (2006, p. 8), could be a consequence of the fact that a great deal of attention has been directed towards violence against women the last decades. The reason why the victim role is associated with the female gender can also be explained due to the fact that stereotypical female attributes like passiveness or emotionality form a sharp contrast to a violent and aggressive behavior, which in certain situations also could constitute a criminal behavior. So, does this mean that the different genders constitute different ideals of offenders and victims?

## **The Ideal Victim**

Ideal victims and offenders have been further explored by the criminologist Nils Christie. Although Christie (1986, p. 18) states that being a victim is rather a subjective perception than an objective phenomenon. His theory proceeds from a societal perspective. From this angle, an ideal victim is an individual who receives complete legitimate victim status by society. In other words, people who consider themselves as victims or people who run a great risk to be subjected to crime, do not necessarily achieve legitimate victim status (Ibid). In order to achieve complete legitimate victim status, Christie (1986, p. 19) maintains that at least five prerequisites need to be met. Firstly, that the victim is considered as weak in relation to the offender. Christie exemplifies that old, sick or very young people could be considered as ideals in this aspect. The victim should also have been busy doing some kind of a respectable project when he or she was subjected to the crime. Christie (Ibid) exemplifies this with an old woman who had been subjected to a crime when helping a relative. In contrast, a young man who had been exposed to violence in a bar, does probably not achieve similar victim status compared to the old woman (Ibid). A third aspect to be considered as an ideal victim is that the crime should have occurred in a place where the subjected person could not be blamed for being. Christie (Ibid) claims that a woman is more likely to achieve victim status if the violation is committed at daytime in the streets, in contrast to at night. The fourth and fifth requirements in order to achieve legitimate victim status state that the offender should be characterized as big or bad and should also be unknown to the victim. Christie (1986, p. 21) also suggests a sixth condition, namely that the victim has the ability or capacity to claim that he or she has been subjected to a crime and who is powerful enough to process the case.

By characterizing the ideal victim, it also creates the ideal perpetrator. These roles are basically each other's opposites and arise from an interdependence. "The more ideal a victim is, the more ideal the offender becomes" (Christie, 1986, p. 25). Conversely, if the offender is considered ideal, it is more likely that the individual subjected to crime achieves legitimate victim status. However, Christie (1986, p. 25) points out that in reality, victims and offenders rarely achieve status in terms of ideals. In many crimes, especially those including a violent dimension, victims and offenders are often known to each other, which excludes a possible ideal status (Ibid).

By combining Christie`s ideal victim theory with the concept of genus, it is arguable to suggest that feminine attributes are more corresponding to the victim role than to a role as an offender. Conversely, a masculine attribute like aggressiveness combined with the fact that males constitute the norm in criminal contexts and that the female-gender historically has been perceived as hierarchically lower than the male-gender, makes it arguable to suggest that the perpetrator role is more applicable to the male gender than to the female one.

## **Methodological Considerations**

In this chapter I will introduce the methodological considerations made for this particular study. Firstly, the study will assume a constructionistic position which advocates that social phenomena and its meaning should be considered as a product of interaction between actors that in its condition is mutable rather than immutable (Bryman, 2011, p. 37). Accordingly, a constructionistic approach opposes the possibility that social phenomena are created isolatedly and separately from the concerned actors and should instead be considered in their context. (Bryman, 2011, p. 341). In a legal context and in addition to the above-mentioned perspective, the study can also be considered to advocate a socio-legal approach. In correspondence with the constructionistic approach, the socio-legal perspective can be described as a challenge to the traditional view that law is a sealed system, which operates isolatedly and separately from societal norms or values (Banakar, 2015, pp. 48-49). Instead, law should be considered as a part of where it exists and operates (Ibid). In more concrete terms, this study will apply social theories in relation to the empirical material in order to highlight internal processes within law, which Banakar (2015, p. 48) refers as a Law in Context approach.

### **Qualitative Method**

To make further methodological considerations and since this study can be regarded to belong to a constructionistic position, the qualitative method appeared to be suitable. The qualitative method can be described as a method to advocate an interpretative position, where focus is directed to understanding, rather than to a position which assumes that social phenomena exist and can be observed objectively and isolatedly from the involved actors (Bryman, 2011, p. 341). The qualitative method can thus be considered to harmonize with the constructionistic and socio-legal perspectives. In contrast to the quantitative method, which aims at quantifying data and numbers, the qualitative orientation is instead characterized by words and interpretation (Bryman, 2011, p. 340).

### **Selection**

The procedure that was used in order to select cases for this study can be described as a mode of procedure, which consists of a so-called convenience sample combined with a targeted sample approach. According to Bryman (2011, p. 194), the first approach signifies that respondents who are selected are accessible to the researcher. The second approach signifies

that selections are targeted to respondents who are relevant for the research questions (Bryman, 2011, p. 434). In this study and instead of selecting respondents, searches for cases were made and selected from the database Karnow. In this manner, cases that appeared as a result of the searches can thus be regarded as accessible. Searches were also targeted in regard of the purpose and in relevance towards the research questions. According to Bryman (2011, pp. 194-195), who declares that by selecting samples or cases using a convenience approach it is not possible to generalize the results in a broader sense. I am also conscious of that the scope of this study excludes the capability to generalize the results in a wider context. However, I still think it is possible to identify a pattern or an indication which can function as a step towards further research.

When selecting cases to constitute material for this study, several requirements were set to conform to the purpose and to the research questions. Searches were filtered to find determined cases from District Courts in Sweden, where the accused was prosecuted of the crime gross assault and where the offender and the victim were closely related. Additional requirements were set, implying that the accused was condemned to either assault or gross assault and where the accused was prosecuted for one crime only. One exception was made where an accused was prosecuted for a second crime. However, this crime did not in a significant manner affect the chosen sanction by the Court. Further limitations consisted of cases with offenders younger than 21 years of age and cases defined as especially gross assault were excluded. When these requirements and limitations were settled, 10 cases of female offenders and 10 cases of male offenders were selected by the date of the Court decision, starting with the last crime case in order to achieve a current selection as possible.

### **Thematic Analysis**

In order to analyze the selected cases, an approach called thematic analysis has been used. This approach is, according to Bryman (2011, p. 528), not adapted to a special design or technique and can thus be adjusted to function in varied types of studies. Nevertheless, this method is particularly common and appropriate for qualitative text-analysis and therefore suitable for this particular study (Ibid). In general terms, a thematic analysis means a search of themes and subcategories within the material to be analyzed. So, this approach will structure the material in themes or categories, which in the next phase is summarized into results (Bryman, 2011, pp. 528-529). When searching for themes and subcategories in the

actual material Ryan & Bernard (2003) recommend to pay attention to some significant aspects in order to identify, categorize and create themes. The first aspect which I find relevant for this particular study is what Ryan & Bernard (2003, p. 89) refer as *repetitions*. This aspect means that searches should be directed towards finding words or phrases which are recurring in the material. This approach was used in a discrete manner, indicating that searches for repetitions were performed separately, first involving cases with female offenders and then with cases with male offenders. The second aspect - *similarities and differences* – can be described as containing an element of comparisons. Ryan & Bernard (2003, p. 91) suggest that researchers should not only search for repetitions but also compare material in order to identify themes. This aspect was particular relevant due to that this study intends to investigate Court assessments in regard to a gender perspective. By using this approach one theme was identified first by searching for similarities and differences in a separate manner (first with cases involving female offenders, then with cases involving male offenders). Then the results were compared in order to create a theme. A third aspect which I find relevant for this study is what Ryan & Bernard (2003, p. 92) refer as *missing data*. This aspect signifies that researchers should also pay much attention to data that could be missed, either by searching for data that could be excluded or latent from the material, or by examining the material once again in order to find data that could have been missed in previous searches (Ibid). This third aspect has in this particular study mainly been approached in connection with selected theories. Latent or missing data in court cases may consist of norms or societal values and the chosen theories have accordingly functioned partly to interpret the empirical material, but also to explore possible latent data in Court assessments.

### **Ethical Principles**

When conducting studies, a researcher should always relate to the ethical principles prevailing where the study is performed. The Swedish Research Council has established four main requirements that should be followed when social science studies are conducted. In an overall view, these demands consist of requirements regarding participants` consents, information about the study and requirements concerning confidentiality and material use (The Swedish Research Council, 2002, p. 6). These requirements are not in their entirety relevant for this study and that`s why I have chosen only briefly to describe these different demands. This is because court cases in Sweden are public documents, meaning that citizens can take part of information that the authorities possess, which means that the first two

mentioned requirements are irrelevant for this particular study. However, requirements concerning confidentiality and material use are relevant and should be considered. Court cases usually consist of names and personal data regarding offenders and victims, but I find it ethical inappropriate and irrelevant to display such information in this study. Therefore, personal data of offenders and victims have been excluded and names have been replaced with initials. The investigated cases have also been kept so that only I had access to the information. References to cases are however necessary to display in order to review them and references are shown by the case number. In the following chapter the results and analyses of this study are presented.

## Results and Analyses

In this chapter I will present the results and analyses of the reviewed cases, but first, a quick reflection of the purpose of this study. The aim of this thesis has been to analyze Court cases including the crime gross assault, and which have been determined in a Swedish context. The intent has also been to investigate if gender has any effect on Court assessments and if male and female offenders are portrayed differently by the Court. In investigating this, a thematic approach has been used to identify themes in the selected cases. To find themes and subcategories, the review started with studying cases in their entirety, this in order to achieve an overall view. At the next phase the study was connected to the actual research questions and aimed at finding similarities, differences and repetitions in Court assessments. This led to the identification of two themes, namely “Choice of Sanction” and “Bad or Mad”. The outcome of reviewing the actual cases has been analyzed by relating and connecting the results to the theoretical framework of this study, consisting of Christie’s ideal victim theory and of the concept of genus. Previous research has to some extent also been related to the results of this study. When presenting the results and analyses, material from the Courts’ judgment will be highlighted by quoting relevant phrases central to identifying themes, starting with the first identified theme - Choice of Sanction.

### Choice of Sanction

This theme was identified when studying what type of sanctions male and female offenders of the crime gross assault received by the Courts. As a reminder, from the first of July 2017 the minimum penalty regarding the crime gross assault was raised from 1 year imprisonment to 1 year and 6 months (Proposition 2016/17:108, 2017). Assault and gross assault are also categorized as so called *artbrott*, which presume a prison sentence. This has been established by the Supreme Court in the NJA 1990 and NJA 1991 cases. Consequently, the Court must refer to very particular circumstances to deviate from a prison sentence (NJA 2000 p. 195). If the Court finds very particular circumstances, other sanctions that can be judged are regulated in chapter 30, section 7 and 9 within the Swedish Penal Code.

When it comes to the actual cases reviewed in this particular study, the choice of sanction by the Court can on one hand be described as one-way constant, but on the other hand varied as well. In cases concerning male perpetrators the Courts were constant with their sanctions. Out of the 10 cases concerning male perpetrators, all 10 were sentenced to jail. Although I

find several of these decisions as motivated, the Courts` reasoning was perceived more rigidly in relation to cases concerning female offenders. This is exemplified by the B 3138-16 case, where the Court stated:

“The penalty value of the crime should consist of imprisonment of one year, which is the minimum penalty for the crime gross assault. Assault constitutes an *artbrott*. At such a high penalty scale there are no prerequisites to deviate from a prison sentence. The penalty should therefore be determined to one (1) year” (B 3138-16 p. 25).

Similar reasoning could be found in the majority of the cases with a male perpetrator. In these cases, Courts frequently referred to the presumption that the consequence of committing this type of crime should be imprisonment. This opinion was also maintained in the B 1866-17 case, where the Swedish Prison and Probation Service (Kriminalvården) suggested a treatment plan combined with psychiatric care and probation. The Court stated that “the suggested treatment plan is not a sufficient interference alternative” (B 4478-17 p. 10). Instead the offender received a sentence of 8 months in prison.

In cases with female perpetrators, the Courts` reasoning was perceived more variedly and not as constantly as in cases with male perpetrators. Out of these 10 cases, 5 resulted in prison sentences (1 case with combining treatment plan and probation), 2 in probation, 2 in forensic psychiatric care and 1 in probation combined with psychiatric care. The statement by the Court in the B 3138-16 case, where it was argued that "at such high penalty scale there are no prerequisites to deviate from a prison sentence” (B 3138-16 p. 25), does not seem to be as indicative concerning cases with female offenders as with male ones. Although the female offender in the B 63-14 case was sentenced to 1 year and 6 months` imprisonment (settled by previous legislation) and above the minimum penalty, the Court held further proceedings in order to determine a treatment plan for the offender. However, this was denied, not by the Court but by the municipality (B 63-14 p. 12).

The perception that the Courts` reasoning seems to differ from a more rigid and constant posture in cases with male offenders, to a more flexible attitude when it comes to female perpetrators, makes it arguable to suggest that the different genders may constitute contrasting ideal roles connected to a criminal context. Through history, males have constituted the norm in this aspect (Steffensmeier & Allan, 1996) and are responsible for the

majority of crimes also in present time (BRÅ, 2018). When Courts determine cases, the probability is relatively high that the accused is a male and can thus be considered to confirm expectations of a criminal. In other words, a male is more ideal as an offender in relation to a female. Christie (1986, p. 25) states that "the more ideal a victim is, the more ideal the offender becomes." The fact that the reviewed cases in this study consist of an offender and a victim who are or were closely related and of different gender makes it suitable to refer to Christie's theory. His theory (Christie, 1986, pp. 19, 25) suggests that females are more likely to receive legitimate victim status in relation to males, while men on the other hand are more suitable to constitute an ideal offender. Regarding these facts in relation to the studied cases it is possible to argue that one explanation why Courts are more constant in their decisions concerning accused males than in decisions concerning females, is that Courts find it easier to sentence a man because this action confirms the expectations of the stereotypical offender. Violent actions by women may instead be perceived as a contrast to the traditional and expected criminal and could mean that Courts find it more difficult to punish a woman by the same means as a man. The fact that male and female criminals to some extent receive different sanctions implies that men and women are also perceived differently by the court. This leads to the next theme.

### **Bad or Mad?**

This theme was identified when studying Courts' choices of sanction and can consequently be regarded as a subcategory to the former theme. As previously mentioned, all of the male offenders were sentenced to prison while half of the female perpetrators in one way or another was condemned to measures of care. By studying the cases more closely it appeared that Courts in 6 of the cases (B 340-16 p. 22, B 2743-15 p. 12, B3318-16 p. 10, B 11990-15 p. 7, B 1619-17 p. 22, B 63-14 p.11) concerning female offenders referred to a mental disorder, which would affect either the choice of sanction or in a reducing penalty value. In relation to cases with male offenders only 1 case (B 4478-17) included this reference, in this particular case in reducing the penalty value. Though, by examining the cases more carefully, it appeared that this difference to some extent can be explained due to the fact that some males in the actual cases denied addiction problems and opposed suggested treatment plans combined with surveillance. However, some distinctions still remained and can be discussed and illustrated by the B 1866-17 and the B 3318-16 cases. Several similarities were identified in these cases. For instance, both of the accused were prosecuted for gross assault but both

crimes were assessed and classified as only assault. In both cases the offenders had used some kind of weapon in their actions. In the first mentioned case a male used a shoehorn, while in the second case a female used a scalpel. Both offenders were also considered to have addiction problems. The Swedish Prison and Probation Service expressed an opinion regarding the male offender, who hit his wife with a shoehorn. The statement said:

“The investigation shows a serious addiction problem concerning alcohol, which has been going on since early teen years. In addition to this it appears that J.N. has been using substances containing anabolic steroids for the last year” ...” the investigation also shows an aggravated condition concerning violence, which according to J.N. is particularly noticeable in connection with alcohol” (B 1866-17 p. 12).

The Swedish Prison and Probation Service advocated a probation sentence combined with 2 different treatment plans. They also emphasized that these conditions should be combined with a drug analysis, consisting of breath and urine samples (B 1866-17 p. 12). This suggestion was however denied by the Court, which stated:

“This sort of crime presumes to a high extent a prison sentence. The Court does not consider that the suggested non-institutional sanction is a sufficient interference alternative. The Court therefore determines the sanction to imprisonment for 8 months” (B 1866-17 p. 12).

In the B 3318-16 case the Court clarified from the opinion of the Swedish Prison and Probation Service that the accused “has a widespread addiction problem that has been going on for a long time and which has escalated over the last year” (B 3318-16 p. 9). The Court also clarified that the accused was responsible for the crime assault by stabbing her partner with a scalpel, which also, according to the Court, was committed intentionally (B 3318-16 p. 7). Although a prison sentence was judged (2 months that were considered as executed because of time spent in custody), it appeared that the presumed prison sentence to this type of crime did not function as an indicative point of reference in this case. Regarding the choice of penalty, the Court stated:

“Treatment aid of any kind is, according to the Court, so significant that this will be the real sanction. This sort of crime means that the probation shall be combined with a short prison sentence” (B 3318-16 p. 10).

An additional aspect implying that priority was directed to treatment instead of a prison sentence was that during the main hearing, social service was contacted regarding so called *kontraktsvård*. This option was however not possible due to that the social services did not complete their investigations regarding an appropriate treatment plan (B 3318-16 p. 9-10).

Although the difference in Courts` choice of sanction at first sight appeared to be substantial in consideration of a gender perspective, it emerged by studying the cases more carefully that this distinction to some extent could be explained due to that some male offenders opposed measures of care. However, some differences still remained, and it also seemed that Courts in some cases (B 1866-17 and B 3318-16 in particular) assessed male and female offenders from different premises. In the previous section I maintained that men are considered more ideal as offenders in relation to women, which could function as one explanation why Courts sanctioned male offenders more constantly with prison sentences, while sanctions regarding female offenders were more varied. An addition to this could be that men and women are perceived differently by Courts. Connell (2005, pp. 67, 71) states that attributes connected to the different genders have been separated and categorized to femininities and masculinities. These categories are also to a high extent each other`s opposites, which according to Connell (2005, pp. 67, 71) exist and are defined in contrast to one another. Characteristic attributes like aggressiveness, obstinacy and analytical capacity have through history been associated with masculinities and the male gender, while feminine characteristics which have been featured deal with being emotional, caring and intuitive and have mainly been associated with females (Connell, 2005, p. 86). In relation to a criminal offender role and to the crime assault in particular, it is possible to claim that traditionally masculine attributes are closer connected to these aspects, while feminine characteristics instead stand in contrast to a violent behavior. These conditions may explain why Courts frequently referred to the sort of crime which presumes a prison sentence in assessments regarding male offenders, while these circumstances did not seem to function as indicative as in cases with female offenders. A violent act performed by males may be regarded by Courts as a normal phenomenon belonging to a masculine behavior that needs to be punished. A violent act performed by a female could instead be perceived as an abnormal behavior in relation to typical feminine

characteristics which need a different sanction, namely care. That men and women are perceived and treated differently by the legal system has also been highlighted by Wilczynski (1997). In her study Wilczynski (1997) found that males to a great degree were sentenced to jail, while females who committed similar crimes were treated with other types of control mechanisms, like psychiatric care or probation. In this manner these results correspond to the outcome of this study – namely that the legal system perceives criminal men as bad and criminal women as mad.

## Discussion and Conclusion

In this final written chapter, I will discuss the results of the study and provide answers to the formulated research questions. Lastly, I will provide suggestions for further research concerning this field.

The aim of this thesis has been to analyze Court cases settled in a Swedish context, which included the crime gross assault and an offender and victim who were closely related. The purpose has also been to investigate cases in consideration of a gender perspective. Regarding the first formulated research question - Does the gender of perpetrators have an effect when Courts are sentencing offenders? - it appeared that Courts' assessments in consideration of a gender perspective at first sight were substantial. All accused males were sentenced to jail, while female offenders were sentenced with varied sanctions. Though, further examinations showed that some males denied measures of care which reduces the difference to some extent. However, further examinations also showed that cases perceived as relatively similar ended up with different sanctions, namely that a male offender was sent to prison while a female offender received measures of care. This phenomenon was explained by the fact that males through history (Steffensmeier & Allan, 1996) and in present time (BRÅ, 2018) have constituted the norm in a criminal context and are accordingly more ideal as offenders in relation to females. In other words, criminal males correspond to a greater degree to the typical offender role in comparison to females by confirming the expectations of the stereotypical violent criminal. This may explain why Courts did not hesitate to sentence male offenders to prison, while chosen sanctions regarding criminal females varied.

Regarding the second research question - Are female and male perpetrators described and portrayed differently by the Court? - the results showed to a high degree that Courts treated female offenders in accordance to be mad, while male offenders instead were treated as bad. The fact that Courts referred to a mental disorder in the majority of cases with female offenders, while this reference only occurred in one case with male offenders, could imply that the legal system treats and perceives offenders differently because of their gender. This assumption was strengthened due to that Courts' assessments in relatively similar cases seemed to be treated from different premises. In assessments regarding accused men, Courts constantly referred to the presumption of a prison sentence while the initial position in several cases with accused females instead seemed to be measures of care. These circumstances were

explained by the fact that traditional masculine characteristics like aggressiveness or obstinacy mainly have been associated with the male gender, and that these attributes are closer connected to a role as a violent criminal in relation to typical feminine characteristics like emotionality or carefulness, which mainly have been associated with women (Connell, 2005, p. 86). In other words, Courts may perceive a violent act performed by a male as an incorrect but normal phenomenon belonging to the masculine behavior that needs to be punished. A violent act performed by a woman can instead be considered as a contrast to a typical feminine behavior but also as an action which does not correspond to the expectations of a violent criminal. This could mean that Courts perceive violent men as bad and who have to be punished behind bars, while violent women are treated with care interventions since they are perceived as mad.

The results of my study correspond to what Wilczynski (1997) concludes from her study, namely that violent men are to a high degree sentenced to jail, while females who commit similar crimes are punished with other types of control mechanisms like care or probation. The outcome of this study can also be linked towards Ahola's (2010) analysis of why a male perpetrator in her study was sentenced harsher than a female, who had committed an identical crime. According to Ahola (2010), women are less aggressive, less active and less powerful in comparison to the male gender and these attributes can make it more difficult to accuse females of crimes which traditionally have been associated with the male gender.

Although the results from this study show that criminal women and men to a high extent are treated with different sanctions and in accordance that men are bad while women are mad, it is not possible to generalize these results in a broader context. This is partly limited by the comprehension of the study, but also to some extent by the chosen methodology. The investigated material consisted of Court cases which can be considered to constitute a limited part of the insight that Courts have into their disposal in order to make decisions. Therefore, by analyzing Court cases it is not possible to achieve an as equivalent holistic view as Courts possess. Information of offenders' previous crime record or impressions from the actual trials are factors that are excluded from this type of studies and cannot be considered in terms of results. In order to increase the holistic perspective, an alternative might have been to combine text analyses with observations from Court proceedings. However, this approach would highly probably have had a decreasing effect on the number of cases investigated, which could reduce the credibility and the reliability of the study instead of improving it.

Although the difference in Courts' assessments at first sight appeared to be substantial in consideration of a gender perspective, it emerged by studying cases more carefully that some differences could be explained, which to some extent reduces the disparity between the genders. It should also be mentioned that every case which is proceeded within the criminal system is unique and despite the fact that this study has examined relatively similar cases, it does not necessarily mean that all cases should end up with a similar outcome. A more holistic approach might have offered further explanations in why Courts seem to treat violent men and women differently and reducing this disparity further. However – it might also have intensified the image of that gender seems to have an impact within the criminal system.

So, the concluding remarks of my study is that despite the possibility to generalize the results in a wider context, I argue for that there is an indication of that violent male and female offenders are treated differently by Courts and, in accordance to this viewpoint, that violent men are bad, and violent women are mad. This claim is strengthened by the fact that the results of this study correspond to previous research (Wilczynski, 1997. Ahola, 2010), questioning law as a sealed system, which operates isolatedly and separately from social impact. Instead, law should be considered as a part of where it operates and exists.

### **Further Research**

Since previous research regarding this field to a great degree consists of quantitative studies, investigations with a qualitative orientation as this study is needed in order to verify previous results, but also to fill the existing gaps of knowledge regarding this field. To strengthen previous studies and to accomplish additional progress, further research might use observations as a method to study how female and male offenders are spoken of and treated by Courts, but also to observe how accused men and women portray themselves in Courtrooms. I also believe that further research might use a similar approach as this study but from a different angle. For example, this might be to study other types of crimes or with a combination of methods, to examine e.g. what effect class, ethnicity or intersectionality may have on Court assessments.

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