

Punishment Justifications in Rape Cases: A community study

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## **Abstract**

Norway is one of the countries with the most progressive criminal justice systems in the Western world. Traditionally, the Norwegian criminal justice system has been mainly based on treatment and deterrence perspectives. While it is believed that criminal justice practices should be in accordance with public attitudes, few studies in Scandinavia have investigated public attitudes towards criminal justice sanctions in a methodologically sound manner. The current study is the first to investigate the attitudes of the Norwegian public towards punishment of rapists. In a Norwegian community sample (N = 475) from 2005, participants found the typical sentencing severity of a convicted rapist too lenient. The participants did report that as a global sentencing orientation, they preferred incapacitation. When presented with a specific rape case, their sentencing judgments were oriented towards both incapacitation and retribution, but their global orientation were not related to their specific judgments. Aggravating circumstances (e.g. violence was used) were found to influence the participants' judgments more than when no aggravating circumstances were present (e.g. no violence was used). Few gender or educational differences were found, which indicates that these attitudes toward punishment of rapists are quite consistent across demographical groups.

## 1. Introduction

In the summer of 2016 in Norway, three men were found not guilty of the gang rape of a young woman who was under the influence of drugs (Røed, 2016). The professional judges' judgement was a guilty verdict, while the majority of the lay judges (i.e. with no relevant judicial background), found them not guilty (Borgating Lagmansrett, 2016<sup>i</sup>). Before the 2009, June 19<sup>th</sup> revision of the 2005 Norwegian Criminal code (Straffeloven/Lov om Straff), the minimum sentence of rape involving penetration was two years, but the sentence length was typically shorter (Statistics Norway, 2006; Stene, 2001). The main criteria for rape is sexual relations by the use of violence, threats, or exploitation of someone who are unconscious, intoxicated or sleeping (§291). After the 2009 revision, rape involving penetration would require a minimum sentence of 3 years (§292). Some lawyers have raised concerns that this high sentencing requirements would contribute to difficulties with achieving guilty verdicts as seen in this particular case (Rambøl & Sørenes, 2016). However, there was a public outcry about the judgement on social media, assessing it as too lenient; a view which was also supported by one of the largest newspapers in Norway (Røed, Sandvær, & Huuse, 2016). In the wake of the verdict and the reaction to it, a former police inspector and former leader of the Section of the Oslo Police dealing with violent and sexual offences called for a systemic attitude change with regards to rape and sentencing (Rohde, 2016).

While some have argued that the public's opinion of criminal justice practice should be ignored (Ryberg & Roberts, 2014), others believe that criminal justice professionals should be attentive to public attitudes (Hough and Roberts, 1998; Roberts, 2003; Walker and Hough, 1988) because of the direct and indirect influence the public has on criminal justice policy through elected officials such as Members of Parliament, community action groups, and lay judges (and juries) (Enns, 2014; Ryberg & Roberts, 2014). The latter was highlighted in the Norwegian case above, where lay judges' attitudes might have influenced their legal

decisions. While we have seen an increase in research on public attitudes towards criminal justice practice in the past two decades (e.g. Baker, Metcalfe, Berenblum, Aviv, & Gertz, 2015, Enns, 2014; Hough and Roberts, 1998; Darley, Carlsmith and Robinson, 2000; Roberts, Stalans, Indermaur, & Hough, 2003), there is little empirical research on this topic within a Scandinavian context.

The current study aims to rectify this by assessing attitudes toward the sentencing of rapists in Norway. Attitudes toward rapes might however be influenced by the large number of unreported cases in Norway (Ministry of Justice and Police, 2008; Ministry of Justice and Public Security, 2012-14; Thoresen & Hjemdal, 2014; Statistics Norway, 2008), because the cases that are actually brought forward might be attack rapes where violence has been used and not rapes that take place in intimate partner relationships (Dahl, 1994). If this is the case, the Norwegian people might not recognize nonviolent forced sexual intercourse as rape. Furthermore, given the complexity and difficulty of many rapes with regard to burden of evidence and question of guilt (Dahl, 1994), public opinions on the sanctioning of those convicted of these crimes can easily become obscure. Despite this, we agree with Hough and Roberts' (1998) and Roberts' (2007) in that the legitimacy of the criminal justice system depends partly on public attitudes and perceptions, and sentencing guidelines need also be informed by public opinion (Ryberg & Roberts, 2014).

An aspect of the current study will be the difference and relationship between global and specific attitudes. Global attitudes are general in nature, and are typically aimed at abstract ideas and concepts such as people's general preference for sentencing over rehabilitation in rape cases, or their general satisfaction with sentencing (e.g. "I am positive towards offender rehabilitation"), while specific attitudes are directed toward concrete objects and examples such as evaluations of particular aspects of rape cases such as the use of violence, intent and pre-planning, number of offenders, and the age of the victim (e.g. "I

believe that this specific offender should be rehabilitated”) (Eagly & Chaiken, 1995/2014). Previous studies have indicated that global and specific attitudes can differ; i.e. that global attitudes can diverge from judgements about specific cases (Applegate, Cullen, Turner, & Sundt, 1996; Carlsmith, Darley, & Robinson, 2002; Zamble & Kalm, 1990). It appears that general attitudes do predict specific attitudes, but only if they are structurally consistent, meaning that the general attitude must be relevant to the individual case (Prislin, Wood, & Pool, 1998). One might consider structural consistent attitudes as being groups of specific attitudes that “loads” onto a global attitude as an overarching category or higher order group (Eagly & Chaiken, 1995/2014). A potential example of a violation of this principle would be a global attitude about the sanctity of life, but when faced with a specific case of a rapist, a positive attitude towards the death penalty is activated.

Attitudes have long been believed to be directly related to behavior and judgements (Eagly & Chaiken, 1995/2014). When confronted with a real-life case, attitudes have an effect on judgements about appropriate actions, decisions, and behaviours (Ajzen, 2001; Ajzen & Fishbein, 2005; Hogue & Peebles, 1997; Petty, Wegener, & Fabrigar, 1997; Whatley, 2005). For example, Hogue and Peebles (1997) investigated attitudes towards the sentencing of a rapist in a methodological approach using scenarios describing different variations of a rape case ( $N=50$ ). Level of planning and intent of the rape (versus the rape being spontaneous) and subsequent level of remorse were the main manipulations. While remorse did not show an effect on sentencing decisions, intent did. Not surprisingly, the offender’s planning and intent was associated with a desire for more severe criminal justice responses. Attitudes toward sex offenders also showed an effect on sentencing decisions. Again not surprisingly, negative attitudes (e.g. “you have to be constantly on guard with sex offenders”; Johnson, Hughes, & Ireland, 2007), were indicative of a want for a prison sentence, while positive attitudes (e.g. “most sex offenders can be rehabilitated”; Johnson et

al., 2007), were associated with more lenient alternatives. This study is especially interesting because the sample consisted of criminal justice professionals. The sample composition and size (n=50) does however limit the generalizability of the study.

Similarly, Whatley (2005) investigated the relationship between attitudes toward gender roles in marriage and assigning subsequent judgement of “blame” in a rape scenario detailing the rape of a wife by her husband. The more hostile sexist attitudes the participants had, the more likely they were to blame the wife for the rape (i.e. “she deserved it”). Interestingly, those who were higher on these types of attitudes were less likely to even define the scenario as rape. These two studies highlight how attitudes may reflect the level of acceptance and subsequent judgment (Aijzen & Fishbein, 2005; Hogue & Peebles, 1997; Whatley, 2005).

## **1.2 Justifications for Punishment**

Within penal literature, it is common to differentiate between three punishment justifications or purposes: deterrence, retribution, and incapacitation (Carlsmith, 2006). Deterrence can be either specific (for the individual offender), or general (for the public), where the aim of the sanction is to deter people from committing (new) crimes (Blumstein & Cohen, 1987; Carlsmith, 2006). In the context of rape, the punishment should, in accordance to the deterrence perspective, be so harsh and uncomfortable that neither the individual perpetrator (specific deterrence) nor other potential perpetrators (general deterrence) would commit similar crimes in the future. A central tenet within the general deterrence perspective is that the public need to have at least some knowledge about the severity of punishment to be effective (Andenaes, 1997; Carlsmith, 2006). There must also be a perceived high risk of getting caught almost immediately after the commission of the crime (Piquero, Paternoster, Pogarsky, & Loughran, 2011).

Both deterrence and incapacitation adhere to a utilitarian perspective (Carlsmith et al., 2002; Hauge, 1996). The goal of incapacitation justifications is to simply incarcerate the offender, hereby reducing the potential for harm during the period of incapacitation (Blumstein & Cohen, 1987; Hauge, 1996; Zimring & Hawkins, 1995). Based on this principle, a convicted rapist would be imprisoned for a very long time to prevent future reoffending by limiting his opportunities for rape (at least outside of the prison). Norwegian penal theory and practice has traditionally operated with individual (or specific) deterrence as a sentencing justification (Andenæs, 1997). However, being incarcerated and individual deterrence can be closely linked because individual deterrence can take place during incapacitation in the sense that the time incapacitated can be used to facilitate change (Blumstein & Cohen, 1987; Andenæs, 1997). Individual deterrence's main goal is to deter at an individual level (i.e. the offender changes), during punishment, which in turn will reduce the likelihood of recidivism (Blumstein & Cohen, 1987; Andenæs, 1997). Other researchers have also considered restorative justice and rehabilitation as sentencing justifications, where the latter emphasises treatment amenability and the former focuses on restitution (de Keijser, van der Leeden, & Jackson, 2002).

The retributive perspective differs from other sentencing justifications because it holds that sanctions should be *punishment* (Carlsmith et al., 2002; Carlsmith, 2006), and the core meaning of retribution is found in the Old Testament "*Thus, you shall not show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot*" (Deuteronomy 19:21). According to this perspective, moral outrage and anger as a result of the crime will contribute to the need for, and severity of, retribution (Andenæs, 1997; Carlsmith et al., 2002; Carlsmith, 2006; Darley et al., 2000; Hartnagel & Templeton, 2012) with death penalty being perhaps the most archetypical example (Roberts et al., 2003). Although retribution and individual deterrence are similar with respect to the emphasis on harsh punishment, the

former does not include any rehabilitative or utility intent; retribution is pure revenge (Carlsmith, 2006).

While retribution has received little attention in Norwegian or Scandinavian penal theory or criminal justice practice (Hauge, 1996), retribution has again and again emerged as central to public opinion internationally (Carlsmith et al., 2002; Roberts, 2003; Roberts et al., 2003). In addition, the Norwegian criminal justice system and criminal law does take aggravating circumstances into consideration when handing down a judgment and determining an appropriate punishment (Ministry of Justice and Police, 1997-1998; Straffeloven, 2005). The emphasis on aggravating circumstances is central to the retributive perspective (Carlsmith et al., 2002; Darley et al., 2000).

### **1.3 Empirical Research on Attitudes to Sentencing**

People appear to be quite concerned about women's risk for being victims of violent offences (Fox, Nobles, & Piquero, 2009), and across countries, the public finds criminal justice not to be satisfactorily severe on offenders in general (Bondeson, 2005; de Keijser & Elffers, 2009; Hough & Roberts, 1998). International studies have provided mixed findings on public attitudes towards sentencing and criminal justice sanctions. Some studies indicate that deterrence (i.e. general or specific) is the driving force behind the public's want for criminal justice (Brillon, 1988), while others have indicated a more retributive perspective (i.e. revenge), (Finkel, Maloney, Valbuena, & Groscup, 1996). Carlsmith and colleagues (Carlsmith, 2006; Carlsmith et al., 2002; Darley et al., 2000) have conducted a series of experiments and surveys on public attitudes towards sentencing justification and rationale. Darley et al. (2000) conducted two experiments on students. Study 1 presented the participants with a total of 10 cases consisting of different crimes of varying seriousness (simple theft, serious theft assault, murder, and an assassination), together with a record of

criminal history (no/yes). The participants were first spontaneously asked to assign an appropriate sentence for each case. They then received two forms of instructions: (1) consider sentencing based on offenders getting what they deserve, and (2) on recidivism likelihood and threat to society. Following the instructions, participants assigned an appropriate sentence. Their spontaneous responses were more similar to their responses when they were expressively told to utilize a retributive stance instead of incapacitation (Darley et al., 2000).

In study 2, Darley and colleagues' (2000) participants were faced with additional contextual information in three assault cases. The main manipulation was whether the offender was driven by jealousy ("jealous rage"), or uncontrollable factors ("brain tumour"). In the latter case, the respondents were mostly concerned with the dangerousness of the offender and would typically recommend observation or sentence in a (mental) hospital. This indicates that incapacitation was preferred when the perpetrator was perceived to not have control over his actions. In the former case ("jealous rage") the participants recommended prison, indicating a more retributive perspective (Darley et al., 2000).

Similarly, Carlsmith et al. (2002), conducted three surveys on university students, comparing the emphasis on retribution versus deterrence using a questionnaire. In a pilot study, they developed measures of retribution and deterrence justifications by presenting information surrounding the crime. Theoretically, the authors hypothesized that level of harm to the victim and the offender's motivation to commit the crime would reflect a retributive perspective and elicit a need for revenge. Deterrence on the other hand consisted of detection rate and publicity. Theoretically, general deterrence relies on the public being aware of the number of offences as well as the likelihood of getting caught. In studies 1 and 2, Carlsmith and colleagues (2002) presented the participants with two vignettes describing one criminal case involving embezzlement and one involving environmental crime. Three versions of the questionnaire were developed manipulating information on either intent (personal gain or

not), detection probability (low/high), or publicity (low/high). Study 2 also included a question order manipulation. The results indicated that severe punishment was assigned for cases involving personal gain (intent), and for public harm (environmental crime), both reflecting punishment based on the retributive principle, while information on detection probability and publicity was deemed less important (Carlsmith et al., 2002).

In Study 3, Carlsmith et al. (2002) also included two global attitude questions. As with the attitude studies discussed earlier in this introduction, it appears that while participants might emphasise deterrence at a global level, punishment is based in retribution at a *specific* level. This means that when participants were asked generally, without case specific context, they preferred a deterrence justification. However, when provided with a specific case and contextual information, respondents preferred retribution. Similar findings were reported by Carlsmith (2008), in two studies on university students. Results suggest that while people might have overt, global attitudes of punishment based on deterrence, when faced with specific scenarios, they demand a punishment based on retribution. This means that a need and craving for revenge is activated when faced with a specific offender and a specific crime, independent of one's overarching global punishment orientation. This tendency is however contrary to earlier theoretical musings by Christie (1982), who argues that knowing the details of a case would actually elicit a more compassionate response compared to when faced with complete strangers<sup>ii</sup>.

Further support for the retributive perspective was found in a series of experiments by Carlsmith (2006). He investigated whether participants emphasised retribution or utilitarian (deterrence/incapacitation) justifications for sentencing by having participants rank the relative importance of 9 items containing information of the crime. Three items measured retribution containing information on magnitude of harm, intent, and extenuating circumstances. Three items measured incapacitation containing information on likelihood of

violence, prior-record, and self-control, and finally, 3 items measured deterrence containing information on general frequency, detection rate, and publicity of the crime. In addition, each item contained aggravating circumstances or not (e.g., low vs. high self-control). The participants consistently ranked the retribution items (e.g. harm and intent) as most relevant and important in a given criminal case. Retribution information also contributed to stronger feelings of confidence judgment among the participants in one of the experiments. Later studies have however questioned the long-term effect of such positive emotions associated with revenge (Carlsmith, Wilson, & Gilbert, 2008).

Carlsmith's (2006) methodology has also been utilized in European samples, where the same emphasis on retribution has been found (Keller, Oswald, Stucki, & Gollwitzer, 2010). Taken together, the literature does provide overall support for the importance of retribution to lay-people (Carlsmith, 2006; Keller et al., 2010; Strelan and van Prooijen, 2013), but there are several factors that might influence these attitudes (Balvig, 2006; Carlsmith et al., 2002). We will now turn to some of these.

#### **1.4 Factors Influencing Attitudes and Judgements: Individual Differences**

Research from the US has found that attitudes toward punishment, sentencing, and rape are partly determined by individual and group differences, such as gender, race, and political standpoints (Cullen, Clark, Cullen, & Mathers, 1985; Elklit, 2002; Kleck & Jackson, 2016). In Scandinavia, Bondeson (2005) found that certain characteristics, such as gender and level of educational attainment, influenced attitudes towards criminal sanctions. It appears that men prefer more punitive attitudes compared to women, and (of interest to the current study) this was especially true in Norway and Sweden compared to the other Scandinavian countries (Bondeson, 2005). Such demographical differences have also been reported internationally (Chen & Einat, 2015). Bondeson (2005) found that people with low

educational attainment also have a more punitive view of criminal justice sanctions. Again, this effect was found to be greatest in Norway compared to other countries in Scandinavia. These findings support the notion that people's attitudes not only are context-dependent, but also dependent on the characteristics of the people themselves (Eagly & Chaiken, 1995/2014; Bondeson, 2005; Cullen et al., 1985; Rybertg & Roberts, 2014).

### **1.5 The Current Study: Aims and Hypotheses**

In the current study, we wanted to investigate what sentencing justification domain (retribution, incapacitation or deterrence) is emphasised when judging the appropriateness of a hypothetical rape case sentence drawing heavily on Carlsmith and colleagues' (Darley et al., 2000; Carlsmith, 2006; Carlsmith et al., 2002, 2008) justification framework. The study used a cross-sectional community survey describing a rape case supplemented by additional information and conditions. Through the use of a questionnaire methodology it is possible to investigate whether the experimental judgments in Carlsmith and colleagues studies hold up using different methodologies. It was expected (1) that community members would find retribution (e.g. the intent) to be the most relevant to their judgments compared to incapacitation (e.g., self-control) and deterrence (e.g., publicity) (Carlsmith, 2006; Keller et al., 2010), and (2) that information within these three domains reflecting aggravating circumstances (vs. not) of the rape would result in more strict sentencing. We also expected that global punishment justification for rapes and sexual assaults (at a more general level) would reflect on the specific punishment justifications made in the hypothetical rape case. Specifically, participants who generally adhere to one sentencing justification over another were expected to show the same preference when faced with a specific rape case with details about the case and the offender.

Since research on population characteristics affecting punishment justification are scarce, we wanted to examine the extent group differences in sentencing varied by gender and educational attainment. Although men and participants with low educational attainment are generally found to be more punitive compared to women and those highly educated (Bondeson, 2005), we do not know whether this holds for rape cases.

## 2. Methodology

### 2.1 Design and Sample

The current study is a cross sectional postal survey on a randomized community sample of 1500 women ( $N = 759$ ) and men ( $N = 741$ ) aged between 20 and 60 years from the mid-Norwegian region, Trøndelag. The firm EDB Infobank conducted the sampling on behalf of the researchers. Mean ages for women and men were 40.1 ( $SD = 11.8$ ) and 39.9 ( $SD = 11.4$ ), respectively. 43 cases were deemed inapplicable due to the lack of valid addresses. Of the 1457 remaining cases, a total of 32.6 % ( $n=475$ ) returned the survey. The final sample consisted of 61.5 % ( $n=292$ ) women and 38.5 % ( $n=183$ ) men. The mean age of the final sample ( $M = 40.6$ ,  $SD = 11.4$ ) did not differ significantly from that of the randomized sample. Half of the participants were married (49.6%,  $n=232$ ), 27.1% ( $n=127$ ) identified as cohabiting, while 23.3% ( $n=109$ ) were single. Half of the participants (49.2%,  $n=229$ ) had completed post-secondary education (high educational attainment). Marital status did not differ across gender ( $\chi^2 [2, N = 468] = 1.77, p = .413$ ), but highest level of education did ( $\chi^2 [4, N = 465] = 14.34, p < .01$ ). More men (36.9%) than women (22.0%) reported vocational education, and more women (52.1%) than men (44.7%) reported college/university degree.<sup>iii</sup>

### 2.2 Procedure

The study consisted of a survey that was mailed to the respondents between February 2005 and April 2005 along with a prepaid return envelope. As an incentive, all respondents were informed that by returning the survey they could win one of three gift cards at a value of NOK 1000 (approximately 120 USD or 100 GBP) each. Those who did not return the survey during the allocated time period received a reminder by post. The Data Protection Official for Research (NSD, Personvernombudet for Forskning) approved of the procedure.

## 2.3 Measures

**2.3.1 Demographical variables.** Three demographic variables were measured in the current study. Gender was defined as either male or female, while educational attainment was dichotomized into no post-secondary education versus having completed post-secondary education.

**2.3.2 Punishment justification condition.** We constructed a multi-item measure of punishment justifications by adopting Carlsmith (2006) to a hypothetical rape case with a typical verdict that complied with Norwegian Criminal Code at the time of study (i.e., 2005). The respondents were initially presented with the following brief information:

*“A man in his thirties is found guilty of raping a woman of his age. At the trial, the man is sentenced to one year in prison and he has to pay NOK 50.000 (approximately 8 000 US Dollars) in restitution.”*

The scenario was accompanied by 18 items, each providing further information on the case. For each item, the respondents had to indicate on a 5 point Likert scale what sentencing

they would recommend: *Clearly more strict* (+2), *More strict* (+1), *Keep unchanged* (0), *More lenient* (-1), or *Clearly more lenient* (-2). This was their sentencing judgment. Each item reflected conditional information on circumstances (aggravating or not), for the three justification domains: (1) Retribution (Magnitude of harm, Perpetrator intent, Extenuating circumstances), (2) Incapacitation (Likelihood of reoffending, Prior record, Self-control), and (3) Deterrence (General frequency, Detection rate, Publicity). Detailed information on the categorization and wording of the items is in the Appendix. Items within each domain evinced acceptable to good reliability given aggravating information (Retribution:  $\alpha = .66$ ; Incapacitation:  $\alpha = .71$ ; Deterrence:  $\alpha = .82$ ) and given no such aggravating information (Retribution:  $\alpha = .86$ ; Incapacitation:  $\alpha = .86$ ; Deterrence:  $\alpha = .91$ ). Item scores within each domain and circumstances were summed and averaged (scores ranging from -2 to +2). A negative score indicates a wish for a more lenient sentence, a positive score a wish for a more strict sentence.

**2.3.2 Global Punishment Justification.** Following their judgments, respondents were asked to choose one of three global justifications for punishing rapists. Alternatives were: Retribution ('rapists should get what they deserve'), Deterrence ('others should be deterred from committing rape in the future'), or Incapacitation ('rapists should be prevented from recidivating').

## **2.4 Analytical Strategy**

For assessing gender and educational attainment (Low vs. High) differences in punishment justification we conducted six two-way ( $2 \times 3$ ) Analysis of Variance controlling for respondent's age (ANCOVA) (Tabachnick & Fidell, 2014). For measuring differences among the six punishment justification conditions, we performed a three-way ( $3 \times 2 \times 2$ ) Mixed Model (Profile) Analysis (Tabachnick & Fidell, 2014), with Domain (Retribution vs.

Incapacitation vs. Deterrence) × Circumstances (aggravating vs. not), as within subject factors, and Gender as between subject factor. Post-hoc analyses were performed (dependent group t-tests). Assumptions were checked throughout.

To investigate group differences in global punishment justification (Retribution vs. Incapacitation vs. Deterrence), chi-square analyses were conducted for gender and educational attainment. Finally, we tested whether global punishment justification toward rape and sexual assault cases affected one punishment justification over another in the specific rape case. We conducted four ( $3 \times 2$ ) ANOVAs (Domain: Retribution vs. Incapacitation vs. Deterrence × Gender: women vs. men) on the following difference scores: (1) Incapacitation score – Retribution score, and (2) Incapacitation score – Deterrence score. The analyses were done separately for presence or absence of aggravating circumstances. Higher scores would reflect relatively stronger emphasis on incapacitation vs. retribution or deterrence. Because men were less likely to return the survey, all analyses are performed on weighted data using population weights for gender (50.6% women).

### **3. Results**

#### **3.1 Group Differences Across Punishment Justification Domains**

If the rape case contained information of aggravating circumstances regarding the offender's use of violence during the rape (yes), perpetrator intent (yes), or extenuating circumstances (none), respondents generally were willing to assign more strict sentencing. As can be seen from Table 1, respondents' judgments for retribution did not differ for women and men, level of educational attainment, or age. When given no aggravating information about the rapist (no violence, no planning, or being a victim of sexual assault), the willingness to assign stricter sentencing (scores above 0), was generally low, but significantly higher in women

than men (Cohen's  $d= 0.26$ ). The gender effect was moderated by educational attainment ( $p=.060$ ), suggesting that relative to those with lower education, highly educated women were slightly more punitive, while highly educated men were slightly more lenient.

Insert Table 1 About here

When given aggravating information regarding likelihood of reoffending (high), prior record of sexual offences (yes), and low self-control, respondents generally were again willing to assign more strict sentencing. As can be seen from Figure 1 (incapacitation bar), this was more pronounced in women ( $d= 0.39$ ). It was also more pronounced among those without higher education ( $d= 0.25$ ). The respondents were only moderately more willing to assign more strict sentencing (scores above 0), when given incapacitation information that did not include aggravating circumstances, women slightly more than men ( $d= 0.22$ ).

Insert Figure 1 about here

Information relevant to deterrence (general frequency, detection rate, and level of publicity) did only moderately affect willingness to assign more strict sentencing. Again, women and respondents without higher education assigned significantly more strict sentencing than men (for both aggravating circumstances or not), but the gender effect was small. In addition, relative to those younger, older respondents were willing to assign slightly more strict sentencing when given information general frequency (high), detection rate (low), and level of publicity in rape cases (high) ( $r= .12, p<.01$ ).

### **3.2 Differences within the Various Punishment Justifications**

The profile analyses suggest that overall –across all six conditions– women were more punitive than men ( $F(1,465)= 7.99, p< .01, d= 0.26$ ). Willingness to assign stricter sentences also differed across the three punishment domains ( $F(2,930)= 482.93, p< .001$ ), and was far higher in the aggravating condition relative to the not aggravating condition ( $F(1,465) = 1393.96, p< .001$ ). The profiles for the high and low condition were not parallel across the punishment domains (a significant domain  $\times$  aggravating interaction,  $F(2,930)= 624.05, p< .001$ ), and these profiles again differed slightly for women and men ( $F(2,930)= 5.46, p< .02$ ) (See Figure 1). The post-hoc analyses suggest that sentencing strictness did not differ for the high retribution vs. high incapacitation domains ( $t_{\text{paired}}= -.05$ ), but more strict sentencing was assigned for low incapacitation vs. low retribution ( $t_{\text{paired}}= -13.74, p< .001, d= 0.36$ ). Relative to the high deterrence domain, stricter sentencing was assigned in the high retribution ( $d= 1.44$ ) and in the high incapacitation domains ( $d=1.38$ ). For the no aggravating circumstances condition, these domain differences were small ( $d= 0.28$  and  $d= 0.08$ , respectively). Further, information on aggravated circumstances (present vs. not) affected willingness to punish only in the retribution ( $d= 1.88$ ) and in the incapacitation ( $d= 1.40$ ) domains. High vs. low deterrence differed only marginally:  $d= 0.13$ .

### **3.3 Global Punishment Justifications**

When asked what should be the main purpose of sentencing rapists or sex offenders, 52.5% supported an incapacitation perspective (i.e. those who are convicted of rape should be prevented from recidivating). One in four (25.1%) indicated that they wanted rapists to be punished based on retribution (i.e. those who are convicted of rape should “get what they deserve”), and finally 22.4% supported deterrence (i.e. others should be deterred from committing rape in the future) as a punishment justification. These global punishment

justifications did not differ across gender ( $\chi^2 [2, N=459]= 1.23, p= .54$ ). However, global punishment justification differed across educational attainment (low vs. high) ( $\chi^2 [2, N=450]= 6.32, p< .05$ ). Relative to those with lower education, higher educated respondents were relatively less likely to justify incapacitation (48.4% vs. 57.1%), and more likely to justify deterrence (27.4% vs. 17.7%).

We finally tested our expectation that global punishment justification toward rape and sexual assault cases in general would affect what punishment justification was emphasised in the specific rape case. In none of the analyses of the differences scores, participant's global punishment justification significantly affected the emphasis of one justification over another in the specific case (all  $p$ 's  $>.10$ ). One gender difference in emphasis was found for incapacitation over retribution (aggravating circumstances condition,  $F(1,454)= 11.43, p< .001$ ), but this gender effect was not moderated by global punishment justification (no interaction). Apparently, participants who chose incapacitation vs. retribution or deterrence as their global punishing justification did not differ in what information they emphasized in a particular rape case, i.e. participants who selected incapacitation or deterrence as justification at a global level made similar emphasis on incapacitation and deterrence information in the rape case.

#### **4. Discussion**

The aim of the current study was to investigate Norwegian community members' attitudes towards and judgments of punishment and sentencing of rapists as well as potential educational and gender differences. The results suggest that community members generally justify the punishment of rapists and sex offenders to prevent the likelihood of recidivism (incapacitation) more than for retribution or deterrent reasons. This did however not translate into specific judgments when faced with a hypothetical rape case. The results also indicate

that aggravating information has a strong impact on how relevant different sentencing justifications are to participants. Still, regardless of type of information relevant to the rape case, community members assigned stricter sentencing to the rapist than what was the common sentencing policy in 2005 (Statistics Norway, 2006; Stene, 2001).

Some interesting group differences did also emerge. For example, while there were no gender differences found for global punishment justifications, women consistently assigned stricter sentencing across punishment justifications (independent of aggravating circumstances) than men in a rape case, and particularly so for incapacitation (when the risk of recidivism was high). Educational attainment and age were not consistently related to sentencing, but participants with College/University education assigned slightly less sentencing when given information relevant to incapacitation (aggravating circumstances) and deterrence (both when aggravating circumstances were present and not).

#### **4.1 Punishment Justifications: Global and Specific Attitudes**

As a global sentencing justification, Norwegian community members endorse incapacitation for sex offenders and rapists. A potential reason for this might be linked with rehabilitative ideals in Norway (Andenæs, 1997; Dullum & Ugelvik; 2011; Ministry of Justice and Police, 2007-2008). As highlighted in the introduction, incarceration in a prison can also be used to engage in programmes and individual change (Andenæs, 1997; Blumstein & Cohen, 1987). Interestingly though, the global sentencing justification was not related to judgments on appropriateness of a sentence in a specific rape case. When faced with a specific rape case, the respondents' sentencing judgments appear to be most affected by aggravating circumstances related to retribution and incapacitation perspectives. This is in accordance with previous research (e.g. Carlsmith, 2006), where several studies have found inconsistencies between global and specific attitudes towards punishment for a wide range of

different crimes. Carlsmith et al. (2002) and Carlsmith (2006) suggest that when presented with cases that describe violent offences, people's moral outrage will contribute to a greater need for retribution. At a global attitude level, this might not be activated to the same degree. Rape is potentially such a crime, where the violent aspect (Bechhofer & Parrot, 1994; Bennice & Resick, 2003) affects attitudes. The proposed explanation here is however contradictory to Christie (1982), who argued that more information and knowledge of conditions would facilitate a more lenient response out of sympathy and human compassion. Following this, it is possible that the measures in the current study are not structural consistent, and that is why there are differences in judgments (Applegate et al., 1996; Zamble & Kalm, 1990). Our global measure might not have been sufficiently relevant to the case that was presented to the participants (Applegate et al., 1996; Eagly & Chaiken, 1995/2014; Zamble & Kalm, 1990).

#### **4.2 Are there Group Differences in Attitudes and Judgments?**

There are significant group differences in attitudes toward punishment of rapists. When presented with a specific rape case, women overall wanted a more punitive (stricter), criminal sanction compared to men, and even more so for preventing recidivism. This may not come as a surprise, since rape is a crime with predominantly female victims (Dahl, 1994), and future need for self-defense may have been more strongly activated in women. This tendency was however not found at a global punishment justification level. It seems that women identify more with the case instead of when asked for a more general standpoint. For the global sentencing punishment justification, respondents who had completed a high level of education appeared to prefer deterrence compared to those lower on educational attainment.

It must be noted that overall, there were few and relatively small significant differences when it comes to gender and education. Thus, rape might overall be viewed as morally despicable regardless of group membership. Even though men are more likely to be perpetrators (Bechoffer & Parrot, 1991; Dahl, 1994; Martin, et al., 2007; Sexual Offences Act 2003), and previous research has found that men can recognize their own propensity to rape (Tieger, 1981), there might be a case of the “black sheep effect” for the male participants (Lewis & Sherman, 2010; Marques, Yzerbyt, & Leyens, 1988). This effect is where in-group members distance themselves from other in-group members because of the others’ actions (Marques et al., 1988). This effect could have produced such a strict sentencing among the male respondents.

#### **4.3 Implications for Criminal Justice Policy**

The current study indicates that community members find that rapists should be sentenced more harshly than what was the practice in 2005. Since 2005, sentencing guidelines for rape have increased in severity (Ministry of Justice and Police, 2007-2008, Ministry of Police and Public Security 2012-2014; Lov om Straff, 2005). This increase might partly be due to the emphasis the former Minister of Justice and Police placed on responding to public opinion and his sense of public opinion toward sentencing and punishment (Indermaur, Roberts, Spiranovic, Mackenzie, & Gelb, 2012; Ministry of Justice and Police, 2007-2008; Roberts et al., 2003). In comparison to some other countries, the sentencing tradition in Norway is relatively lenient (Andenæs, 1997; Dullum & Ugelvik, 2011; Ministry of Justice and Police, 2007-2008; the Norwegian Government, 2005-2009, Storberget, 2007). However, these findings indicate that the Norwegian public would support stricter sentences for rape, supporting the changes in the Norwegian Criminal Code the past 10 years. Of interest is that both at a global and a specific attitude level, deterrence is found to be the least

important when sentencing a rapist. This finding diverges from previous findings from Carlsmith and colleagues (2002), and is contradictory to Norwegian tradition in criminal justice theory and policy which do favour deterrence (Andenæs, 1997; Bondeson, 2005). While one might argue that judgments surveyed over 10 years ago have limited utility today, our results do however support the changes made in criminal law, and neither lay-judges nor publics' attitudes are likely to change quickly (Eagly & Chaiken, 1995/2014; Indermaur et al., 2012; Mandracchia, Shaw, & Morgan, 2013; Petty et al., 1997; Roberts et al., 2003).

#### **4.4 Limitations**

The main limitation to the current study is the fairly high nonresponse rate. Low response rates are not uncommon in social science research, but even with a response rate of less than 35%, the sample can still be considered large ( $N > 400$ ) (Tabachnick & Fidell, 2014). However, low response represents a potential threat to the generalisability of the findings. Nevertheless, in their review of the literature on effects of response rates on the accuracy of survey results, Holbrook, Krosnick & Pfent (2008) found that response rates do generally not affect representativeness. E.g., regardless of response rate, women and higher educated are generally overrepresented in surveys. Comparisons made between our sample and the Norwegian population in 2005 indicated that overall, relevant sample characteristics were highly comparable to those in the population<sup>III</sup>. The main difference was that our sample had higher female and higher educational attainment representation than the larger population. This may partly be due the presence of a university in the region, but possibly also higher educated participants found the topic more relevant and intelligible. Apart from women generally being more willing to return surveys (Holbrook et al, 2008), women are arguably more likely to find the topic of the survey relevant compared to men because women are the most frequent victims (Dahl, 1994).

## 5. Conclusion and Future Research

The current study shows that even in a country as liberal in its criminal justice policy as Norway where the foundation of the criminal justice system is found in rehabilitative ideals (Andenæs, 1997; Dullum & Ugelvik, 2011; Hauge, 1996; Ministry of Justice and Police, 2007-2008), the general public harbors retributive attitudes and makes judgments based on retributive and incapacitation attitudes. Albeit small in magnitude, the gender and education differences indicate that there are group differences in rape sentencing judgements. Future research should present multiple cases, detailing sex crimes varying systematically in seriousness, applying sentencing that reflects the current criminal code. It is also recommended that more information is provided on the victim's actions and intentions, such as the victim's biological and mental age, clothing, level of intoxication, past sexual history, and level/type of resisting. More demographic characteristics of the rater should also be assessed, for example ethnicity and political ideology. It would also be interesting to investigate differences between professional judges and lay judges as their attitudes and judgements sometimes diverge as highlighted in the initially presented case.

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<sup>i</sup> The civil claim of monetary restitution was however granted in favour of the victim ([www.vg.no](http://www.vg.no)).

<sup>ii</sup> We would like to thank the Editor Henrik Elonheimo for this argument.

<sup>iii</sup> The proportions of singles, cohabiting and married women and men in the sample were highly comparable to those reported by Statistics Norway (SSB) for the relevant age groups in 2005. For both the sample and the national estimates, with increased age the proportion of singles decreased, the proportion of cohabiting decreased slightly, and the proportion of married increased markedly. According to SSB, 32% of the nation's population aged 25 – 64 years had higher education (College/University degree) in 2005, women more than men. Due to the region's university (NTNU)

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the level of higher education in the region under study is approximately 5% higher (according to SSB).