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SENTENCING MATTERS**FACTORS DETERMINING SENTENCE TYPE AND LENGTH:
AN EXPLORATORY VIGNETTE STUDY**

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ABSTRACT

We investigate factors affecting sentence type and length. Employing a vignette design, we assess whether severity of the offence, offender sex, recidivism and offender family characteristics impact the type of sentence and custodial sentence length for embezzlement in a convenience sample of adults residing in the Netherlands.

We observed that restorative sanctions are a frequently chosen response as an appropriate sentence for fraud. We found that the severity of the crime and recidivism had an impact on sentence type and sentence length. We also found that female offenders are less likely to receive custodial sentences, and that they generally receive shorter sentences. Furthermore, having a family (i.e. married with dependent children), reduces custodial sentence length significantly more for women than for men.

As our study was small and carried out on a non-representative sample, it can only be regarded as exploratory. Nevertheless, it reveals some interesting findings which warrant further study. We end with recommendations for future research.

I. Introduction

Sentences are impacted by the severity of the crime of which an offender is convicted. Serious crimes generally lead to more severe penalties, whilst less serious crimes may be expected to lead to less severe penalties. Mitigating factors may play a role in reducing the severity of the sentence, for instance, whether the defendant cooperated with the prosecutor. Some criminal justice systems have legal prescriptions to punish recidivists more severely, such as the Netherlands - the

* The study was designed and executed as part of the Master's Research Talent Track programme at Vrije Universiteit. All authors contributed to the literature study, the study materials, piloting of the design, data collection, along with analysis and interpretation. Catrien Bijleveld was responsible for statistical analysis and wrote the final article. Juliana Augustinis and De Sheng Lim checked literature and wording. Nieke Elbers added materials on restorative justice. De Sheng Lim corrected the English, all other authors are in alphabetical order.

country where our study was conducted – where recidivism is prescribed to add a third to sentence length.

In addition to such legally relevant factors, it is often observed that factors that should not or need not play a role in sentence length – such as gender – do impact sentence length. To that end, many studies highlight a persistent trend: that is, when it comes to sentencing outcomes, female offenders are sentenced to prison less often and for shorter time spans. Obviously, part of this effect may be due to judges taking into consideration the fact that women offenders are more often (single) caretakers of children, even when the law does not give specific guidelines to do so.

The majority of research into the effects of legally relevant (hereafter referred to as “legal factors”) and strictly speaking legally irrelevant factors (hereafter referred to as “non-legal factors”) on sentence length have been observational. It has been reported that women tend to receive more lenient sentences due to the following observations: (1) women commit less serious crimes than men, (2) women often have less extensive criminal records than men, and (3) in some circumstances, women are spared a custodial sentence as to avoid putting an onerous burden on their family especially if they are the sole or primary caregiver. Methodologically speaking, many legal and non-legal factors co-occur in empirical reality. Therefore, if we observe that women receive lighter sentences than men, we cannot be sure whether that is because their crime was perceived as less serious or because they are female.¹ Such entanglement of factors is referred to as “confounding” – factors that tend to co-occur so that we cannot separate out the effect on some variable of interest of one factor over the other.

The only solution to such issues of confounding, would be to randomize properties that one wants to investigate. This is, however, hard to do in real life as we cannot randomize offender characteristics such as gender or recidivism. For this reason, researchers have often employed vignette studies.² In a vignette study, respondents are presented with and asked to rate a standardized hypothetical factual scenario. Researchers randomly vary (‘manipulate’) pertinent aspects of the factual scenario. For instance, in this particular vignette study, half of the offenders are male and half are female. Furthermore, half committed a serious offence (embezzling €20,000) and the other half a less serious offence (embezzling €3,000). If respondents’ ratings of the vignettes correlate with these manipulated properties, one may conclude that the manipulations caused the differences in ratings. Because the vignettes are always identical except for the systematically varied properties, we can be sure that there is no confounding.

To that end, we designed sixteen different vignettes based on a hypothetical factual scenario in which an offender is found guilty of embezzlement by a judge.³ A convenience sample of respondents were asked to determine an appropriate type of sentence as well as an appropriate length if the hypothetical offender was given a prison sentence. In the vignettes, we systematically varied factors that may impact sentencing decisions, including both legal and non-legal factors. As the vignettes differ only with regard to these factors, we can be sure that any differences in sentence length are indeed attributable to these factors and not due to confounders. For instance, if respondents are presented with exactly identical cases in which the offender is male in half of the cases and in the other half female, any differences in sentence length can only be attributed to offender gender as the cases are identical except for the offender gender.

¹ See K. Daly, *Gender, crime and punishment*, New Haven: Yale University Press 1994, pp. 5-6; S. Jeffries, G.J. Fletcher & N. Greg, ‘Pathways to Sex-Based Differentiation in Criminal Court Sentencing’, *Criminology* 2003- 41, pp. 329-354.

² C.S. Alexander & H.J. Becker, ‘The use of vignettes in survey research’. *Public Opinion Quarterly* 1978-42, pp. 93-104.

³ Article 321, Dutch Criminal Code (Wetboek van Strafrecht).

Our research improves on previous research in two ways. First, we study the impact of gender on sentencing for the crime of fraud, a crime that has not often been studied, especially not using vignette studies. Previous vignette studies generally focused on relatively common, “street-level” crimes such as violence, theft, burglary, or sex offending. Here, we study the crime of embezzlement committed in the setting of the workplace. Second, we expressly include restorative justice options (i.e. mediation and repayment of the stolen money) alongside retributive justice options (i.e. custodial sentence and monetary fine) in the array of sentences that respondents were allowed to choose from. Most previous research using vignettes investigated the impact of offender and offence differences on a quantitative outcome such as length of prison sentence; some others only included standard options for retribution such as imprisonment or a fine.

Embezzlement, along with other white-collar crime, has relatively seldom been studied in criminology (a discipline that focuses overwhelmingly on blue collar crime). This is even more strongly so when it comes to female perpetrators of fraud and similar crimes.⁴ It is not surprising that the gender gap in crime is also present when it comes to embezzlement. This is due to women working less than men, and women rarely working in senior positions where they are able to commit large-scale embezzlement or white-collar crime. Gottschalk reports how women comprised less than 5% of the antitrust, securities, tax, and bribery offenders in the US federal justice system, but close to half of the bank embezzlement offenders.⁵

Extensive literature (see for instance, Daly)⁶ on the topic notes that female offenders are sentenced less harshly than men, particularly when it comes to incarceration decisions.⁷ Furthermore, it has been reported that much like female offenders, perpetrators of embezzlement and white-collar crime have often received relatively light sentences. Sutherland⁸ offers one explanation for this phenomenon by stating that white collar offenders are often shielded from harsher sentencing because of their relatively high socio-economic position and subsequent privileges. Another explanation is that white-collar offenders are more likely to have families than street level offenders.⁹ In a study of white-collar convictions in US federal courts from 1976 to 1978, Wheeler, Weisburd and Bode found that female offenders were 30% less likely to face imprisonment than males. According to the authors, the difference could result from paternalistic views of women, particularly in smaller districts.¹⁰ Similarly, a 2013 UK statistical report on women and the criminal justice system indicates a reduced average custodial sentence length for female perpetrators of fraud offences.¹¹ The study reveals that females would also generally be more likely than males to have mitigating factors applied to their sentence. Moreover, Van Slyke and Bales conducted an investigation and analysis of Florida sentencing guidelines data from 1994 to 2004, looking at whether or not female white-collar offenders did enjoy the greatest leniency in sentencing. Unexpectedly, they found greater leniency for female street offenders as

⁴ M.L. Benson, & S.S. Simpson, *White-Collar Crime: An Opportunity Perspective*, New York: Routledge 2018.

⁵ P. Gottschalk, ‘Gender and Crime: Convenience for Pink-Collar Offenders’, *Deviant Behavior* 2020, p. 2.

⁶ Daly 1994, supra note 1, pp. 3-15.

⁷ K. Daly, & R. L Bordt, ‘Sex effects and sentencing: An analysis of the statistical literature’, *Justice Quarterly* 1995-12, pp. 141–176.

⁸ E. H. Sutherland, *White collar crime: The uncut version*, London: Yale University Press 1983, pp. 3-10.

⁹ M. L. Benson, & K. R. Kerley, ‘Life course theory and white-collar crime’. In H. N. Pontell & D. Shichor (Eds.), *Contemporary issues in crime and criminal justice*, Upper Saddle River, NJ: Prentice Hall 2001, pp. 121-136.

¹⁰ S. Wheeler, D. Weisburd, & N. Bode, ‘Sentencing the White-Collar Offender: Rhetoric and Reality’, *American Sociological Review* 1982-47:5, pp. 641-659.

¹¹ UK Ministry of Justice, ‘Statistics on Women and the Criminal Justice System 2013’, A Ministry of Justice publication under Section 95 of the Criminal Justice Act 1991. London: Ministry of Justice 2014, pp. 13-14.

compared to female white-collar offenders.¹² One possible explanation for this is that when offenders do not meet stereotypical expectations, such as when females commit non-feminine or masculine crimes, the counter-stereotypical information may lead to increased punitiveness.¹³ Hence, Van Slyke and Bales recommend, amongst others, that vignettes studies be employed to better understand a number of such unexplained “sentencing” factors.

We aim to follow up on that recommendation, and to further improve on previous research. We do so by expressly including non-custodial sentencing options (e.g. community service) and restorative justice (e.g. mediation and compensation payments) as sentencing options for respondents. In many countries, non-custodial sentencing options constitute an important part of the sanctioning arsenal available to judges. For instance, in 2018 in the Netherlands,¹⁴ judges imposed 99,000 sentences, of which 36,000 were custodial sanctions, 30,000 community service sentences, and 23,000 monetary fines. Community service cannot be imposed as a “standalone” sentence for serious crimes (such as rape or serious assault) or when the offender was convicted of a similar crime less than five years ago. Restorative justice has gained increasing support from legal scholars and practitioners.¹⁵ It can be described as a movement focused on repairing the harm caused by crime by connecting offender and victim, with offenders assuming responsibility for their actions and victims taking an active role in the restorative process. Additionally, it attempts to enhance the understanding by offenders of the harm that has been caused with the aim of restoring relations between offenders and victims. Restorative justice is explicitly non-retributive. While restorative justice has not been codified, there are increasing numbers of examples where it has been employed next to, complementary to or supportive of regular sentencing options. It is popular also because mediation is seen as a relatively efficient and empowering option to settle conflicts emanating from norm transgressions, especially as compared to the traditional judicial process.

II. Description of and Rationale for Legal and Non-legal Factors of Interest

First, we investigated whether *legal factors* played a role in sentencing by looking at whether severity of the crime and recidivism incurred different and heavier sentences.

Second, we investigated whether a number of *non-legal factors* impacted sentence length. The first of these is offender gender. Several studies conducted in the USA, the UK, France and Australia have illustrated a clear gender disparity in sentencing outcomes, namely that women tend to receive lighter sentences compared to men. One US study found that women were sentenced to an average term of imprisonment of 25.2 months, compared to 64.4 months for men; the result represents a remarkable 63% difference.¹⁶ Similarly, the disparity found in Australia was 42%,¹⁷

¹² S.R. Van Slyke, & W.D. Bales, ‘Gender dynamics in the sentencing of white-collar offenders’, *Criminal Justice Studies* 2013-26, pp. 168-196.

¹³ P. Giordano, ‘Sanctioning the high-status deviant: An attributional analysis’, *Social Psychology Quarterly* 1983-46, pp. 329–342.

¹⁴ M.E. Vink, ‘Criminaliteit in beeld’, at:

[https://www.criminaliteitinbeeld.nl/onderwerpen/berechting#:~:text=In%202017%20werden%20er%20in,3%25\)%20dan%20in%202017](https://www.criminaliteitinbeeld.nl/onderwerpen/berechting#:~:text=In%202017%20werden%20er%20in,3%25)%20dan%20in%202017) (accessed on 8 February 2021).

¹⁵ J. Braithwaite, *Restorative Justice & Responsive Regulation*, New York: Oxford University Press 2002, pp. 3-27.

¹⁶ S. Starr, ‘Estimating Gender Disparities in Federal Criminal Cases’, *American Law and Economics Review* 2015-17, pp.127-159.

¹⁷ S. Jeffries, & C.E.W. Bond, ‘Sex and Sentencing Disparity in South Australia’s Higher Courts’, *Current Issues in Criminal Justice* 2010-22, pp. 81-97.

whilst in France 33% in favour of women,¹⁸ and in the UK 19%.¹⁹ There are several theories to explain this discrepancy. The first relates to the “girlfriend theory”, which presupposes that women are often “minor players” or ‘mere accessories of their male romantic partners’. As a result, they are regarded as less responsible and should receive more lenient sentences.²⁰ The second theory casts women as traditional “caretakers” of a family, and therefore giving them a severe sentence such as imprisonment would have an adverse effect on children. The third theory suggests that women are often victims of unfavourable life circumstances (e.g. poverty, substance abuse, physical abuse), so they are most likely perceived to be less culpable.²¹ A final theory suggests that discrimination in the form of “chivalry” and “paternalism” plays a role;²² in particular, male prosecutors and judges seek to protect female offenders by giving them less severe sentences. See also Philippe, who mentions that the gender gap could be due to a paternalistic bias and to female offenders being viewed as more fragile.²³ Other literature also suggests that this gap would be less significant when judges were female.²⁴ Therefore, traditional, male, gender assumptions might partially explain the differences across sentence distribution, at least in certain forms of crimes.

Interestingly, one factor that in real sentencing situations may often be confounded with gender is offender family situation. A number of studies have found that defendants with dependents, specifically underaged children, receive more lenient sentences compared to single, childless defendants.²⁵ Notably, Flavin and Dinovitzer & Dawson found that relationship status and presence of children were not related to the sentence that the defendants received.²⁶ Any trend need not be identical across genders, as Bickle & Peterson showed that familial status may also be associated with a more severe sentence.²⁷ The above shows that it may be important to disaggregate the effect of family situation by gender.²⁸ It is unclear what explains an effect of family situation on sentence type or length. On the one hand, it has been suggested that refraining from custodial sanctions for offenders who are (sole or primary) caretakers of children may be due to judges not wanting to harm an offender’s already vulnerable dependent children. Heftier sentences, on the other hand, may be regarded as a penalty for not taking the responsibility that

¹⁸ A. Philippe, *Gender Disparities in Criminal Justice*, Institute for Advanced Studies in Toulouse, Working Paper No. 17-762, 2017, pp. 2, 9.

¹⁹ C. Hedderman, & M. Hough, *Does the Criminal Justice System Treat Men and Women Differently?* London: Home Office Research and Statistics Department, Research Findings No. 10 1994, pp. 1-4.

²⁰ Starr 2015, supra note 4, pp. 149-50.

²¹ Jeffries, Fletcher & Greg 2003, supra note 2, pp. 349-50; Starr 2015, supra note 4, p. 152.

²² H. Elffers, & C.C.J.H. Bijleveld, ‘Sekse en straftoemeting: een experiment [Gender and punishment: an experiment]’, *Tijdschrift voor Criminologie* 2010-52, pp. 365-373; C. A. Franklin, & N. E. Fearn, ‘Gender, race, and formal court decision-making outcomes: Chivalry/paternalism, conflict theory or gender conflict?’, *Journal of Criminal Justice* 2008-36, pp. 279-290; Starr 2015, supra note 4, pp. 153-154.

²³ Philippe 2017, supra note 6, p. 16.

²⁴ Elffers & Bijleveld 2010, supra note 10, p. 371; Philippe 2017, supra note 6, p. 16.

²⁵ G.S. Bickle & R.D. Peterson, ‘The Impact of Gender-Based Family Roles on Criminal Sentencing’, *Social Problems* 1991-38, pp. 372-394; Daly, K., ‘Structure and practice of familial-based justice in a criminal court’, *Law & Society Review* 1987a-21, pp. 267-290; K. Daly, ‘Discrimination in the criminal courts: Family, gender, and the problem of equal treatment’, *Social Forces* 1987b-66, pp. 152-175; A. Farrell, ‘Measuring judicial and prosecutorial discretion: Sex and race disparities in departures from the federal sentencing guidelines’, *Justice Research and Policy* 2004-6, pp. 45-78; T. L. Freiburger, ‘The Effects of Gender, Family Status, and Race on Sentencing Decisions’, *Behavioral Studies and the Law* 2009-28, pp. 378-395.

²⁶ J. Flavin, ‘Of punishment and parenthood: family-based social control and the sentencing of black drug offenders’, *Gender and Society* 2001-15, pp. 611-633; R. Dinovitzer & M. Dawson, ‘Family-based justice in the sentencing of domestic violence’, *The British Journal of Criminology* 2007-47, pp. 655-670.

²⁷ Bickle & Peterson 1991, supra note 13, pp. 385-390.

²⁸ Idem, p. 390; B. K. Crew, ‘Sex differences in criminal sentencing: Chivalry or patriarchy?’, *Justice Quarterly* 2006-8:1, pp. 59-83; Freiburger 2009, supra note 25, pp. 360-381.

being a parent requires.

III. Research Questions

This leads us to pose the following research questions:

1. To what extent do the legal factors severity of crime and recidivism impact sentence type and custodial sentence length for embezzlement?
2. To what extent do the non-legal factors gender and family constellation of the offender impact sentence type and custodial sentence length for embezzlement?

IV. Method

IV.1. Vignette

We designed a vignette, consisting of a short description of embezzlement committed by a 35-year-old person employed by a wholesaler in office supplies. We systematically varied the embezzled amount, including either €3,000 or €20,000. Next, we varied the gender of the offender, naming the male offender “Mark” and the female offender “Nicole”. Both names are common for people in this age group in the Netherlands and are socio-economically neutral. This generated four different vignettes. Each vignette describes that the person confesses immediately and is found guilty. We also added that the person was a first-time offender to one set of cases, and that the person was a recidivist to a second set, giving us eight different vignettes. Lastly, we added information on the home-situation of the offender, varying whether the offender was single, or married with two young children. This resulted in a final 16 different vignettes. One version of the vignette was piloted, resulting in a small number of modifications.

Below is an example of a vignette: the perpetrator is male, has embezzled a large amount, is married with two young children and a first-time offender. Text for the other options has been put in square brackets.²⁹

Mark [Nicole], 35 years old, has been working for five years at the Finance department of an office supplies wholesaler. One day he is caught, and it emerges that he has been embezzling numerous amounts to a total of €20,000 [€3,000]. Mark confesses right away. Mark is prosecuted and found guilty. A fitting punishment must be imposed. Mark is married and has two children aged three and five years [is single]. [It is the second time that Mark has come into contact with the criminal justice system, eight years ago he had also embezzled money from his then employer].

After presenting the respondents with the vignette, they were first asked to fill out what type of sentence they would consider appropriate. Respondents were required to choose one of the following sentencing options: imprisonment, mediation with the employer and repayment of the embezzled amount, community service, fine, or 'other, namely....'. The second task required respondents to determine an appropriate custodial sentence length (in months) in case a judge sentenced the offender to imprisonment. Next, respondents were asked to fill out a number of personal characteristics: age, sex, whether they had become the victim of a crime the past year and whether they knew anyone (a friend or family member) who had been prosecuted for a crime.

²⁹ The original vignette is available from the first author.

IV.2. Procedure and Sample

Paper versions (in Dutch) of the vignettes were administered by the authors at several locations in the Netherlands between the 3rd and the 23rd of February 2020. People on the street, at bus/tram stops, on campus or in other less public locations were approached and asked to fill out the forms. Response was generally good, with very few of the people approached refusing to collaborate because they were mostly busy shopping or catching a tram. A total of 223 respondents filled out the vignette form, 33% of which were men and 67% women. Almost a quarter (24%) reported that they had been a victim of a crime the past year, and almost one in five (19%) reported that a friend or family member had been prosecuted by the criminal justice authorities. Respondents were generally young: 50% were 30 years or younger and 10% were 58 or older.

The sample constitutes a convenience sample and therefore the findings are not generalizable to the Dutch population. We find this less of a concern because we are mainly interested in achieving internal validity in assessing what the impact of the manipulated factors is on sentence type and length.

IV.3. Analysis Method

We will first describe our findings using simple means and tabulations, simple bivariate tests where possible and multiple regression to test an interaction effect. Analyses were carried out using SPSS.

V. Results

We investigated the impact of various factors manipulated in the vignettes (i.e. severity of crime, recidivism, offender gender and family constellation) on two outcome measures, namely, the type of sentence and the length of custodial sentence. Before we discuss the impact of the manipulated factors, we give the answers on the two outcome measures.

V.1. Descriptives

Of the possible sentencing options, imprisonment was on average the most often chosen (29%), closely followed by mediation (27%), community service (24%) and at some distance a fine (18%). Five respondents (1%) chose a sanction type that did not fit any of these categories, and these were removed from any analyses of this variable. A small number of respondents had given combinations of sanctions as their preferred option (such as 'mediation and a fine'); in such cases we recoded the answer to the most punitive category. The mean sentence length imposed was 6.3 months (sd 7.5); this variable was clearly skewed with the minimum at 0 and values tailing off to a maximum of 60 months, with clear spikes around values demarcating half or quarter years, such as 3 months, 6 months and 18 months.

V.2. Impact of Manipulated Factors

Severity of the crime of embezzlement had a clear impact on both sentence type and preferred length of imprisonment. Comparison of the cases where €3,000 versus €20,000 had been embezzled showed that the fictitious offenders who had embezzled higher amounts were more often sentenced to imprisonment, whereas those who had embezzled the smaller amount were more often sentenced to community service, a fine or mediation. Imprisonment was the most frequent sentence of choice for the more serious offenders. These findings are significant ($\chi^2 = 10.067$, $df = 3$, $p = .018$). When respondents were asked to determine sentence length for a custodial sentence, differences between offenders who had embezzled smaller or larger amounts

were also significantly different. Those who had embezzled €3,000 were sentenced on average to 4.9 months imprisonment and those who had embezzled €20,000 to 8.2 months, which constitutes a large increase, of 67% ($t = 4.861, p < .0001$).

Offender recidivism also had a clear impact on both sentence type and length of custodial sanction. Recidivists were much more often sentenced to imprisonment, whereas first-time offenders were much more often sentenced to mediation; differences were slight for fines and community service. These findings are significant ($\chi^2 = 15.366, df = 3, p = .002$). When respondents were asked to determine custodial sentence length, first-time offenders were sentenced on average to 5.4 months imprisonment and recidivists to 7.3 months, which constitutes a significant increase of 35% ($t = 2.465, p = .014$).

Subsequently, we also investigated non-legal factors or factors that are or should not impact sentence type or length. Offender gender clearly impacted both sentence type and custodial sentence length. Male offenders were more often sentenced to imprisonment and mediation, while female offenders were more often sentenced to community service or a fine. These differences are significant ($\chi^2 = 10.901, df = 3, p = .012$). When respondents were asked to determine sentence length for a custodial sentence, again the differences between male and female offenders were significant with women sentenced on average to 5.6 months imprisonment and male offenders to 7.1 months, which is 27% longer ($t = 2.012, p = .045$).

Furthermore, we investigated whether offender family situation (i.e. being married with two kids or being single) impacted the type of sentence or length of custodial sentence — a non-legal factor that is in real life often confounded with gender — which we had randomized in the vignettes. Comparison of the answers given for offenders in either of these situations revealed that differences were minimal (with those with family less often sent to prison but more often sentenced to community service), and it is therefore not surprising that the differences are non-significant ($\chi^2 = 1.693, df = 3, p = .638$). The same goes for the length of imposed imprisonment; even though those with families get a shorter sentence on average (5.8 months) than singles (6.9 months), the difference is not significant ($t = 1.416, p = .158$). However, this could be explained by the fact that having a family or being single impacts male and female offenders differentially in a so-called interaction effect, which we therefore tested next. A first finding is that family situation does not significantly impact the type of sentence if we disaggregate male or female offenders; while there are again small differences, none are significant. We also looked at impact on the length of custodial sentence. It turns out that both men and women indeed do benefit differentially from their family situation. On average, single women are sentenced to 6.3 months and women with families to 4.8 months; single men, on the other hand, are on average sentenced to 7.4 months and men with families to 6.8 months. Thus, it does appear that women “benefit” more from having a family: it reduces their sentence by 24%, while the sentence reduction for men is much less at 8%, a threefold difference. By testing the significance through multiple regression analysis, it is revealed that this interaction effect is indeed significant ($p = .045$).

VI. Discussion

Our small and exploratory study revealed some interesting findings. The first finding was the “popularity” of restorative justice sentences. Even for the most serious crime where €20,000 had been embezzled, our respondents chose mediation in 26% of the cases and community service in 22% of the cases as appropriate sentences. This means that in almost half of the cases, less punitive options were the response of choice for the most serious crime committed. This picture does not change dramatically when we look at repeat offenders; the recidivist offender was given a less punitive sanction in 44% of cases. Notably, mediation did become distinctly less popular

when it comes to repeat offenders. The relatively high percentage of participants in favour of mediation and compensation in relation to punishment corresponds with empirical studies.³⁰ In a study by Pranis and Umbreit, for example, respondents were asked to imagine that a burglary had taken place by a repeat offender who had stolen \$1200 worth of goods. Three times more respondents chose reimbursement over detention of the perpetrator.³¹

Secondly, we found that legal factors generally behaved the way we expected, with heavier crimes incurring more punitive and lengthier sentences, and recidivists being sentenced to more punitive responses than first time offenders and a significantly longer custodial sentence lengths. Moreover, those culpable of more severe crimes were less likely to receive restorative sentences or a fine, while first-time transgressors are more likely to receive restorative sentences. It is striking to note that the additional 35% in sentence length that our respondents added for recidivist offenders matches the mandatory penalty extension in the Dutch criminal code for recidivism (33%).

A third interesting finding is that offender gender played a significant role. Respondents handed out less punitive sanctions and shorter custodial sentences to female offenders. The importance of gender was further evidenced by another factor, namely the offenders' family situation. Whilst this situation did not by itself impact the type or length of the sentence, we observed that female offenders with families benefited much more from having a family in having their sentence reduced than male offenders with a family. This shows that it is not family situation *per se*, but family situation in interaction with gender that plays a role.

The interaction effect of gender with family situation can tentatively be explained in several ways. One explanation is that females are seen as primary caregivers and that a shorter custodial sentence would limit the harm to their children. Another explanation is that male offenders with families are regarded as irresponsible and therefore given a more punitive, custodial sentence. Future research could address differing expectations concerning family roles by gender, such as whether or not respondents in certain contexts expect women to be primary caretakers of young children and believe a severe sentence would have an adverse effect on the family.

Even though we have not included it in the results section, we did investigate whether or not respondent characteristics played a role in sentencing options and sentence length. Male and female respondents, victims and non-victims, and those who had and did not have acquaintances who had been in contact with the criminal justice system all had fairly similar responses. While similar answering patterns by male and female "judges" have previously been reported in the literature, we had expected differences to emerge between the latter categories. The fact that male and female respondents, who act as 'judges' in this study, have given fairly similar sentences contradicts chivalry, paternalism and paternalistic bias explanations for the observed gender disparity. The absence of differential responses between crime victims and non-victims, and between those who had and did not have acquaintances who had been in contact with the criminal justice system, could be partly explained by the observation that the particular crime (embezzlement) that we were investigating bears little relevance to any victimization that respondents themselves might have experienced or the crimes for which their acquaintances had been prosecuted.

³⁰ J.V. Roberts, L. Stalans & M. Hough, 'Publieke meningen over herstelrecht', *Tijdschrift voor Herstelrecht* 2005-5(1), pp. 25-34.

³¹ K. Pranis & M. Umbreit, 'Public Opinion Research Challenges Perception of Widespread Public Demand for Harsh Punishment', at: <http://restorativejustice.org/rj-library/public-opinion-research-challenges-perception-of-widespread-public-demand-for-harsher-punishment/4192/#sthash.UgOcEjM0.dpbs> (accessed on 15 February 2021).

Such explanations are tentative, as one of the weak points of our study is that we did not ask respondents for the reasons why they gave certain offenders particular sentences or why they chose a particular sentence length. An improvement to our design would be to include more qualitative elements to investigate the reasons underlying respondents' answers. Such an addition could be of value to understand how respondents perceive the crime of embezzlement, along with the different types of sentences (such as restorative justice options) as well as identify what particular motivation they have for particular sanctions. In general, empirical studies have shown that when participants (the public) are offered alternatives with advantages for victims, such as repayment of damages, they are more likely to choose restorative justice and less likely to simply choose punishment.³² This points to a less punitive stance in the general public than commonly supposed.

We have two additional recommendations for future research. The first recommendation is to investigate the impact of gender for more serious types of fraud, such as 'boardroom' or tax crimes. Embezzlement may be regarded as a relatively innocuous opportunity crime that requires little planning and is not particularly atypical for a female offender. We were interested in differences between manipulated factors to achieve high internal validity so that we were not bothered much by the convenience sample that we investigated. Finally, a clear improvement to our design and a second recommendation for future research would be to investigate a sample that reflects the properties of the Dutch population—or even better that of the population of Dutch judges, which could lead to greater generalizability and usefulness of the findings.

³² Roberts, Stalans & Hough 2005, *supra* note 31.