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Sentencing in the Netherlands. Taking risk-related offender characteristics into account

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Taking risk-related offender characteristics into account

Sentencing in the Netherlands

Taking risk-related offender characteristics into account

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1 Introduction

1.1 THE DAILY BUSINESS OF SENTENCING

Criminal sentencing is a daily business, affecting many people's lives. In 2011 Dutch judges imposed almost 29,000 fines, over 34,000 community service sentences and over 21,000 unsuspended prison sentences (Van Rosmalen, Kalidien, & De Heer-de Lange, 2012), and they are only part of the picture.

Criminal sentencing is not only a daily business, it is also a popular topic of public debate. Everyone has an opinion on the sentences imposed – especially in criminal cases in the media spotlight – as well as on the Dutch penal climate in general. Discussions about sentencing are however not limited to the public in general, which mainly focuses on the severity of sentencing. Legal scholars tend to write more about the legitimacy and equity in sentencing (e.g. Brenninkmeijer, 1994; Duker, 2003; Kelk, 2001; Schoep, 2008; Schuyt, 2009), whereas social scientists aim to study disparity in sentencing outcomes empirically. In this field, criminal sentencing has been a popular topic for over a century, and has taken over a vast research area in the fields of criminology and penology in the United States.

1.2 PRIOR RESEARCH

Yet, unlike the case in the United States, sentencing research has not always been a popular research field in the Netherlands. Relatively few sentencing studies were published in the twentieth century. After the first Dutch sentencing study by Van Sandick (1933), several studies on the effects of offense and offender characteristics on sentencing outcomes followed in the 1970s and 1980s (Jongman & Schilt, 1976; Jongman, Timmerman, & Kannegieter, 1984; Oomen, 1970; Timmerman, Bosma, & Jongman, 1986; Timmerman & Breembroek, 1985; Van der Werff & Van der Zee-Nefkens, 1978; Van Leeuwen & Oomen, 1974; Van Straelen & Van der Werff, 1977; Zoomer, 1981), as well as some in the 1990s (Kannegieter, 1994; Rovers, 1999). Various studies also appeared on sentencing for traffic offenses (Steenhuis, 1972; Van Bergeijk & Vianen, 1977a; Van Bergeijk & Vianen, 1977b; Van der Werff, 1981), regional disparity in sentencing outcomes (Berghuis, 1992; Berghuis & Mak, 2002; Fiselier, 1985), the influence of prosecutorial recommendations (Slotboom, Koppe, Passchier, De Jonge, & Meijer, 1992), and the increasing punitiveness of judges (Grapen-

daal, Groen, & Van der Heide, 1997). In a nutshell: one century of sentencing research resulted in two dozen publications and left many questions on sentencing and its determinants unanswered.

However, in the past decade, sentencing has received renewed attention in the Netherlands with almost more empirical sentencing research than in the entire twentieth century.¹ Although some studies lack an underlying theoretical framework from which hypotheses on sentencing mechanism are derived (e.g. Van Tulder & Diephuis, 2007; Bosmans & Pemberton, 2012; Van Tulder & Van der Schaaf, 2012), most of the recent sentencing research uses the *focal concerns perspective* as a theoretical framework to study sentencing disparity. From this perspective, judges address three main issues in their sentencing decisions: 1) the blameworthiness of the offender; 2) the dangerousness of the offender; and 3) practical constraints (Steffensmeier & Demuth, 2000; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier, Ulmer, & Kramer, 1998). But with only limited time and information at their disposal, judges cannot assess these focal concerns without uncertainty, so like any other human being making decisions, they avoid this uncertainty by relying on patterned responses. These patterned responses or decision-making shortcuts invoke past experiences, stereotypes and social prejudices (Albonetti, 1991). Hence, characteristics of the offense, offender, victim and criminal proceedings might either consciously or unconsciously affect judges' sentencing decisions. The focal concerns perspective provides a useful framework for sentencing research, although the exact implementation leaves a great deal of leeway for the researchers' own interpretations.

Recent sentencing research not only uses this more sophisticated theoretical foundation for studying sentencing outcomes, its research methods are also more refined than most of the twentieth-century sentencing studies. Although studies differ in their research design, sample of cases, operationalization of variables, and the specific factors that are examined and controlled, findings from recent Dutch sentencing research suggest that sentencing outcomes are influenced by features of the offense: the more severe the crime, the more severe the punishment (Van Tulder & Diephuis, 2007; Van Wingerden, Moe-rings, & Van Wilsem, 2011; Van Wingerden & Nieuwbeerta, 2010). Sentencing outcomes are also affected by characteristics of the victim, with harsher punishments for offenders who victimize females, children, and people older than 30 or born in the Netherlands (Van Wingerden & Nieuwbeerta, 2010). The punishment is also harsher if the victim has a special designation, e.g. police officer (Bosmans & Pemberton, 2012). Sentencing outcomes can also be related to case-processing characteristics such as the sentencing recommendation of

1 The studies I refer to are limited to studies using quantitative research methods to examine real case outcomes: qualitative studies (e.g. Wagenaar, 2008), experimental studies (e.g. De Keijser, 2001a) or studies focusing on lay-judges (e.g. Bijleveld & Elffers, 2010) are not included in this overview.

the public prosecutor (Johnson, Van Wingerden, & Nieuwbeerta, 2010; Van Tulder & Van der Schaaf, 2012), the length of the pre-trial detention (Van Wingerden et al., 2011; Wermink et al., 2013a) and the court district (Van Wingerden et al., 2011). In addition, sentencing outcomes can depend on the time frame, with judges' punitiveness increasing over time (Van Tulder, 2005, 2011; Van Wingerden & Nieuwbeerta, 2006; but see Van Velthoven, 2014).

Moreover, recent prior research suggests that offender characteristics relate to sentencing outcomes. Females are punished less severely than males (Boone & Korf, 2010; Van Wingerden et al., 2011; Van Wingerden & Nieuwbeerta, 2010; Wermink et al., 2013b). Offenders who were born in the Netherlands or look Dutch are given more lenient sentences. However, for the age and criminal history of the offender results are mixed (Van Wingerden et al., 2011; Van Wingerden & Nieuwbeerta, 2010; Wermink et al., 2013a; Wermink, De Keijser, & Schuyt, 2012). Offender's social circumstances such as unemployment and substance abuse also show conflicting results, affecting sentencing outcomes in one study (Van Wingerden et al., 2011), but not in another (Wermink et al., 2013a).

These findings mainly correspond to prior research from the United States, revealing that many offense, case-processing, offender, and victim characteristics relate to sentencing outcomes. As a result of sentencing research revealing unwarranted sentencing disparity, many states have tried to fight this disparity by adopting laws restricting judges' discretionary powers to make sentencing decisions. Multifarious sentencing guidelines and mandatory sentencing laws were introduced to prevent certain offender characteristics such as race from affecting sentencing outcomes. However, despite the changes in sentencing laws, numerous studies still note that sentencing outcomes are less severe for female than for male offenders (Curry, 2010; Doerner & Demuth, 2010; Koons-Witt, 2002). Age also affects sentencing outcomes, with more lenient punishments for the youngest offenders (Doerner & Demuth, 2010; Spohn & Holleran, 2000b) and the eldest (conform a curvilinear age-effect) (Steffensmeier et al., 1995). Blacks and Hispanics frequently receive harsher punishments than white Americans, although these effects are often indirect or intermediate (Spohn, 2000): young, non-white males in particular are punished more harshly (Steffensmeier et al., 1998). Social circumstances are rarely studied in sentencing research from the United States. But as in Dutch research, the few studies that did examine social circumstances often show mixed results, for example with regard to the educational level of the offender (Koons-Witt, 2002; Wooldredge, 2010) and his employment status (Chiricos & Bales, 1991; Myers, 1988).

1.3 THE RELEVANCE OF SENTENCING RESEARCH

Despite prior sentencing research, to date, there are still many questions about the factors judges take into account in their sentencing decision – and why

they do so – and how the effects of these factors are related, causing indirect or intermediate effects on sentencing outcomes. This dearth of knowledge on the sentencing determinants is striking, since the judge's sentencing decision is usually not only the final decision in the criminal proceedings, it may be the most important one as well. For this is where the decision is made on the consequences of the offense for the offender. Moreover, the public relies heavily on the imposed sentences to form its opinion on the performance of the judiciary (De Roos, 2000). That makes sentencing not only relevant because of the impact the punishment has on the offender, it is also an important cornerstone of the legitimacy of the entire criminal justice system.

Greater insight into sentencing determinants might increase judges' awareness of the factors they take into account in making sentencing decisions, for findings from sentencing research may reveal leads to adjust sentencing practices or policy, for example by modifying the non-binding orientation points for judges as set out by the National Consultation on Criminal Content (LOVS, *Landelijk Overleg Vakinhoud Strafrecht*, 2013). Greater awareness on the part of judges could eventually contribute to the equality and legitimacy of the criminal justice system.

1.4 SHIFTING SENTENCING GOALS: TOWARDS ACTUARIAL JUSTICE?

Gaining insight into sentencing determinants is thus not only of great importance for judges, offenders and victims, but ultimately for the equality and legitimacy of the entire criminal justice system. However, unraveling the sentencing determinants is a complex matter since so many factors might affect sentencing outcomes. Starting from a theoretical base is useful then to direct this quest. Such a theoretical base can be found in the sentencing goals. These provide important leads for the study of sentencing determinants, because judges take various interests into consideration when they make their sentencing decisions: on the one hand, the interests of the offender, and on the other hand those of the victim and society at large. These interests are often incompatible since punishments aiming to help the offender to get back on the right track conflict with punishments that reassure society and do justice to the victim and the harm inflicted on him. These conflicting interests are reflected in the differing goals of punishment, e.g. the one goal aims to incapacitate the offender, while the other aims to rehabilitate him.

In spite of the Recommendation of the Council of Europe concerning consistency in sentencing,² sentencing goals are not adopted in Dutch law. However, both retributivist and utilitarian goals are reflected in the Dutch sentencing system, since a mixed theory is believed to be dominant in sentenc-

2 Council of Europe, Recommendation (92) 17.

ing practices (De Keijser, 2001b): retribution is the essence of the punishment and also sets its upper limit. This means punishment cannot be more severe than required by the severity of the offense and the blameworthiness of the offender. Below that upper boundary, utilitarian goals may be pursued, such as rehabilitation or incapacitation.

However, the goals judges aim for when imposing a sentence not only differ from one judge to the next, as prior research suggests (De Keijser, 2001a), they also change over time. Rehabilitation was the main sentencing goal after World War II, but from the 1970s on, people lost faith in the rehabilitative ideal and the focus shifted from ‘improving’ to incapacitating offenders, thus protecting the public by eliminating risks (Downes & Van Swaaningen, 2007). Feeley and Simon (1994) refer to this development in the field of criminal justice as *actuarial justice*. In this ‘new penology’, crime is no longer viewed as a pathological problem that needs fixing, but as a normal phenomenon to be managed like any other risk. To do so efficiently, different techniques such as risk assessment tools are used to identify, classify and control groups based on their expected danger to society (Feeley & Simon, 1992, 1994).

The emergence of actuarial justice is widely accepted and elaborated on in the academic field. It is assumed to exist in the Netherlands as well (Van der Woude, 2010; Van Swaaningen, 1996). The three Dutch probation agencies (3RO)³ for example have developed from agencies acting exclusively in the interest of the defendant into output-driven organizations acting in the interest of society. They assist the legal authorities by informing and advising the Public Prosecutor and judges on the personal characteristics of the defendant, and supervise community service and the conditions of suspended sentences. The focus has thus shifted from the needs of the defendant to the risk he poses to society. To assess this risk, the probation agencies have developed a structural clinical risk assessment tool (RISC, Recidivism Assessment Scales). The probation officer assess the RISC by mapping out the defendant’s personal circumstances, categorized in twelve sections (the Scales): 1) Offending history; 2) Present offense and pattern of offenses; 3) Residential accommodation; 4) Education, work and training; 5) Financial management and income; 6) Relationships with partner, family and relatives; 7) Relationships with friends and acquaintances; 8) Drug abuse; 9) Alcohol abuse; 10) Emotional well-being; 11) Cognition and behavior; and 12) Attitudes. Each scale contains several items to assess the risk of reoffending. Each of these items is scored by the probation officer on a three point scale (0, 1 or 2 points). The weighted scale scores add up to the total RISC-score (see Van der Knaap, Leenarts, Born, & Oosterveld, 2012). Based on this total score, defendants are categorized as posing a low, medium or high risk of reoffending. RISC is not only used to

3 3RO is a cooperation of three probation agencies: Probation Service Netherlands (Reclassering Nederland), Probation Service for addicted offenders (Stichting Verslavingsreclassering GGZ) and Salvation Army Probation Service (Leger des Heils Jeugdzorg & Reclassering).

assess the risk of reoffending, it is also the foundation of the pre-sentence report that is written to inform judges on the characteristics of the offender and his risk-related circumstances. Hence, the shift towards a more risk-oriented criminal justice practice has also affected the information judges are provided with. Actuarial justice is thus likely to affect sentencing outcomes, possibly causing more severe punishment for offenders with a high risk of reoffending.

Despite the attention in the academic field, there has been very little focus on actuarial justice in empirical studies. A prior study by me and my colleagues (Van Wingerden et al., 2011) addressed this research gap and investigated the role of the risk of reoffending in criminal sentencing in the Netherlands: Are high-risk offenders indeed punished more severely than low-risk offenders?⁴ We studied the sentencing outcomes of over 26,000 suspects with pre-sentence reports assessing the risk of reoffending using the risk assessment tool RISC. Our findings suggest that – when controlled for many offense, case-processing and offender characteristics – offenders with a high RISC outcome are not sentenced more severely than those with a low RISC outcome. We concluded that, contrary to new penological discourses, offender's risk categorization is not a major sentencing determinant in the Netherlands.

1.5 RESEARCH QUESTIONS

Prior sentencing research has improved our insight into the factors related to sentencing outcomes, but has left many questions unanswered. The current study addresses several of these knowledge gaps. The developments in criminal justice practice as regards the emergence of actuarial justice as described above, entailing the introduction of the risk assessment tool RISC as the foundation of the pre-sentence report, have directed the focus of this study to two related matters linked to sentencing: the effects of risk-based pre-sentence report and of the personal characteristics of the offender. These are related matters since the pre-sentence report is pre-eminently a means to provide the judge with information on offender's characteristics and risk-related social circumstances. The introduction of the risk-based pre-sentence report thus draws attention to the question of the extent to which judges take the risk-related information on the personal characteristics of the offender into account when making their sentencing decision.

This is not only a major issue in the criminological sentencing literature, it concerns legal scholars as well. Dutch jurists agree that the personal characteristics of the offender are to be factored in at sentencing (e.g. Duker, 2003; Kelk, 2001; Schuyt, 2009), since it is highly valued that sentences fit the crime *as well the personal characteristics of the offender*. However, there is a tension

4 This research was supported by a grant of the Dutch Council for the Judiciary.

between the individualization of punishment and the equality principle. According to Frankel (1973) 'individualized justice is prima facie at war with such concepts, at least as fundamental, as equality, objectivity, and consistency in the law' (p. 10). But even though taking characteristics and social circumstances of the offender into account might lead to sentencing disparity, sentencing disparity does not necessarily involve discrimination, because there might be very legitimate reasons to sentence cases differently. Discrimination only exists when differential treatment is based on illegitimate criteria, such as race, gender, or social class. With respect to sentencing, Blumstein, Cohen, Martin and Tonry (1983) note that discrimination 'exists when some case attribute that is objectionable (typically on moral or legal grounds) can be shown to be associated with sentence outcomes after all other relevant variables are adequately controlled' (Blumstein et al., 1983, p. 72). Hence, punishing an offender more severely *merely* because of his sex, race, or employment status is not only undesirable, it is illegitimate. Even though the current study does not investigate issues of the legitimacy of sentencing disparity, in studying the effects that offender characteristics have on sentencing outcomes it is important to be aware of this legal context. Moreover, studying sentencing disparity from a criminological point of view might provide more empirical arguments for the legal discourse.

With the effects of risk-based pre-sentence reports and offender characteristics on sentencing outcomes as the main topics of this study, I specify five related research questions. First of all, although many prior sentencing studies suggest that offender characteristics such as sex, age and race or origin are known to affect sentencing outcomes, little is known about the reasons for the disparities. *Why* are young, male and non-Dutch offenders punished more harshly than older, female or Dutch-born offenders? The focal concerns perspective suggests that judges either consciously or unconsciously factor in offender's risk of reoffending (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998). Offender's sex, age and origin might then affect sentencing outcomes because these characteristics are proxies for offender's risk of reoffending. Therefore, I investigate in depth whether detailed risk-related personal circumstances of the offender such as unemployment, problematic ties with family or friends and drug or alcohol addictions can account for the harsher punishments for the young, male and non-Dutch offenders. The first main research question is thus:

Research question a:

To what extent are the effects of demographic offender characteristics on sentencing outcomes mediated by his risk-related personal circumstances?

The characteristics and personal circumstances of offenders can only be taken into account at sentencing in as far as they are known to the judges. The most important source of offender information for judges is the pre-sentence report.

Yet to date, little is known about the effects of pre-sentence reports on sentencing outcomes. Ever since 2007, Dutch probation agencies have been using RISC as the foundation for pre-sentence reports. Such risk-based pre-sentence reports *frame* the defendant as a certain risk to society. They are also a feature of the new penology as described by Feeley and Simon (1992, 1994). According to these new penological accounts, high-risk offenders are more likely to be sentenced to *controlling* types of punishment (i.e. imprisonment or special conditions with a suspended sentence) and low-risk offenders to *diverting* types of punishment (i.e. no imprisonment). Since a structured risk-based pre-sentence report might cause framing effects and confirmation bias, I expect a risk-based pre-sentence report to affect sentencing outcomes by enhancing these new penological sentencing mechanisms, so that high-risk defendants with a risk-based pre-sentence report are expected to be even more likely to be sentenced to controlling types of punishment than high-risk defendants without such a report, while low-risk defendants with a risk-based pre-sentence report are expected to be even more likely to be sentenced to diverting types of punishment (e.g. community service, suspended sentences) than low-risk defendants without such a report. I thus compare sentencing outcomes for defendants who have the same level of risk, but who differ in the presence of a risk-based pre-sentence report, to answer the second main research question:

Research question b:

To what extent does a structured risk-based pre-sentence report enhance risk-based sentencing?

Quantitative research methods are valuable for gaining insight into factors that relate to sentencing outcomes. However, some features of judges' sentencing deliberations, such as their *perception* of offender's risk of reoffending and their *reasons* for taking certain factors into account, cannot be grasped well with these methods. Nonetheless, these limitations can be overcome by using *qualitative* research methods, such as interviewing judges. Prior research on judicial decision-making for which judges have been interviewed is rather rare, since it demands quite a time investment from the judiciary. However, the exceptional studies reveal important information on the contexts in which judges make their decisions and on their motivations to impose certain sanctions. Examples of these studies are amongst others De Keijser, Van de Bunt and Elffers' (2004) study on how judges cope with the public opinion on their decisions, Schoep and Schuyt's (2005) study on judges' views on the instruments that assist them at their sentencing decisions, Van Wingerden, Moerings and Van Wilsem's (2007) study on judges' willingness to impose the compensation order for the benefit of the victim, Ten Velden and De Dreu's (2012) study on time pressure and the quality of judge's decision-making, and, for Belgium, Beyens' (2000) study on the penal context of sentencing.

Prior qualitative research has thus shown that interviewing judges can reveal the *contexts* and *motives* of their decision-making. Because of this added value over quantitative research methods, I interviewed judges as a supplement to the first two main research questions to answer the third main research question:

Research question c:

How is the risk of reoffending related to sentencing according to judges?

The first three research questions address several important gaps in the existing sentencing literature with regard to the role the risk of reoffending plays in sentencing: I investigate the mediating effects of risk-related personal circumstances of the offender, the effects of risk-based pre-sentence reports on sentencing, as well as judges' own views on the role of risk of reoffending in sentencing. Although our knowledge on sentencing can be substantially improved by addressing these research questions, there are voids in sentencing research that remain unaddressed by the first three research questions. Several remaining and largely unexamined issues are thus the focus of the next research question, which pertains to the sentencing of homicide offenders. By focusing on the sentencing of homicide offenders, a first gap in the sentencing literature is addressed, since relatively few studies focus on this 'ultimate' crime (Auerhahn, 2007), even though homicide punishments serve as an important source for public opinion and concerns about sentencing in general. Moreover, sentencing homicide offenders is not the judges' daily business and the sentencing decision is likely to be made more deliberately than in other cases. The next gap in the sentencing literature addressed by the fourth research question concerns including certain variables usually omitted in sentencing research. Data on prosecutorial sentencing recommendations, victim characteristics and detailed information on the offense such as the *locus delicti* and *modus operandi* are rarely studied, while they are likely to have a strong impact on judges' sentencing decisions. After all, these are important to establish the severity of the crime, since one type of crime might encompass very divergent acts. For example, a child being stabbed to death by a stranger is considered to be a more severe crime than a 50 year old man being executed at a rip deal. Extending the scope of sentencing research to these little-researched case-processing, offense and victim characteristics can broaden our knowledge on sentencing. The fourth main research question is thus:

Research question d:

To what extent are offense, offender, victim and case-processing characteristics related to the sentencing of homicide offenders?

The fifth research question critically addresses another important limitation of both Dutch and foreign sentencing research, i.e. it is generally limited to

the study of prison sentences. This is an important flaw, since sentences typically consist of a myriad of options: different types of sanctions can be jointly imposed, some unsuspended and others suspended. Studies limited to unsuspended prison sentences might lead to incomplete and thereby biased findings on the sentencing determinants, for the aggravating effect a variable has on the one sanction type might be counterbalanced by the mitigating effect it has on another sanction type, or vice versa. Regarding offender's personal circumstances, for example, drug abuse might be related to less of a chance of being sentenced to prison, merely due to an increased chance of being sentenced to placement in an institution for habitual offenders (ISD-measure). To investigate the extent to which research findings might be distorted by the imprisonment bias, I examine whether in a research model limited to unsuspended prison sentences – as sentencing research generally is – the effects of offender characteristics and social circumstances hold up under a more complete measure of the imposed sentences (i.e. including other sanction types and modalities and combinations of sentences). This can provide important insight into the tenability of prior research findings when sentencing research broadens its scope to a more complete and realistic depiction of the sentences imposed. The fifth research question is thus:

Research question e:

To what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?

1.6 CONTRIBUTIONS TO THE EXISTING SENTENCING LITERATURE

The current study contributes to the existing sentencing literature in several important ways. First of all, it has a broad and unique scope: the research questions all focus on rarely researched but very essential aspects of sentencing. I explore the mediating effects of personal circumstances of the offender, the effects of pre-sentence reports on sentencing, judges' own views on the risk of reoffending as a sentencing determinant, the effects of prosecutorial sentencing recommendations, victim/offender interaction effects and *locus delicti* and *modus operandi*, as well as the extent to which the effects of sentencing factors hold up when the research scope is broadened from only imprisonment to a more complete measure of the sentences imposed.

Second, my study contributes to the sentencing literature because the data used for the quantitative research questions include extremely detailed information on the *offender*. Moreover, in the study on the sentencing of homicide offenders a unique level of detailed information on *victim* and *incident* characteristics are used as well. These data make it possible to investigate aspects of sentencing that have rarely been studied before, thus answering the calls

of scholars to tackle the issue of omitted variables by including more variables (e.g. Ulmer, 2012; Wellford, 2007).

Third, my study not only uses uniquely detailed data, its contribution to the existing sentencing literature is reinforced by its research methods. Employing multiple research methods, my study responds to Baumer's (2013) comment 'that it is vital that this [conventional regression] approach be supplemented significantly with alternative approaches' (p. 234-235). One important asset of the current study is that quantitative research methods are supplemented with qualitative ones, making it possible to study judges' perceptions and causal mechanisms that are hard to grasp with quantitative research methods. Moreover, the quantitative research methods in this study are diverse and sophisticated. In addition to multivariate regression analyses, the research method commonly used in sentencing research, I use a uniquely detailed matching strategy based on propensity score matching and nine other offense and offender characteristics relevant to sentencing. This makes it possible to study sentencing as a quasi-natural experiment: the matching strategy pairs an offender from the 'control' group to an offender from the 'experimental' group, thus establishing equivalence in observed covariates between groups. Propensity score matching is an advanced technique, that has only been used in sentencing research twice before (Johnson & Kurlychek, 2012; Kurlychek & Johnson, 2010). The technique I developed is even more advanced, since the offenders' propensity scores not only have to be equal for matching, nine offense and offender characteristics all have to be similar as well.

Fourth, the current study contributes to the sentencing literature by providing innovative leads to further sentencing theory. It suggests linking the focal concerns perspective explicitly to findings from prior research on predictors of reoffending, since attributions of the dangerousness of the offender (the second focal concern of sentencing) are likely to be related to indicators of reoffending. For instance, Sampson and Laub's (1993) age-graded theory of informal social control argues that strong ties to work, school and family prevent people from reoffending (see also e.g. Haynie, Weiss, & Piquero, 2008; Horney, Osgood, & Marshall, 1995), and Warr (1998) and others suggest that association with delinquent peers constitutes an important criminogenic factor (see also Akers, 2009; Sampson & Laub, 1993; Sutherland, 1947). Additional research shows that the risk of reoffending is increased by other personal circumstances such as homelessness (Lee, Tyler, & Wright, 2010), socioeconomic status (Farrington, 2007), family disruptions (Sampson, 1987), low educational attainment (Makarios, Steiner, & Travis, 2010), and unemployment (Haynie et al., 2008; Van der Geest, Bijleveld, & Blokland, 2011). Addressing this 'missing link' in sentencing theory might provide valuable pointers for the construction of research models and hypotheses in sentencing research, since the judges' attributions, stereotypical images and patterned responses are likely to be driven by the same aspects that are proven to be risk factors in offending literature. The scope of the current study is thus innovative with regard to

both the research questions, the uniquely detailed data, the research methods and the theoretical implications.

1.7 OUTLINE OF THIS BOOK

Chapter 2 focuses on the first main research question: *to what extent are the effects of demographic offender characteristics on sentencing outcomes mediated by his risk-related personal circumstances?* Prior research suggests that offender's sex, age, and race are important sentencing determinants, though some studies stress that these effects are conditional or indirect (e.g. Doerner & Demuth, 2010; Spohn & Holleran, 2000; Steffensmeier & Demuth, 2006). With the focal concerns perspective (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998) as the main theoretical framework in sentencing research, demographic offender characteristics are generally assumed to affect sentencing outcomes, because judges either consciously or unconsciously use them to assess the blameworthiness and dangerousness of the offender. Judges only have limited time and information at their disposal, so they are likely to rely on patterned responses – decision-making shortcuts – that invoke past experience, stereotypes and social prejudices (Albonetti, 1991). Thus, young, foreign, and male offenders might not be sentenced more severely *because* they are young, foreign or male, but because judges relate these features to increased blameworthiness or dangerousness. Yet, the focal concerns theory does not clearly state which factors explicitly contribute to the attributions of blameworthiness and dangerousness, nor in which direction they affect these attributions. Important progress on this issue can be made by linking it to prior research findings on predictors of reoffending. This may offer valuable leads for the construction of research models and hypotheses in sentencing research, since judges' attributions, stereotypical images and patterned responses are likely to be driven by the same aspects that are proven to be risk factors in offending literature. These risk factors possibly serve as key mediators in the relationship between demographic offender characteristics and sentencing. Young, foreign, and male offenders might thus be sentenced more severely because judges associate these features with higher levels of unemployment or addictions or lengthier criminal records. The current study tries to shed new light on the origins of the role of demographic offender characteristics by examining whether disparities by sex, age, and national origin are attributable to differences in disadvantageous, risk-related personal circumstances, thus addressing the 'missing link' in sentencing research. To investigate this, I combine the RISC database of the Dutch probation agencies, containing detailed information on offender charac-

teristics and his risk-related social circumstances, with OM-data, containing information on prosecution and sentencing (N=21,113).⁵

In Chapter 3 the second main research question is addressed: *to what extent does a structured risk-based pre-sentence reports enhance risk-based sentencing?* Unlike Chapter 2, here the focus is not on the effects of offender characteristics and risk-related personal circumstances of the offender as such, but on the *communication* of offender's risk of reoffending via a pre-sentence report. According to new penological accounts (Feeley & Simon, 1992, 1994), offender's risk of reoffending has become pivotal in the criminal justice system. To make society a safer place, crime is managed as efficiently as possible by identifying, classifying and controlling groups of people based on their expected danger to society. Scarce resources are used to control high-risk offenders and to divert low-risk offenders from prison. Risk assessment tools have emerged to classify people according to their dangerousness. The Dutch probation agencies use the tool RISC to assess defendant's risk of reoffending. This RISC assessment is also the basis of the pre-sentence report, which follows the structure of the RISC. So risk-based pre-sentence reports narratively describe the risks posed by the defendant in various fields. They conclude with a classification of low, medium or high risk offender, thus framing the offender as a certain risk to society. Through framing effects and confirmation bias, a risk-based pre-sentence report might enhance risk-based sentencing. To examine the effects of these reports on sentencing outcomes, the current study investigates whether high-risk defendants with a risk-based pre-sentence report are indeed more likely to be sentenced to 'controlling' types of punishment (i.e. imprisonment or special conditions with a suspended sentence) than high-risk defendants without such a report, and whether low-risk defendants with a risk-based pre-sentence report are more likely to be sentenced to 'diverting' types of punishment (e.g. community service, suspended sentences without special conditions) than low-risk defendants without such a report. I use the RISC-data from the probation agencies and OM-data (N=6,118), employing extensive matching techniques to compare sentencing outcomes of offenders with a structured risk-based pre-sentence report with those of similar offenders without such a report.

Offender's risk of reoffending is also the focus of Chapter 4, but contrary to the prior chapters, I here use a qualitative research method to answer the third main research question: *how is the risk of reoffending related to sentencing according to judges?* To answer this question, I interview 15 judges. These interviews provide valuable insight into judges' own considerations about sentencing, especially with respect to factors hard to capture with quantitative research methods, such as judge's belief that the offender will live a law-

5 OM-data are obtained from the Research and Documentation Centre (WODC) of the Dutch Ministry of Security and Justice. This Centre cannot be held responsible for the completeness, correctness and use of the data provided.

abiding life in the future. In addition, the use of interviews as a research method can reveal processes in how certain factors affect sentencing outcomes, since insight is gained into *why* judges take certain aspects into account in their sentencing decision. This research method thus supplements the quantitative approach of the previous chapters to important matters. I use the interviews to explore the effects of the risk of reoffending on sentencing by relating judges' views on the role of the risk of reoffending to theories about the justification of punishment and to sentencing goals.

The three previous chapters focus on risk-related aspects of sentencing barely studied before, thus substantially improving our knowledge on factors that relate to sentencing outcomes. Yet there are still voids in sentencing research that remain unaddressed by the previous three research questions. Several of these remaining and little-researched issues, such as the problem of omitted variables regarding prosecutorial sentencing recommendations, victim characteristics and detailed offense information, are addressed in Chapter 5. This chapter focuses on the fourth main research question: *to what extent are offense, offender, victim and case processing characteristics related to the sentencing of homicide offenders?* To answer this question, I use data from the Dutch Homicide Database (N=1,911), which combines information on homicides from newspapers, the police and other sources, with information on criminal records and the registry of the Public Prosecutor's Office (OM-data). The detailed data enables me to incorporate many features of the offense, offender, victim, and court procedures in the study.

Chapter 6 focuses on the fifth main research question: *to what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?* This chapter addresses another key limitation in prior sentencing research, because even though prior research has provided many insights in the practice of sentencing in the Netherlands, it is mostly restricted to a focus on prison sentences. This is not only true of Dutch research, foreign studies generally have the same bias. This is an important flaw, since sentences typically consist of multifarious options: not only are different sanction types imposed in different modalities (unsuspended or suspended), they are combined as well. Studies with a scope limited to unsuspended imprisonment might lead to incomplete and thereby biased findings on the sentencing determinants, for aggravating effects that factors have on the one sanction type might be counterbalanced by the mitigating effect they have on another sanction type, or vice versa. For example, with regard to the social circumstances of the offender, drug abuse might be related to less of a chance of a prison sentence, merely because there is more of a chance of being sentenced to placement in an institution for habitual offenders. To investigate the extent to which prior research findings might be distorted by the imprisonment bias, I first investigate the extent to which the effects of offender characteristics and social circumstances vary for different sanction types by comparing their effects on

the length of the unsuspended imprisonment to their effects on the length of the suspended imprisonment and of the unsuspended and suspended community service sentences. Thereafter, I compare the effects of offender characteristics and social circumstances from the model that only includes unsuspended imprisonment – as sentencing research generally does – with those from a model that includes different sanction types and their combinations. This can provide important insight into the tenability of prior research findings when sentencing research broadens its scope to a more complete and realistic picture of sentences imposed. For this research I combined the detailed personal offender information from the RISC-data with the information on sentencing outcomes in OM-data (N=22,031).

A schematic overview of the chapters' main research questions, methods and data sources is presented in Table 1.1. Chapters 2 to 6 are written in the form of papers and can be read independently. As a consequence, some chapters partially overlap, mostly in the sections describing the data.

Finally, Chapter 7 summarizes the main findings of this study, discusses its theoretical and practical implications, addresses methodological considerations, and provides suggestions for future research.

Table 1.1. Outline of this book

Chapter	Main research question	Method	Dependent variable	Data	N
2	a) To what extent are the effects of demographic offender characteristics on sentencing outcomes mediated by his risk-related personal circumstances?	Multivariate regression analyses	Unsuspected imprisonment (yes/no and length)	OM-data and RISC-data	21,113
3	b) To what extent does a structured risk-based pre-sentence report enhance risk-based sentencing?	Propensity score matching	Unsuspected imprisonment (yes/no and length), special conditions with a suspended sentence, solely suspended sentence without special conditions, community service	OM-data and RISC-data	6,118
4	c) How is the risk of reoffending related to sentencing according to judges?	Interviews	n.a.	Interviews with judges	15
5	d) To what extent are offense, offender, victim and case processing characteristics related to the sentencing of homicide offenders?	Multivariate regression analyses	Unsuspected imprisonment (yes/no and length)	Homicide Database	1,911
6	e) To what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?	Multivariate regression analyses	Imprisonment, community service, fine (all both suspended and unsuspended), placement in an institution for the mentally ill (Tbs) or for habitual offenders. (ISD)	OM-data and RISC-data	22,031

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Offender's personal circumstances and punishment

Toward a more refined model for the explanation of sentencing disparities¹

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ABSTRACT

Prior research suggests that offender sex, age, and race are often influential determinants of sentencing outcomes. According to focal concerns theory, they affect sentencing because – due to limited time and information – judges rely on stereotypical behavioral expectations when assessing offender blameworthiness and dangerousness. As such, extralegal offender characteristics may serve as proxies for more specific risk indicators. Whether more complete information on additional risk factors helps account for the effects of extralegal characteristics, however, remains an untested assumption. Therefore, this study analyzes the Dutch data on standardized pre-sentence reports to examine the influence of personal circumstances of the offender, such as employment, family, and drug use factors, on the likelihood and length of incarceration. The results suggest that personal circumstances exert inconsistent influence over sentencing outcomes and that they fail to significantly mitigate the direct effects of sex and age, but do mitigate the effects of national origin.

2.1 INTRODUCTION

The study of judicial sentencing outcomes is a vast criminological research enterprise. Prior research indicates that offender sex, age, and race are often significant sentencing determinants, though many studies stress that these effects are conditional or indirect (Doerner & Demuth, 2010; Spohn & Holleran, 2000; Spohn, Welch, & Gruhl, 1985; Steffensmeier & Demuth, 2006; Steffensmeier, Ulmer, & Kramer, 1998). Contemporary research suggests that racial disparities in sentencing reflect the fact that minority defendants tend to have

¹ A slightly different version of this chapter has been published in *Justice Quarterly* (2014, DOI:10.1080/07418825.2014.902091).

lengthier prior criminal records, higher chances of pre-trial detention, detrimental employment status, and generally more disadvantageous social positions in society (Kleck, 1981; Reitler, Sullivan, & Frank, 2013; Spohn, 2013; Zatz, 1987). As such, judicial sentencing decisions are likely to reflect the consideration of these and related factors that are tied to assessments of threat or future risk of offending (Albonetti, 1991). Similar arguments apply to sex and age-enhanced sentencing severity for young, male defendants may reflect differential distributions of negative life circumstances that are tied to judicial assessments of dangerousness, culpability, and higher risks of recidivism. Demographic offender characteristics such as sex, age, and race, then, may affect judicial decision-making in part because they are associated with risk-related personal circumstances that are unequally distributed among the population of offenders and are typically absent from empirical models of the sentencing process.

The idea that offender characteristics affect judicial decision-making because they are proxy indicators of culpability and risk has been adopted widely in sentencing research; however, it remains an assumption that has gone largely untested in prior research (Bridges & Steen, 1998). Moreover, extant sentencing research has yet to incorporate insights from the substantial research literature on risk assessment and recidivism (Casey, Warren, & Elek, 2011). This is somewhat surprising given that many of the same factors theorized to affect criminal behavior are also tied to judicial assessments of blameworthiness and future risk of reoffending. Important progress on this issue can therefore be made by identifying salient predictors of recidivism and incorporating them into existing models of judicial sentencing outcomes. Key among these predictors are indicators of the local life circumstances of offenders, such as their socioeconomic conditions, family and peer relationships, drug and alcohol use, and psychological factors, among others (e.g. Farrington, 2007; Horney, Osgood, & Haen Marshall, 1995; McNulty & Bellair, 2003). Importantly, offender personal circumstances may also serve as key mediators in the relationship between demographic characteristics and sentencing.

Building on these insights, the current study attempts to shed new light on the origins of demographic differences in sentencing outcomes by investigating the unique contribution of more detailed information about personal circumstances of the offender (e.g. family situation, substance abuse, housing, friendship networks, etc.). As Wellford (2007) recently opined, one of the most important limitations of modern sentencing research is that it relies on estimates of extralegal disparity derived from 'poorly specified models' (p. 399) that fail to include important background characteristics of the offender. This study addresses that concern by examining whether or not observed disparities by sex, age, and national origin are partially or fully attributable to unaccounted-for differences in disadvantageous, risk-related personal circumstances relevant to judicial decision-making. It utilizes a unique level of detailed offender information from standardized pre-sentence reports written

by Dutch probation officers, which are provided to Dutch judges at sentencing. The sentencing system in the Netherlands provides a highly relevant context for such an investigation, because the Dutch legal framework offers relatively broad discretionary powers to the judge at sentencing. Moreover, examining sentencing decisions outside the typical US context also offers rare and valuable insights into the treatment of different social groups by the penal system in other legal contexts (Johnson, Van Wingerden, & Nieuwbeerta, 2010). As such, the current study addresses 'another key gap in the literature', which is that 'almost all of the research on sentencing is limited to the contemporary North American – particularly the US – context' (Ulmer, 2012, p. 31).

2.2 UNDERSTANDING SENTENCING IN THE NETHERLANDS: JUDGES' DISCRETIONARY POWERS

In contrast to the criminal justice system in the United States, there are no juries or lay-assessors in the Netherlands; professional judges decide both the guilt and punishment of the suspect. Less serious cases are adjudicated by a single magistrate, who pronounces a verdict immediately. More serious cases are heard by a panel of three judges, who, within two weeks of trial, are required to come to a consensus regarding both the guilt of the offender and the punishment. An important feature of the Dutch criminal justice system is the broad discretionary powers of the judge when determining the sentence. In the Netherlands, this is highly valued to ensure that the penalty imposed fits the severity of the crime, the risk and needs of the offender, and his or her unique personal circumstances. Judges' sentencing decisions are only constrained by the Dutch Penal Code, which sets a uniform minimum penalty (e.g. imprisonment should last at least one day) and crime-specific maximum penalties; for instance, four years for ordinary theft and twelve years for violent theft. The discretionary power of the judge is further broadened by the different sanction types the judge can choose from, which can be independently or jointly imposed. In addition to imprisonment, judges can impose community service and/or a fine. Furthermore, under certain circumstances, additional measures can be imposed, such as placement under a hospital order or the deprivation of the proceeds of crime. Finally, for suspended punishments, various special conditions can be specified, which have to be met by the offender during the operational period of the suspended sentence, such as alcohol treatment or aggression regulation therapy. The Dutch legal framework provides for a broad range of punishments that allows the personal circumstances of the offender to be taken into account at sentencing and provides a unique opportunity to investigate the role of extralegal offender characteristics in judicial decision-making.

2.3 THEORETICAL FRAMEWORK AND PRIOR RESEARCH

2.3.1 A new direction for focal concerns theory

The idea that offender characteristics affect sentencing outcomes because they are proxy indicators of the future risk of recidivism is a core element of contemporary theoretical perspectives on criminal sentencing. Rooted in organizational perspectives on bounded rationality and attribution theory, modern perspectives on sentencing argue that judicial decision-making is limited by time and information constraints. To be fully rational, a judge would need complete information about the offender and about future behavioral outcomes, but in practice this is never the case. Therefore, as Albonetti (1991) argued, in the absence of sufficient time or information, judges are likely to rely on patterned responses that invoke past experience, stereotypes, and social prejudices. She argues that 'from an uncertainty avoidance perspective, case information salient to reducing recidivism will affect judicial discretion' (Albonetti, 1991, p. 249).

Similarly, the focal concerns perspective posits that judicial decision-making is guided by three focal concerns: 1) the blameworthiness or culpability of the offender; 2) the dangerousness of the offender and the protection of the community; and 3) individual and organizational practical implications of sentencing decisions (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1998). The first two focal concerns reflect the two main principles of sentencing: retributivism and utilitarianism. Blameworthiness and culpability reflect the retributivist approach that the punishment should fit the crime (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1998). Dangerousness and community protection reflect the utilitarian sentencing goal of special prevention and incapacitation of the offender. In order to protect society by reducing the likelihood of reoffending, judges attempt to assess and predict the offender's dangerousness and risk of recidivism. The last focal concern bears upon the fact that judges consider practical constraints and consequences, such as the costs to be borne by the correctional system, disruption of ties to family members, or the court's standing in the public's eye, among others (Johnson et al., 2010; Steffensmeier & Demuth, 2000).

When assessing these three focal concerns, though, judges seldom have complete information about the case or the offender to make fully informed decisions. In order to deal with this uncertainty, judges develop a decision-making schema that assist with the determination of an offenders' blameworthiness, dangerousness, likelihood of recidivism, ability to do time, and other practical considerations (Steffensmeier & Demuth, 2000). This decision-making schema draws upon past experiences, normative courtroom mores, and societal stereotypes to formulate attributions of offender risk (Johnson et al., 2010). Importantly, the contents of these attributions are likely to be related to the predictors of reoffending; that is, the same factors known

to affect recidivism are likely to be taken into account by judges at sentencing. For instance, Sampson and Laub's (1993) age-graded theory of informal social control argues that strong ties to work, school, and family prevents people from offending or reoffending (see also e.g. Haynie, Weiss, & Piquero, 2008; Horney et al., 1995), and Warr (2006), and others suggest that association with delinquent peers constitutes an important criminogenic factor (see also Akers, 2009; Sutherland, 1947; Sampson & Laub, 1993). Additional research shows that the risk of reoffending is increased by other personal circumstances, such as homelessness (Lee, Tyler, & Wright, 2010), socioeconomic status (Farrington, 2007), family disruptions (Sampson, 1987), low educational attainment (Makarinos, Steiner, & Travis, 2010), and unemployment (Haynie et al., 2008; Van der Geest, Bijleveld, & Blokland, 2011). Indeed, judges may rely heavily on these types of conventional social bonds in their assessments of offender blameworthiness or risk, which may translate into important differences in sentencing. Other deviations from conventional lifestyles may also be important indicators of future risk that affect sentencing. For example, substance abuse has been identified as an important determinant of criminal behavior (e.g. Kretschmar & Flannery, 2007; McNulty & Bellair, 2003), as have psychological characteristics (Farrington, 2007; Gottfredson & Hirschi, 1990). Although focal concerns and other contemporary sentencing perspectives argue that judicial attributions of offender risk affect sentencing, empirical research seldom examines detailed information on offender personal circumstances associated with risk of reoffending. Importantly, detailed information on the local life circumstances of offenders may at least partially account for observed age, gender, and race disparities in punishment.

2.3.2 Demographic differences in sentencing and their origins

Stereotypical behavioral expectations can translate into patterns of punishment that reflect categorical differences in assessments of culpability and risk across gender, race, and age designations (Steffensmeier et al., 1998). Empirical studies of disparity vary in the quality of their research design, operationalization of variables, and the specific factors that are examined and controlled, making it somewhat difficult to summarize this expansive literature. Findings for gender, though, have proven to be relatively consistent (Daly & Bordt, 1995). When differences emerge, they overwhelmingly suggest that women tend to be punished more leniently than men (e.g. Curran, 1983; Daly & Bordt, 1995; Koons-Witt, 2002), even when interaction effects with other variables are taken into account (Curry, 2010; Doerner & Demuth, 2010; Freiburger, 2011; Spohn et al., 1985).

Research examining offender's race and ethnicity suggests they may also affect sentencing outcomes, with more severe punishment meted out to minority defendants (Mitchell, 2005). However, many studies point out that the

relationship between race and sentencing is subtle and at times inconsistent, with racial status indirectly or interactively affecting sentencing outcomes (Spohn, 2000). For example, a growing literature documents harsher punishments for young, minority, male defendants in criminal court (e.g. Spohn & Holleran, 2000; Steffensmeier et al., 1998). Although findings of prior research on the role of race or ethnicity remain mixed, Spohn (2000, p. 458) concluded in her review of sentencing disparity that 'the findings of these studies suggest that race and ethnicity do play an important role in contemporary sentencing decisions'.

Finally, though most studies include controls for the age of the offender, relatively few studies explicitly focus on age effects in sentencing. Existing work tends to suggest that youthful offenders are punished more harshly than older offenders (Doerner & Demuth, 2010; Spohn & Holleran, 2000; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier et al., 1998). However, some evidence exists to suggest that this relationship is curvilinear, such that very young offenders are treated more leniently, offenders between 20 and 30 are punished more harshly, and as offenders get older than 30 sentence severity decreases (Steffensmeier et al., 1995).

Limited findings from Dutch sentencing research show similarities with research from the United States. Offense characteristics and prior convictions of the offender are major sentencing determinants (e.g. Jongman & Schilt, 1976; Kannegieter, 1994). Furthermore, women tend to be treated more leniently than men (Boone & Korf, 2010; Johnson et al., 2010) and foreign offenders tend to be punished more severely than Dutch offenders (Johnson et al., 2010; Van der Werff & Van der Zee-Nefkens, 1978).

Different theoretical explanations are available for why offender demographic characteristics are related to sentencing. Early research on race and punishment suggested sentencing disparities reflected discrimination on the part of judges (Zatz, 1987). Subsequent work challenged that interpretation, arguing that observed differences were due to the omission of legally relevant sentencing factors, such as criminal history scores, in sentencing models (Kleck, 1981). Although contemporary sentencing research now routinely includes quality measures of legally relevant factors, more detailed information on other relevant sentencing criteria, such as individual offender circumstances, are seldom examined in detail (Wellford, 2007). Thus, one relatively unexplored explanation for extant disparities in sentencing is that they may reflect unaccounted-for differences in offender local life circumstances.²

The direct effects of offender's personal circumstances on sentencing outcomes have been only rarely studied, and when they are they tend to be

2 An alternative explanation is that different groups have similar risk-related circumstances, but that the judge values these risk factors differently for the distinct social groups. However, in a later section of this paper we demonstrate that this does not appear to be the case in our data.

limited to relatively few characteristics, such as coarse measures of educational, employment, or family status. In these cases, they are typically used as control variables and their results and theoretical implications are seldom fully considered. Therefore, many of the findings for these measures remain inconsistent and contradictory.

Offender's educational status, for instance, has yielded mixed results in prior sentencing research. Koons-Witt (2002) found that college education did not affect the likelihood of imprisonment, while Wooldredge (2010) and Freiburger (2011) found that offenders with at least high school education are less likely to be incarcerated than those without high school education. In federal court, Steffensmeier and Demuth (2000) found that defendants with more years of education had less chance to be incarcerated in drug cases, and their length of imprisonment was shorter for both drug and non-drug offenses. Moreover, for non-drug offenses, black and Latino defendants were less often incarcerated when their educational status was higher, but this was not the case for white defendants.

The employment status of the offender also has yielded decidedly mixed results in prior work. In some studies, the occupational status of the offender has no effect on sentencing outcomes (e.g. Curran, 1983; Myers, 1988), while other studies show that unemployed offenders are more likely to be incarcerated (Chiricos & Bales, 1991; Wooldredge, 2010). Some work also suggests that the effects of employment vary according to demographic offender characteristics (Freiburger, 2011; Spohn & Holleran, 2000), geographical context (Nobiling, Spohn, & DeLone, 1998), sentencing guideline models (Koons-Witt, 2002), and judges (Anderson & Spohn, 2010). Other measures of socioeconomic status have only rarely been investigated. For instance, Chiricos and Bales (1991) reported a negative relationship between their summary measure of SES and incarceration, and Wooldredge (2010) found that offenders relying on financial support from the government, family, or friends had a higher chance of being sentenced to prison.

Even less research examines family effects in sentencing. Some work find that marital status has no effect on incarceration (Freiburger, 2011; Koons-Witt, 2002) or sentence length (Myers, 1988), but other research show that offenders with dependents are treated more leniently (Daly, 1987). Koons-Witt (2002) found evidence for unique leniency meted out to women with dependent children, both before and after the passage of sentencing guidelines.

Other social circumstances of the offender are even more rarely studied, such as the housing circumstances of the offender. Rare exceptions are the studies of McNiel, Binder, and Robinson (2005), who found that homeless people were held in jail longer than others, and that of Wooldredge (2010), who found that the number of months at current residence is negatively related to the chance of imprisonment. Effects of drug and alcohol abuse or dependency on sentencing outcomes are also seldom studied. A rare exception is the work by Cauffman et al. (2007) who found that alcohol abuse and dependency

had no effects on the likelihood of secure placement for juvenile offenders, though drug abuse and drug dependency did increase the likelihood of placement. This study was also one of the only to examine the effects of psychological offender characteristics on sentencing outcomes. Results showed no significant effects of self-reported psychological disorders on the likelihood of secure confinement. Effects were also absent for responsibility, resistance to peers, future orientation, consideration of others, and temperance. However, McNeil et al. (2005) have shown that offenders with co-occurring severe mental disorders spent more time in jail than offenders without such disorders.

In the Netherlands, some of the rare Dutch sentencing studies suggest that unemployed offenders are more likely to be sentenced to imprisonment (Kannegieter, 1994). Moreover, results from one early study suggested that marital status, living accommodation, and alcohol use had no significant effect on Dutch sentencing outcomes (Jongman & Schilt, 1976), though this research is now quite dated.

Overall, few studies examine detailed correlates of offender's personal circumstances in sentencing research. Moreover, much of the available work is now several decades old (e.g. Chiricos & Bales, 1991; Jongman & Schilt, 1976). Results from this limited work is often inconclusive and seldom are the effects of offender personal circumstances considered in conjunction with their association with offender demographics such as sex, age, and origin. This is important given that there are persuasive reasons to expect that the personal circumstances of the offender may at least partially mediate the direct effects of offender sex, age, and ethnic origin on criminal punishment.

2.3.3 Theoretical expectations

Drawing on these insights, our theoretical expectations are threefold. We expect to find the same effects for offender characteristics in our study as in prior research from the United States when we examine the 'standard' sentencing model that includes variables for offense, prior record, and basic case processing and offender demographic characteristics. Specifically, we expect the following:

Hypothesis 1:

Male, young, and foreign offenders will be punished more severely than female, older, and Dutch offenders.

Second, we expect that detailed information on the personal circumstances of the offender, which is usually omitted in sentencing research, will affect judicial decision-making in such a way that information indicating increased

risk will contribute to more severe sentencing outcomes. Our second expectation is therefore:

Hypothesis 2:

Offenders whose personal circumstances indicate increased perceptions of risk and danger – signaled by problems with housing, education, employment, finances, relationships with family and friends, misuse of drugs or alcohol, emotional well-being and thinking patterns – will be punished more severely than other offenders.

Our final hypothesis concerns the change in effects of offender characteristics when personal circumstances are added to the statistical model. As suggested above, it is expected that the direct effects of offender sex, age, and national origin will be mediated by detailed information on offenders' risk and dangerousness. Because male, young and foreign offenders are likely to be associated with more socially disadvantaged personal circumstances, inclusion of these additional sentencing factors should reduce the main effects of offender demographics on sentencing.

Hypothesis 3:

The effects of demographic offender characteristics will be decreased by the inclusion of offenders' personal circumstances in the statistical model.

2.4 DATA AND METHOD

2.4.1 Dataset

This study is based on the combination of two data-sets: the registry of the Public Prosecutor's Office (OM data) and the database of the Probation Service on offender characteristics. The registry of the Public Prosecutor's Office contains information on the prosecution and conviction of all offenders. The database of the Probation Service contains information on the personal circumstances of the offender recorded in pre-sentence reports. Since 2004, the Dutch Probation Service has been using Recidivism Assessment Scales (RISC) to assess the suspect's risk of recidivism and to frame the pre-sentence report. Such a report is requested by the Prosecutor. There are no clear rules about which cases require a pre-sentence report, but, in general, a report is requested when the offender is kept in pre-trial detention, or when he is expected to be punished to a custodial sentence or to a punishment in which the Probation Agency is involved, such as Community Service or suspended sentences with special conditions. Because of practical reasons, no RISC is completed when the court session is scheduled to be held within 10 weeks and no RISC is requested when the offender already had his risk assessed within the last year. Finally, pre-sentence reports are not requested for traffic offenses and other

minor offenses. Relatively minor offenses are therefore underrepresented in these data.

When assessing the risk of reoffending by means of the RISC, the Probation Officer has information on the offense from the police case file, as well as on the criminal history of the offender. In addition, one or more interviews with the offender are held, and often the Probation Officer talks to the offender's family and/or employer as well. The Probation Officer assessing the RISC maps out the delinquent's personal circumstances, categorized into 12 sections (the Scales): 1) Offending history; 2) Present offense and pattern of offenses; 3) Residential accommodation; 4) Education, work, and training; 5) Financial management and income; 6) Relationships with partner, family, and relatives; 7) Relationships with friends and acquaintances; 8) Drug misuse; 9) Alcohol misuse; 10) Emotional well-being; 11) Cognition and behavior; and 12) Attitudes. Each scale contains several items to assess to what extent each domain is a point of risk for future recidivism. Each of these items is scored by the Probation Officer on a three-point scale (0, 1, or 2 points).

The pre-sentence report for the judge is based on this risk assessment. It does not contain the detailed scores on the separate items and scales of the RISC, but the criminogenic issues captured by the different domains are described in detail in the report; so, judges have all of the relevant information on the offender's social circumstances at their disposal. For this research, the data from the RISC database for the years 2005–2007 are matched to the registry of the Public Prosecutor's Office. This generates a data-set of 21,113 suspects whose risks were assessed for the pre-sentence report. This merged data-set has a unique level of detail on offender characteristics and personal circumstances.

2.4.2 Dependent variables

Because personal circumstances of the offender may differentially affect the decision to incarcerate and the decision concerning sentence length, the effects of offender's personal circumstances are examined for both types of sentencing decisions. First, the decision to impose an unsuspended imprisonment sentence is examined.³ Then, the decision regarding length of imprisonment is analyzed. Incarceration is coded dichotomously, with 1 indicating a prison sentence and 0 indicating non-prison alternatives, so that offenders receiving an unsuspended prison sentence ($n=9,854$) are compared to suspects receiving less serious

3 An unsuspended imprisonment sentence means that the offender certainly will spend time in prison, whereas a suspended imprisonment sentence only results in prison if the offender breaches the conditions of his release.

punishments (n=11,259).⁴ Sentence length captures the unsuspended imprisonment term and is coded as a continuous measure in days and can range from as little as one day up to 30 years.⁵ Because the imposed sentence lengths are not normally distributed, they are logarithmically transformed to correct for positive skewness, which normalizes the distribution of the dependent variable.

2.4.3 Independent variables

The severity of the offense is captured by several measures. First, the *seriousness of the major offense* is derived from the maximum length of imprisonment possible in the Penal Code. If a suspect is convicted for multiple offenses, the offense with the highest maximum punishment is used. Factors diminishing the maximum punishment, for example in the case of an attempt or an accessory to the crime, are taken into account, as well as factors increasing the maximum punishment, such as certain crimes committed by public servants or with a terroristic aim. To account for the *type of the major offense* 15 dummy variables are included: assault (reference category), intimidation, violent theft, vices, homicide, other violent crimes, forgery, theft, aggravated theft, other property crimes, destruction of property, violation of public order, drugs, traffic, and other crimes. Finally, a separate variable capturing the *number of offenses* is also included in the model, which is capped at three to prevent the influence of outliers

Case processing characteristics are also taken into account. The first is the *length of preventive custody* (in months), ranging from 0 to 29 months. Next, the *court district* processing the case is included in the models using a series of 19 dummy variables, with Utrecht as the reference category. These fixed effects remove any between-court variation in punitive dispositions.

In addition the *criminal history* of the offender is included in the models. Prior research shows that offender's criminal record is one of the most important determinants of sentencing, with prior convictions increasing both the likelihood of being incarcerated and the length of the imprisonment (Welch, Gruhl, & Spohn, 1984). In the current study, the criminal history is derived from the information in the RISC-database and consists of both the number of prior convictions as a juvenile and as an adult. For both types of prior convictions four dummy variables are computed: 1) no prior convictions; 2) 1–2 prior convictions; 3) 3 or more prior convictions; and 4) prior convictions unknown. Offenders with no prior convictions are used as the reference group.

4 These 11,259 offenders were sentenced to a suspended imprisonment sentence only (n=6,028), to a community service (n=3,892), to a fine (n=1,070), were declared guilty while no punishment is imposed (n=230), or were sentenced to another type of punishment (n=39).

5 Three life sentences were recoded to equal an imprisonment term of 30 years.

Several offender characteristics are also examined. The first is the offender's *sex* (0=male, 1=female). The second is *age* at the time of the offense. To allow for a non-linear relationship (Steffensmeier et al., 1995) dummies were created for five different age categories (18-20, 21-30, 31-40, 41-50, and 51 and over), with the age group 21-30 used as the reference category. The third offender characteristic is *national origin*, which is based on the offender's country of birth. In contrast to research from the United States, we focus on nationality rather than race. The first reason is that it is forbidden for any Dutch governmental authority to register citizens' race or ethnicity, and so these data are not recorded anywhere. Second, the Netherlands is relatively homogenous with regard to race and ethnicity, but it is characterized by diversity of national origin. Thus, the country of birth better reflects cultural sensitivities in Dutch society regarding minority status, particularly with certain groups such as Moroccans and Turks who are overrepresented in Dutch crime statistics (Johnson et al., 2010). And third, national origin has been shown to be a salient predictor of criminal recidivism in prior work conducted in the Netherlands (Wartna, Tollenaar, & Bogaerts, 2009). To capture national origin, offenders are grouped by their country of birth into the following categories: the Netherlands (reference category); another Western country; a non-Western country; and unknown country of birth.

In this study, *offender's personal circumstances* are captured with measures collected in the Probation Office's RISC assessment. For each item the probation officer scores 0, 1, or 2 points, with 0 indicating no risk and 2 indicating a high risk of reoffending. Because of the large number of detailed items, we constructed ten scales that capture the different unique dimensions of offender personal circumstances and community risk. Each scale reflects the mean score of the offender on the different items of a RISC scale.⁶

Accommodation of the offender is the first scale, which consists of four items: homelessness in the past; no permanent accommodation; no suitable or durable accommodation; and a living environment that contributes to the criminal behavior (Cronbach's alpha .81). Because information on this scale is often incomplete (for 13% of the offenders the housing circumstances are unknown), these cases were scored 0 and a dummy variable was included to indicate whether the housing conditions of the offender are unknown. The dummy estimates the extent to which offenders with unknown accommodations are sentenced differently compared to offenders with no risk scores on accommodation.

6 A small number of cases (5% of the total) were excluded because offenders lacked information for a majority of items. For the remaining cases included in the scales, only 1-3% had any missing scores on items of a scale, with the notable exception being for the drug misuse scale, which had missing items in 12% of cases. Most of these involved missing information for the item regarding the *motivation to kick the habit of drugs use*, so in these cases the remaining four items of the scale were used

Education and employment is captured with the following seven items: no education or not graduated; no enjoyment of school and played truant; learning difficulties; problematic employment history; unemployed or unable to work; a lack of working skills; and a poor attitude towards education and employment (Cronbach's alpha .89). A separate scale captures risks involving *financial management and income*. It consists of the following four items: depends on others for income; financial problems; debts; and financial problems because of an addiction (Cronbach's alpha .70).

Criminogenic relationships are captured with two different scales. The *relationships with partner, family, and relatives* scale consists of five items: problematic youth; no close relationships in the past; problematic family ties; a family member with a criminal record; and domestic violence (Cronbach's alpha .68).⁷

The *relationships with friends* scale consists of four items: delinquent friends; manipulated and used by friends; manipulates and uses friends; and thrill seeker⁸ (Cronbach's alpha .76).

Drug and alcohol abuse are captured with two additional measures. *Drug misuse* is comprised of six items: usage of hard drugs or problematic use of soft drugs; use of drugs more than once a week; day revolves around drugs; crime is related to drug usage; drug usage causes danger to delinquent or others; and lack of motivation to kick the habit of drugs usage (Cronbach's alpha .88). Similarly, *alcohol misuse* consists of five items: alcohol abuse in the past; current alcohol abuse; crime is related to alcohol usage; alcohol abuse causes danger to delinquent or others; and lack of motivation to kick the habit of alcohol abuse (Cronbach's alpha .89).

Separate scales are included for emotional and cognitive risk factors. Specifically, *emotional well-being* is comprised of five items: coping problems; psychological problems; damaged self-image; self-destructive behavior; and special circumstances (e.g. psychiatric treatment) (Cronbach's alpha .79). *Thinking and behavior* is a scale consisting of the following eight items: lack of social skills; impulsive; dominant; lack of self-control; lack of awareness of problems; lack of skills to handle problems; lack of goals for the future; and not open to new ideas (Cronbach's alpha .87). Finally, the last area of the RISC is the offender's *attitude*. The five items of this scale are: pro-criminal attitudes; lack of willingness to cooperate at parole or at supervision; thinks he is not bound by the law; lack of insight and recognition of criminal behavior; and lack of willingness to change (Cronbach's alpha .85).

7 One item (having family members with a criminal record) was omitted because it was not highly related to the other items. Removing this item increased the scale reliability from .63 to .68.

8 *Thrill seeker* is a feature of the domain *Relationships with friends*, because RISC assumes that sensation seekers frequently change friends; they do not pursue long-lasting relationships.

2.4.4 Methods

To model the decision to incarcerate, logistic regression is used for the 21,113 offenders eligible for an imprisonment sentence. The sentence length decision is modeled using OLS regression and includes only those offenders who are sentenced to an imprisonment sentence ($n=9,854$). Since we use the logged sentence length, the effect of the unstandardized regression coefficient can be interpreted as the percent change in sentence length resulting from each additional unit change in the independent variable (see Curry, 2010). To account for potential sample selection effects in the sentence length model, estimates were examined with and without Heckman's correction for selection bias (Bushway, Johnson, & Slocum, 2007; Heckman, 1979). However, inclusion of the correction term resulted in high levels of collinearity in the sentence length model, as evidenced by a condition index number of 33, which exceeded recommended thresholds (Bushway et al., 2007). We therefore report estimates from the uncorrected model, though we note important differences in subsequent footnotes where relevant.

To gain insight into the effects of the personal circumstances of the offender in sentencing, three analytical steps are taken. First, multivariate regression analyses are performed to investigate the role of offender demographics without additional information on offender's personal circumstances. Results from this model (Model 1) include typical offense, case processing, and demographic characteristics and can be viewed of as the 'standard' model, common in most prior sentencing research. Second, offenders' personal circumstances are added to the model. This model (Model 2) includes the same variables as Model 1, but also includes measures of offenders' personal circumstances. Model 2 provides for an assessment of the importance of the role of different domains of offender personal circumstances in sentencing. Third, we examine the extent to which detailed offender personal circumstances help to account for any observed disparities in sentencing associated with offender demographic characteristics. This is accomplished by assessing whether the effects of demographic characteristics (i.e. gender, age, and national origin) are diminished when more specific risk-related personal circumstances of the offender are included. To accomplish this, the unstandardized coefficients from logistic regression cannot simply be compared from Model 1 to Model 2, because unobserved heterogeneity is likely to vary across the two models (Mood, 2010). To account for this, y -standardizations are employed in which the coefficients from the unstandardized estimates are divided by the sum of the standard deviation of the predicted logits and the assumed standard deviation of the error term (which is always 1.81) (Mood, 2010). These standardized effects are then compared across Models 1 and 2 to investigate whether or not personal circumstances of the offender mediate the relationship between demographic offender characteristics and sentencing outcomes.

2.5 RESULTS

2.5.1 Descriptive analyses

Table 2.1 provides descriptive statistics for the 21,113 offenders in the data-set. About 47% of them were sentenced to an unsuspended imprisonment sentence. The average sentence length of the 9,854 offenders sentenced to prison was 333 days (11 months), but the distribution for sentence length is positively skewed – for half of them the length of the imprisonment sentence is 5 months or less.

Assault is the most severe offense type for 27% of offenders. Other crimes are less prominent in this sample; for instance, approximately 19% of offenders are sentenced for a property crime (forgery, theft, aggravated theft, or other property crime), 5% are homicide offenders, and 9% are sentenced for a drug-related crime. On average, they are convicted for 1.7 offenses and have spent 1.9 months in pre-trial detention. Regarding criminal history, 15% has one or two prior convictions as a minor and 9% has three or more. As an adult, 23% has one or two prior convictions and 38% has three or more.

With regard to the demographic offender characteristics, 10% of the offenders are female. The average age is 33 years ($SD=12$) and the modal age category is offenders aged 21-30 years. About 73% of the offenders are born in the Netherlands, with 7% born in another Western country, and 18% born in non-Western countries.

Table 2.1 also includes the descriptive statistics for the personal circumstances of the offender. *Thinking and behavior* is the life domain for which most problems are observed by probation officers, (.83 on a scale from 0 to 2), followed by *relationships with family, partners, and relatives* (.73). By contrast, the least problems are experienced with *accommodation* (.26).⁹ Drug misuse also has a relatively low average score (.38). For the other personal circumstances, the average risk scores vary between .43 and .66.

9 The mean score for accommodation is reduced because cases with unknown accommodations were included as 0. However, when the mean is only calculated for the offenders whose scores on the accommodation scale are known, the mean score for accommodation is still the lowest of all scales (.29).

Table 2.1. Descriptive statistics ($N=21,113$)

	Min.	Max.	Mean	SD
<i>Dependent variables</i>				
Imprisonment (unsuspended)	0	1	.47	.50
Length of imprisonment (ln) ($n=9,854$)	0	9.29	5.07	1.29
<i>Independent variables</i>				
<i>Offense characteristics</i>				
Maximum penalty	0	30	5.84	3.92
Maximum penalty unknown	0	1	.01	.10
Offense type of most serious offense				
Intimidation	0	1	.07	.25
Assault	0	1	.27	.44
Violent theft	0	1	.08	.26
Vices	0	1	.06	.24
Homicide	0	1	.05	.22
Other violent crimes	0	1	.01	.10
Forgery	0	1	.02	.13
Theft	0	1	.04	.19
Aggravated theft	0	1	.10	.30
Other property crimes	0	1	.03	.18
Destruction of property	0	1	.02	.12
Violation of public order	0	1	.07	.26
Drugs	0	1	.09	.29
Traffic	0	1	.03	.17
Other crimes	0	1	.08	.27
Number of offenses	0	3	1.72	.84
<i>Case processing characteristics</i>				
Length of preventive custody (in months)	0	27	1.86	2.65
Number of prior convictions as a minor				
0	0	1	.57	.50
1-2	0	1	.15	.36
3 or more	0	1	.09	.29
Unknown	0	1	.18	.39
Number of prior convictions as an adult				
0	0	1	.39	.49
1-2	0	1	.23	.42
3 or more	0	1	.38	.48
Unknown	0	1	.00	.05
<i>Offender characteristics</i>				
Sex				
Male	0	1	.90	.30
Female	0	1	.10	.30
Age				
Age 18-20	0	1	.16	.37
Age 21-30	0	1	.30	.46
Age 31-40	0	1	.27	.44
Age 41-50	0	1	.19	.39
Age > 50	0	1	.09	.29

(Continued)

Table 2.1. - Continued

	Min.	Max.	Mean	SD
<i>Offender characteristics - continued</i>				
Origin				
The Netherlands	0	1	.73	.45
Other Western country	0	1	.07	.26
Non-Western country	0	1	.18	.38
Origin unknown	0	1	.02	.15
<i>Offender social circumstances</i>				
Accommodation	0	2	.26	.46
Accommodation unknown	0	1	.13	.34
Education and employment	0	2	.66	.57
Financial management and income	0	2	.51	.55
Relationships with partner, family and relatives	0	2	.73	.58
Relationships with friends	0	2	.48	.50
Drug misuse	0	2	.38	.55
Alcohol misuse	0	2	.43	.59
Emotional well-being	0	2	.63	.54
Thinking and behavior	0	2	.83	.49
Attitude	0	2	.65	.53

NOTE: Case processing characteristics also included the 19 district courts, yet in the interest of space they are not presented. Complete results are available from the authors.

In order to examine whether offender personal circumstances are related to the demographic characteristics of offenders, mean values on the various risk-related domains (such as accommodation and relations with others) were compared using *t*-tests and ANOVAs. Results of these tests are shown in Table 2.2 and demonstrate that risk-related personal circumstances are indeed differentially distributed across social groups. The personal circumstances of men tend to be more criminogenic than for women, except for education/employment, family relationships, and emotional well-being.

Offenders aged 21-30 have the highest mean scores, except for family relationships, alcohol misuse, and emotional well-being, which are more problematic for older offenders. Moreover, offenders younger than 21 have the highest risk scores for relationships with friends. Finally, compared to offenders born in the Netherlands, foreign offenders have higher mean scores on all domains, except for alcohol misuse and emotional well-being. Taken as a whole, these comparisons suggest that offenders who are male, aged 21-30, and born outside the Netherlands tend to experience more problematic personal circumstances that may be tied to judicial assessments of danger and increased risks of recidivism.

Table 2.2. Comparison of mean scores on risk-related social circumstances for offender sex, age and national origin using *t*-tests and ANOVAs

	<i>n</i>	Accommodation	Education and employment Financial management and income	Relationships with partner, family and relatives	Relationships with friends	Drug misuse	Alcohol misuse	Emotional well-being	Thinking and behavior	Attitude	
Sex											
Male	19,041	.26	.65	.52	.72	.49	.39	.45	.61	.84	.66
Female	2,072	.21	.73	.49	.87	.42	.23	.25	.83	.71	.49
Sig. (<i>t</i> -test)		***	***		***	***	***	***	***	***	***
Age											
18-20	3,347	.22	.70	.42	.60	.69	.37	.30	.53	.83	.64
21-30	6,280	.28	.72	.59	.74	.56	.46	.41	.63	.85	.65
31-40	5,655	.28	.66	.57	.80	.43	.43	.48	.67	.84	.65
41-50	3,931	.26	.61	.47	.79	.35	.29	.51	.67	.81	.65
51+	1,900	.17	.52	.32	.64	.26	.11	.44	.62	.73	.61
Sig. (ANOVA)		***	***	***	***	***	***	***	***	***	**
Origin											
Netherlands	15,326	.24	.63	.49	.73	.48	.37	.46	.66	.82	.62
Western	1,523	.32	.78	.61	.79	.53	.44	.40	.53	.87	.72
Non-Western	3,758	.29	.75	.60	.74	.46	.38	.35	.56	.85	.72
Unknown	506	.25	.64	.48	.73	.39	.30	.28	.56	.77	.60
Sig. (ANOVA)		***	***	***	***	***	***	***	***	***	***

NOTE: All social circumstances have scores ranging from 0 to 2. Complete results of the tests are available upon request by the authors.

* $p < .05$ ** $p < .01$ *** $p < .001$.

2.5.2 Offender characteristics

Table 2.3 reports the findings for Model 1, which contains offense, case processing, and offender demographic characteristics that have been examined in many prior sentencing studies. As with prior work, offense and case processing characteristics exert strong effects on sentencing outcomes, though we focus our discussion primarily on the role of offender characteristics. The findings show that the odds of a prison sentence are lower for female offenders (about two-thirds) and that sentence lengths are about 25% shorter compared to male offenders. Similarly, odds for offenders younger than 21 to be sentenced to prison are not significantly different from the reference group (aged 21-30), but the length of their prison terms is on average 12% shorter than that of the reference group. Other age comparisons were not statistically significant.

Table 2.3. Model 1 - Logistic and OLS regressions for the in/out and sentence length (ln) decisions

	Prison (N=21,113)			Sentence length (n=9,854)	
	B	S.E.	Exp(B)	B	S.E.
Constant	-3.40***	.17	.03	2.84***	.05
<i>Offense characteristics</i>					
Maximum penalty	.09***	.01	1.09	.07***	.00
Offense type of most serious offense					
Intimidation	.32**	.11	1.38	.09*	.05
Violent theft	.35	.18	1.42	.62***	.04
Vices	.45***	.14	1.57	.57***	.04
Homicide	-.01	.21	.99	.57***	.04
Other violent crimes	.17	.41	1.18	.65***	.07
Forgery	.11	.21	1.12	.78***	.08
Theft	.77***	.13	2.15	-.01	.05
Aggravated theft	.32**	.11	1.38	.27***	.03
Other property crimes	.62***	.14	1.86	.42***	.05
Destruction of property	-.35	.28	.70	-.15	.13
Violation of public order	-.10	.13	.90	.17***	.04
Drugs	.38**	.13	1.46	.58***	.03
Traffic	-.01	.20	.99	1.29***	.12
Other crimes	.08	.12	1.09	.36***	.04
Number of offenses	.19***	.04	1.21	.16***	.01
<i>Case processing characteristics</i>					
Length of preventive custody (in months)	2.57***	.05	13.10	.25***	.00
Number of prior convictions as a minor					
1-2	.12	.09	1.12	.05	.02
3 or more	.51***	.11	1.67	.06*	.03
Unknown	-.12	.08	.89	.05*	.02
Number of prior convictions as an adult					
1-2	.05	.08	1.05	.04	.02
3 or more	.46***	.07	1.58	.06**	.02
Unknown	.10	.65	1.11	.03	.15
<i>Offender characteristics</i>					
Sex					
Female	-.41***	.10	.66	-.25***	.03
Age					
Age 18-20	-.13	.09	.88	-.12***	.03
Age 31-40	-.02	.08	.98	.01	.02
Age 41-50	-.15	.09	.86	.04	.03
Age > 50	-.02	.11	.98	.03	.04
Origin					
Other Western country	.27*	.12	1.31	.10***	.03
Non-Western country	.17*	.08	1.18	.04	.02
Origin unknown	.10	.19	1.11	.03	.05
(Nagelkerke) R ²	.83			.59	

NOTE: Model includes dummy variables for unknown maximum penalty and for court districts (not presented). Complete results are available from the authors.

* p < .05 ** p < .01 *** p < .001.

The national origin of the offender is also significantly related to sentencing outcomes. For *the decision to incarcerate*, offenders born abroad face higher odds of imprisonment than offenders born in the Netherlands. These odds are about 31% higher for offenders born in another Western country, and about 18% higher for offenders born in a non-Western country. With regard to *sentence length*, offenders born in another Western country also received prison terms that were 10% longer than Dutch offenders. The effect for offenders born in non-Western countries on sentence length approached but did not reach standard levels of statistical significance ($p=.051$). These findings correspond with substantial previous research conducted in diverse contexts within the United States (Crow, 2008; Spohn, 2000; Zatz, 1987). Thus, the effects of offender characteristics in sentencing appear to operate fairly consistently across international boundaries, at least with respect to the Netherlands and the United States.

2.5.3 Offender's personal circumstances

The next step in the analyses entails the inclusion of offenders' personal circumstances. We expect that offenders whose personal circumstances indicate an increased risk of reoffending will be punished more severely than other offenders. Table 2.4 reports the findings from these multivariate models. Results for offense and trial characteristics mirror those of Model 1, although for sentence length *prior youth convictions* no longer reach levels of significance, while *one or two prior convictions as an adult* now reaches levels of significance.

Before describing the findings for the demographic offender characteristics in Model 2, we first focus on the personal circumstances of the offender. Offenders whose accommodation circumstances indicate an increased risk of reoffending are more likely to be incarcerated than other offenders. Each additional one-point increase in the accommodation score results in 62% greater odds of incarceration. Offenders whose accommodation status is unknown also have a greater likelihood of incarceration than offenders who scored zero risk points on *accommodation*.

Having troublesome relationships with friends and having a criminogenic attitude also increase the chance of being sentenced to prison. For every additional one-point increase in the *relationships with friends*-scale the odds of incarceration increase by 21%. For *attitude*, the odds increase by 25%.

Emotional well-being is the only risk domain to be negatively related to imprisonment. The odds of incarceration are reduced by a factor .83 for every additional one-point increase in the emotional well-being scale. This negative relation is not surprising given that this category includes psychological problems and special circumstances that may be viewed as mitigating factors at sentencing. Other personal circumstances of the offender, such as education

and employment, drug misuse, or alcohol misuse, are not significantly related to the likelihood of incarceration.

Table 2.4. Model 2 - Logistic and OLS regressions for the in/out and sentence length (ln) decisions including offender personal circumstances

	Prison (N=21,113)			Sentence length (n=9,854)	
	B	S.E.	Exp(B)	B	S.E.
Constant	-3.52***	.18	.03	2.93***	.05
<i>Offense characteristics</i>					
Maximum penalty	.09***	.01	1.10	.07***	.00
Offense type of most serious offense					
Intimidation	.26*	.12	1.29	.08	.05
Violent theft	.26	.18	1.30	.51***	.04
Vices	.48***	.14	1.61	.53***	.04
Homicide	.03	.21	1.03	.55***	.04
Other violent crimes	.04	.42	1.04	.60***	.07
Forgery	.11	.22	1.12	.63***	.08
Theft	.62***	.14	1.85	-.11*	.05
Aggravated theft	.19	.12	1.21	.13***	.03
Other property crimes	.54***	.15	1.72	.25***	.05
Destruction of property	-.42	.28	.66	-.17	.12
Violation of public order	-.09	.13	.92	.12**	.04
Drugs	.28*	.14	1.32	.44***	.04
Traffic	.11	.21	1.12	1.29***	.12
Other crimes	.09	.12	1.10	.29***	.04
Number of offenses	.16***	.04	1.18	.16***	.01
<i>Case processing characteristics</i>					
Length of preventive custody (in months)	2.51***	.05	12.25	.24***	.00
Number of prior convictions as a minor					
1-2	.02	.09	1.02	.03	.02
3 or more	.34**	.11	1.41	.01	.03
Unknown	-.17*	.08	.85	-.02	.02
Number of prior convictions as an adult					
1-2	.01	.08	1.01	.06*	.02
3 or more	.23**	.08	1.26	.06**	.02
Unknown	.05	.65	1.06	.06	.14
<i>Offender characteristics</i>					
Sex					
Female	-.34**	.11	.71	-.21***	.03
Age					
Age 18-20	-.15	.10	.86	-.13***	.03
Age 31-40	.00	.08	1.00	.04	.02
Age 41-50	-.14	.09	.87	.08**	.03
Age > 50	.00	.11	1.00	.05	.04
Origin					
Other Western country	.19	.12	1.21	.07*	.03
Non-Western country	.11	.08	1.11	.02	.02
Origin unknown	.09	.19	1.09	.02	.05
(Nagelkerke) R ²					

(Continued)

Table 2.4. – Continued

	Prison (N=21,113)			Sentence length (n=9,854)	
	B	S.E.	Exp(B)	B	S.E.
<i>Offender social circumstances</i>					
Accommodation	.48***	.08	1.62	.02	.02
Accommodation unknown	.37*	.18	1.45	.24***	.02
Education and employment	.07	.07	1.07	.01	.02
Financial management and income	.10	.07	1.10	.11***	.02
Relationships with partner, family and relatives	-.05	.06	.96	-.05**	.02
Relationships with friends	.19*	.08	1.21	.15***	.02
Drug misuse	.06	.07	1.06	-.07***	.02
Alcohol misuse	.02	.06	1.02	-.07***	.02
Emotional well-being	-.19**	.07	.83	-.06**	.02
Thinking and behavior	.10	.10	1.11	-.08**	.03
Attitude	.22**	.08	1.25	.02	.02
(Nagelkerke) R ²	.83			.60	

NOTE: Model includes dummy variables for unknown maximum penalty and for court districts (not presented). Complete results are available from the authors.

* p < .05 ** p < .01 *** p < .001.

With regard to the length of incarceration, most of the offender's personal circumstances show significant relations, but not always in the expected direction. Offenders having financial problems receive longer prison terms than others. Every additional point on the scale increases the sentence length by 11%. For offenders whose relationships with friends are viewed as more risky, every point increase results in 15% longer prison terms. Conversely, offenders who have troublesome relationships with their partner or family receive *shorter* prison terms, as do offenders having drugs or alcohol problems, or problems with respect to emotional well-being, and thinking and behavior. For these personal circumstances, sentence length is reduced by 5-8% for each additional point on the scales. Accommodation, education and employment, and attitude are not significantly related to the length of the imprisonment sentence.

These results indicate that certain personal circumstances of the offenders significantly affect criminal sentencing outcomes, though not all are significant and at times their influence is inconsistent across outcomes.

2.5.4 Change in effects of offender characteristics when personal circumstances are included

Finally, we hypothesized that the effects of offender characteristics on sentencing outcomes will diminish once offender personal circumstances are added to the model. In Table 2.5, the *y*-standardized effects of the offender character-

istics of Model 1, which contains the offense, trial, and offender characteristics, are listed next to the γ -standardized effects of Model 2, which also includes the personal circumstances of the offender. The magnitude of the effects of the offender characteristics for incarceration and sentence length differ from Model 1 to Model 2, but only slightly. The effects of offender sex and origin appear to be slightly weakened when personal circumstances are added to the statistical model. Moreover, the effects of both Western and non-Western origin on the decision to incarcerate are reduced to statistical insignificance. However, the effects of offender age are slightly increased, and for the sentence length decision the effect of offenders aged 41-50 becomes statistically significant in the full model.

Overall, Table 2.5 supports the expectation that the inclusion of offender personal circumstances weakens the effects of offender demographic characteristics in sentencing (reducing the effects of offender origin on the likelihood of imprisonment to statistical insignificance), with the notable exception of offender age. Yet, observed changes are of relatively small magnitude and sentencing disparity remains, particularly for female and young offenders. This suggests that the effects of demographic offender characteristics are not simply the product of commonly omitted factors that capture the personal circumstances of the offender, though, as we discuss below, our measures of relevant personal circumstances is not exhaustive.

Table 2.5. Standardized effects of offender demographic characteristics comparing Model 1 and Model 2

	Prison ($N=21,113$)		Sentence length ($n=9,854$)	
	Model 1	Model 2	Model 1	Model 2
	B	B	B	B
<i>Offender characteristics</i>				
Sex				
Female (Male = ref.)	-.05***	-.04**	-.25***	-.21***
Age (Age 21-30 = ref.)				
Age 12-20	-.01	-.02	-.12***	-.13***
Age 31-40	.00	.00	.01	.04
Age 41-50	-.02	-.02	.04	.08**
Age > 50	.00	.00	.03	.05
Origin (The Netherlands = ref.)				
Western	.03*	.02	.10***	.07*
Non-Western	.02*	.01	.04	.02
Origin unknown	.01	.01	.03	.02

NOTE: This table only shows the results for the offender characteristics. Estimates for the other variables included in the model are equal to those in Table 2.3 (for Model 1) and Table 2.4 (for Model 2).

* $p < .05$ ** $p < .01$ *** $p < .001$.

2.6 DISCUSSION

The purpose of this paper was to explore the role of local life circumstances of the offender at sentencing and to test whether inclusion of these risk-related personal circumstances significantly mitigates the direct effects of offender sex, age, and origin on judges' sentencing decisions. In line with our first hypothesis, we found that patterns of sentencing disparity in the Dutch context closely resembled findings from US studies (e.g. Steffensmeier et al., 1998). Female offenders were less likely to be imprisoned and when they were it was for shorter terms of confinement. This is consistent with research that suggests female offenders may be treated chivalrously or may have special sentencing concerns associated with family responsibilities or physical, emotional, and health concerns, which may reflect important practical constraints under focal concerns theory (Steffensmeier, Kramer, & Streifel, 1993). Youthful offenders also received shorter prison terms compared to older offenders, though significant differences did not emerge among older age categories. This too is consistent with work that suggests youthful status is associated with reduced culpability at sentencing (Bernard, 1992; Johnson & Kurlychek, 2012). Finally, national origin also affected punishment, with offenders born in another Western country being both more likely to be imprisoned and when imprisoned experiencing longer sentence lengths relative to Dutch offenders. Foreign offenders from non-Western nations were significantly more likely to be incarcerated, but they did not receive longer sentencing lengths compared to native offenders.¹⁰

Our second hypothesis was that local life circumstances associated with increased risk of recidivism would also be associated with harsher punishments at sentencing. The results indicated that several offender circumstances were significantly related to sentencing, though sometimes in inconsistent or unexpected ways. For the incarceration decision, negative housing and accommodation circumstances, such as previous bouts of homelessness, significantly increased the probability of imprisonment. Offenders without reliable accommodations are likely to be viewed as greater risks for recidivism as well as a potential source of neighborhood disorder that may be linked to community fear, reduced social cohesion, and increased crime more generally (Markowitz,

10 To investigate whether the regression coefficients differ significantly between male and female, Dutch and foreign, and young and old offenders, split models were analyzed and z-scores (based on Paternoster, Brame, Mazerolle, & Piquero's (1998) equation) were calculated to assess whether the effects of the personal circumstances differ by gender, age, or origin (results available upon request by the authors). Our findings show that only very few regression coefficients of the risk-related personal circumstances significantly differ between groups, both with regard to the decision to incarcerate and the decision on the sentence length. This offers little evidence for the alternative explanation of sentencing disparity that suggests judges may differentially value or weigh the personal circumstances of offenders based on their individual demographic characteristics.

2006). Criminogenic friendship ties were also significantly and positively related to the probability of incarceration. An expansive literature documents the association between delinquent peers and offending (Akers, 2009; Sampson & Laub, 1993; Sutherland, 1947), and some research suggests that criminal desistence is largely the product of an interruption in delinquent peer networks during the life-course (Warr, 2006). To the extent that judges are aware of these relationships, it is not surprising that evidence of criminogenic peer networks is associated with incarceration.

Negative offender attitudes, such as failure to cooperate and a lack of recognition of one's criminal culpability, are also positively associated with the judicial use of incarceration. Remorse is often viewed as a prerequisite for reform, so offenders who fail to recognize the harm done by their actions and those who lack empathy or are unwilling to cooperate with officials are more likely to be imprisoned – they represent greater risks of recidivism and less potential for rehabilitative reform. Among the local life circumstances examined, only the emotional well-being of the offender was negatively related to incarceration. Although unexpected, this is not surprising when one considers that this construct includes psychological problems and other special circumstances that may be viewed as mitigating factors in punishment. On the one hand, psychological problems may be viewed as a risk factor for recidivism, but on the other hand it may instead serve as a harbinger of reduced culpability. In the Netherlands, interventions as a part of special conditions with a suspended sentence are available for these types of offenders, so the negative effect for imprisonment here likely reflects the use of these alternatives for offenders with emotional well-being concerns.

The effects of local life personal circumstances on sentence length decisions differ in a number of ways from the incarceration model but still largely comport with theoretical expectations. Both negative peer influences and financial problems significantly increased sentence lengths. The logic of peer influences on sentence lengths is the same as for incarceration, whereas financial problems likely represent increased risk of offending associated with instrumental involvement in underground criminal economies or with social factors such as a lack of social or cultural capital and/or job skills. For instance, Haynie et al. (2008) show that economic and employment well-being are associated with involvement in criminal and violent offending in young adulthood. Judges may therefore use indicators of economic well-being as signals of the likelihood of recidivism in order to inform their sentence length decisions.

A number of personal offender circumstances also demonstrated negative effects on sentence lengths, which was unexpected but makes considerable sense when considered in the context of the Dutch justice system. Drug and alcohol problems were associated with shorter terms of imprisonment, as were cognitive and emotional problems. In the Dutch system, offenders with substance abuse and mental health problems often receive sentences that involve

various treatment alternatives in lieu of long prison sentences. These may include partially suspended sentences with conditions such as drug and alcohol treatment, cognitive behavioral therapy, or placement in a health care institution.¹¹ Hence, it is not surprising that they are associated with shorter terms of imprisonment. Future research is needed that further investigates the different treatment modalities that are used for these types of offenders.

Our third and final hypothesis was that the inclusion of local life offender circumstances in the traditional sentencing model would largely account for observed disparities in demographic characteristics such as sex, age, and national origin. The current findings offer only partial support for this interpretation. Gender differences in punishment were reduced by the inclusion of personal offender circumstances, but they remained statistically significant. Even after accounting for the detailed local life circumstances, female offenders were significantly less likely to be incarcerated and they received shorter prison terms. This may reflect chivalry or paternalism on the part of court actors, or it is also possible that additional, unaccounted-for characteristics could further mediate this relationship. For instance, some prior work suggests that family responsibilities and unique health care concerns may be tied to the punishment of female offenders (Daly, 1994; Steffensmeier et al., 1993). What does appear to be clear, however, is that the common risk assessment considerations examined here do not explain away the gender gap in punishment.

Age effects for sentence length were also unexpected, becoming slightly stronger with the inclusion of personal circumstances in the model. This suggests that special solicitude tends to be extended to the youngest offenders in the Netherlands – a finding which is consistent with a substantial research literature on the punishment of juvenile offenders in the US context (Bernard, 1992). Clearly, differences in risk factors associated with the local life circumstances of youthful offenders do not explain away this effect – in fact they appear to enhance it slightly.

Some evidence for the mitigating effects of personal circumstances did emerge, however, for national origin. When local life circumstances were included in the model, the effect of both other Western and non-Western origin on the likelihood of incarceration were reduced to statistical non-significance. The effect of other Western origin on sentence length was also substantially reduced in the full model, although offenders born in another Western country still receive significantly longer prison terms than offenders born in the Netherlands. This suggests that observed disparities in the treatment of foreign offenders may be due to differences in their specific local life circumstances.

11 Additional analyses with the mandatory treatment of the mentally ill (TBS) as the dependent variable show that problems with emotional well-being and with thinking and behavior indeed increase the likelihood of being sentenced to TBS, while drug misuse increases the likelihood of being placed in an institution for habitual offenders (ISD) (results are available from the authors).

These effects were relatively small to begin with, though, so it will be important for future research to replicate this finding in other contexts and also with different racial and ethnic groups in the US and other international contexts.

2.7 CONCLUSION

A robust research tradition has emerged that focuses on demographic correlates of offending, such as offender sex, age, and race (Hindelang, 1981), and a similar though separate research tradition focuses on the demographic correlates of punishment (Spohn, 2000). Whereas research in the first tradition has devoted considerable effort to explaining demographic differences in offending, though, research in the latter tradition has been primarily concerned with identifying disparities in punishment rather than explaining them (Wellford, 2007). Many of the same factors theorized to affect criminal behavior are also tied to judicial assessments of future risk of reoffending. In particular, prior research suggests that local life circumstances that affect criminal offending include socioeconomic conditions, family and peer relationships, drug and alcohol use and abuse, and psychological factors, among others (e.g. Haynie et al., 2008; Horney et al., 1995; McNulty & Bellair, 2003; Sampson, 1987).

Somewhat surprisingly, though, no research on criminal sentencing includes detailed measures of these types of personal offender circumstances when investigating sentencing disparity. Because demographic offender characteristics are likely to be associated with differences in local life circumstances that are associated with judicial assessments of risk, failure to include them in sentencing models may lead to faulty conclusions about the underlying sources of observed disparities in criminal punishment. Moreover, informing sentencing research with extant findings from offending and recidivism studies provides sentencing scholars with valuable future directions for elaborating existing theoretical perspectives and for improving statistical model specifications in future empirical work on criminal punishment.

The current research provides a test of this proposition, examining the mediating effects of detailed personal offender circumstances on demographic disparities in sentencing in a large sample of Dutch offenders. Our findings comport with the substantial research in the US context that finds significant disparities in punishment associated with the gender, age, and ethnic background of the offender. Traditionally, these effects have been interpreted as evidence that judges rely on stereotypical attributions associated with demographic offender characteristics in sentencing (Albonetti, 1991; Steffensmeier et al., 1998). An alternative explanation, though, is that demographic characteristics may be differentially associated with risk factors that are tied to the local life circumstances of different offender groups. The current research provides some evidence for both interpretations. The effects of gender and national

origin were mitigated by the inclusion of detailed offender circumstances; however, gender differences remained even after controlling for local life circumstances and age differences were not significantly mediated at all. This suggests that while the personal circumstances of offenders are important for determining sentencing decisions, they do not fully account for the effects of offender demographic factors. Thus, it appears as though judges are still influenced by stereotypical attributions tied to offender characteristics, even when very detailed information regarding risk of recidivism is available at sentencing.

One potential reason for this may be because even when judges have relatively complete information on offender risk, they may still lack the requisite time or organizational resources for fully rational decision-making. Organizational attribution perspectives argue that stereotypical assessments become necessary in the presence of time and information constraints (March, 1957). Even when judges do not suffer from *information* constraints, though, they may be affected by *time* constraints. In such cases, available information on the blameworthiness or dangerousness of the offender may be supplemented with existing stereotypes and offender preconceptions. If true, this introduces interesting policy implications that suggest detailed information on offender risk is not sufficient for fair and effective sentencing. Unfortunately, no information is available on judicial time constraints in the current study, but this should be the explicit focus of future research.

The current findings thus raise important theoretical questions regarding the underlying assumptions of psychological attribution and focal concerns perspectives. Our results suggest that even when judges have relatively complete information, stereotypical attributions persist. This draws into question core assumptions of courtroom decision-making models built on stereotypical attributions rooted in *information* constraints, though they may still be consistent with arguments rooted in *time* constraints. These results also raise important questions regarding theoretical specificity in future work. For instance, one key distinction in theoretical work on punishment is between judicial assessments of blameworthiness and assessments of danger or the likelihood of future offending. However, in practice, personal offender circumstances can often affect both – for example, stealing by a poor man may be viewed as less blameworthy than stealing by a rich man, though being poor may be considered a risk factor for recidivism. The lack of theoretical specificity identifying clear and unique indicators of judicial decision-making concerns makes it extremely difficult to tease out these differences. Future research is needed that continues to expand upon existing theoretical paradigms and begins to delve further into the underlying processes that lead to observed disparity in criminal sentencing. Scholars need to begin shifting from the traditional focus on whether or not disparity exists to explaining why and when it exists in different contexts and what the specific underlying social and psychological mechanisms are that underlie it.

Despite its contributions, the current work also has its limitations. In line with prior research, we focus on the use of unsuspended prison sentences. However, sentencing decisions are often more complex than this: they routinely involve additional punishment options, which are often utilized in conjunction with one another. To fully understand the effects of offender's risk-related personal circumstances on judicial decision-making, future research should expand to investigate additional sentencing options, such as community punishments, treatment orders, and different combinations of sentences, in order to better unpack the complex relationship between offender personal circumstances, judicial assessments of risk, and demographic disparities in criminal sentencing.

Another potential limitation is that even though we examined alternative model specifications controlling for selection bias in sentence length, other sources of selection effects are likely present in this study. One important source of selection stems from the sampling frame, which consists of cases where the offender's risk of recidivism is assessed by the RISC tool: minor offenses are likely to be underrepresented in our sample, which may affect the generalizability of our results. It will therefore be important for future research to replicate and extend this study by incorporating detailed risk assessment information into alternative analyses of sentencing disparity in additional, diverse sentencing contexts. It will also be important for the findings regarding national origin to be replicated in other research contexts where racial and ethnic identity plays an integral role in sentencing disparities. Details of additional sentencing factors could also be incorporated into future work. In particular, the current data lack information on victim characteristics which may be consequential (Johnson et al., 2010), and extant research would also benefit from investigation of differences in personal circumstances associated with specific demographic groups, such as young minority males (e.g. Doerner & Demuth, 2010).

Although the current study has a unique level of detailed offender information, a final limitation of this study still concerns omitted variables, such as information on victims, judges, and other court actors, and latter case outcomes such as appellate court decisions. Ideally, these types of information should be incorporated into more dynamic models of criminal sentencing that more fully account for the individual decision-makers and the local court contexts in which sentencing decisions are embedded. Despite these limitations, though, this study expands the scope of contemporary sentencing research to the understudied role of the local life circumstances of the offender, and to their ability to mitigate commonly observed disparities associated with demographic characteristics of offenders at sentencing. It offers new insights into the underlying assumptions of contemporary theoretical perspectives that rely on attribution processes tied to limited time and information, and it contributes to a growing research literature examining criminal punishment processes and outcomes in international contexts (Ulmer, 2012). Finally, it begins to address

the key question raised more than a decade by Wonders (1996, p. 617), regarding 'When does the particular social characteristic matter – under what circumstances, for whom, and in interaction with what other factors?'

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Pre-sentence reports and punishment

A quasi-experiment assessing the effects of risk-based pre-sentence reports on sentencing¹

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ABSTRACT

The current study investigates the effects of structured risk-based pre-sentence reports on sentencing outcomes in the Netherlands by means of a quasi-natural experiment. Defendants with such a report are compared with similar defendants without such a report, based on propensity score matching and synchronization on nine additional criteria relevant to penal decision-making ($N = 6,118$). Although structured risk-based pre-sentence reports are a textbook example of 'new penological' accounts, high-risk defendants with such a report are not sentenced to more 'controlling' and less 'diverting' sentencing outcomes than are high-risk defendants without such a report. Instead, these reports overall relate to less 'controlling' and more 'diverting' sentencing outcomes, indicating that the penal welfarism account is still prevalent in penal decision-making in the Netherlands.

3.1 INTRODUCTION

'The pre-sentence report touches a corner-stone of any nation's penal structure – namely how we regard the individual person being sentenced' (Wandall, 2010, p. 331). Over recent decades, pre-sentence reports have become a big feature of criminal justice practices. Annually, about 246,000 pre-sentence reports are provided by the National Probation Service in the United Kingdom (Scott, 2008), and over 100,000 pre-trial services reports are prepared by Pretrial Services Officers for the United States courts (Duff, 2009). In the Netherlands, 11,000 pre-sentence reports are produced by the probation agencies every year (Reclassering Nederland, 2012). The goal of these reports is to inform judges

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about a defendant's social background, (criminogenic) circumstances, risk of reoffending and eligibility for certain types of punishment, enabling judges to take this into account when making sentencing decisions.

The importance of pre-sentence reports is reflected in the rising interest in these reports among researchers (Persson & Svensson, 2012). Previous research has concentrated for example on the use of pre-sentence reports, by examining the correspondence between the reports' sentencing recommendations and the sentencing outcome (for example Deane, 2000; Downing & Lynch, 1997; Gelsthorpe & Raynor, 1995). However, correspondence between a recommendation and the sentence does not have to imply that judges follow the recommendations: probation officers might also *anticipate* on sentencing outcomes when they recommend sentences (Halliday, Burns, Hutton, McNeill, & Tata, 2009; Tata, Burns, Halliday, Hutton, & McNeill, 2008).

Although previous studies have contributed to knowledge about the role of pre-sentence reports in penal decision-making, they suffer from a key methodological limitation: they lack a proper control group. To fully assert the effect of pre-sentence reports on penal decision-making, sentencing outcomes for defendants with a pre-sentence report should ideally be compared with outcomes for similar defendants without such a report. However, such research is absent to date. The current study fills this gap by using large-scale, Dutch sentencing data to compare sentencing outcomes for an experimental and a control group – carefully matched on a range of relevant characteristics.

3.2 FROM PENAL WELFARISM TO ACTUARIAL JUSTICE: CHANGING TASKS OF PROBATION AGENCIES

To formulate our expectations about the effects of a risk-based pre-sentence report on sentencing outcomes, it is important to consider the changes in the penological climate and related developments in probation agency tasks over recent decades. After the Second World War, imprisonment rates in the Netherlands dropped to an all-time low and the Dutch penal system was characterized by the belief in the 'improvement' of the delinquent, with rehabilitation as the hallmark of sentencing philosophy. This period of 'old' penology can be typified by concern for individuals (Feeley & Simon, 1994), an attitude more generally reflected in a society characterized by welfarism.

However, since the 1970s, when offense rates kept rising and Martinson's (1974) 'What Works' research was interpreted as 'Nothing Works', people lost faith in the rehabilitative ideal, and penal welfarism was gradually replaced by a more punitive system, with a focus not on 'improving' offenders but on protecting the public by eliminating risks (Downes & Van Swaaningen, 2007). This transformation of the welfare state into a society characterized by a culture of control is analyzed by Garland (2001), and is assumed to exist in the Netherlands as well (Van der Woude, 2010; Van Swaaningen, 1996). Feeley and Simon

(1994) refer to this development in the field of criminal justice as actuarial justice. In this 'new penology', crime is seen no longer as a pathological problem that needs fixing but as a normal phenomenon that can be managed. To do this efficiently, different techniques, such as risk assessments, are used to identify, classify and control groups based on their expected danger to society (Feeley & Simon, 1992, 1994).

Ultimately, the consequence of this actuarial justice is that society is protected by maintaining long-term control over high-risk defendants, with prison as 'a warehouse for the highest risk classes of offenders' (Feeley & Simon, 1992: 460). On the one hand, this 'risk-based sentencing' increases the punitiveness of the criminal justice system by placing high-risk defendants under long-term control, but, on the other hand, scarce penal resources are not used for low-risk offenders; these defendants are diverted from prison (for example by sentencing them to more rehabilitative-orientated types of punishment such as community service), decreasing the system's punitiveness. This corresponds to the notions of scholars who argue that the welfare/risk binary is overstated because the emergence of the new penology has not simply replaced penal welfarism, but has instead resulted in 'mixed models' and 'hybrid formations' (Hannah-Moffat, 2005) or 'complex and contradictory interweaving' (Field & Nelken, 2010; see also Wandall, 2010) combining risk with welfarism accounts.

New penological discourses – suggesting that risks can be identified and managed – affect the tasks of probation officers who write pre-sentence reports. In the era of the old penology, probation agencies used to act exclusively in the interests of the defendant. Now, they have evolved into output-driven organizations with the objective of assisting judicial authorities by advising the public prosecutor and the judges, and by supervising community services and conditions of suspended sentences, with the interests of *society* at heart. As a consequence, for report writers the focus has shifted from assessing defendants' needs to assessing defendants' risks. To assess this risk, they use a clinical structured risk assessment tool: RISC (Recidivism Assessment Scales).

3.3 PRE-SENTENCE REPORTS IN THE NETHERLANDS

A pre-sentence report is the key piece of information about an individual defendant. It is normally about five pages long, depending on the case and the defendant, and is requested from the probation agency by the prosecutor, although it may also be ordered by the judge. There are no clear rules about which cases require a pre-sentence report but, in general, a report is requested when the defendant is held in preventive custody or when the case demands special attention owing to the severity of the crime or the harm to the victim. Conversely, pre-sentence reports are least common in standard cases – to which most criminal cases belong – such as driving while intoxicated. Furthermore, for practical reasons, no pre-sentence report is requested when the court session

is scheduled to be held within 10 weeks, or when the defendant has already had his/her risk assessed within the last year (Adviesbureau Van Montfoort & Reclassering Nederland, 2004).

Before 2004, pre-sentence reports were based on the professional judgement of the probation officer, without the assistance of a structured, clinical risk assessment tool. The subjects described in the reports depended heavily on the individual probation officer's approach. However, since 2004, the probation agency uses RiSc as the foundation of the pre-sentence report: a structured clinical tool to assess a defendant's risk of reoffending.² The introduction of RiSc as central to the advisory work of the probation agency signifies a much more explicit focus on risk assessment; whereas risk assessment by the probation agency used to be more a clinical and non-standardized assessment of *needs*, RiSc clearly aims at the standardized assessment of *risk*. However, focusing on risk does not mean that needs are neglected: to assess a defendant's risk to society RiSc also touches upon a defendant's needs. But, in contrast to the assessment of needs in the era of penal welfarism, RiSc covers only a defendant's *criminogenic* needs, since these needs are the mirror image of risk.

When assessing risk, the probation officer relies on information about the offense from the police case file, as well as on the criminal record of the defendant. In addition, one or more interviews with the defendant are held, and often the probation officer talks to the defendant's family or employer as well. The probation officer assessing the RiSc maps out the defendant's criminogenic factors categorized into 12 sections, such as accommodation, education and work, relationships, drug or alcohol misuse and thinking and behavior. Each scale contains several items to assess whether the section is a point of risk for reoffending. The (weighted) scale scores together add up to the total RiSc score (see Van der Knaap et al., 2012). Based on this total score, delinquents are categorized as having either a low, medium or high risk of reoffending.

The pre-sentence report for the public prosecutor and the judge is based on this risk assessment and follows the structure of the RiSc, but does not contain the scores on the separate items or scales of the RiSc. Instead, the defendant's overall risk of reoffending is reported explicitly in terms of either a low, medium or high risk of reoffending, while criminogenic issues on the different scales are only narratively described in the report.³

2 RiSc is derived from the Offender Assessment System (OAsys) developed in the United Kingdom (Howard, Clark & Garnham, 2003), which is based on the Canadian instrument Level of Service Inventory – Revised (LSI-R) (Andrews and Bonta, 1995) and on the Assessment Case management and Evaluation System (ACE) (Gibbs, 1999; van der Knaap et al., 2007).

3 Report writers are free to divert from the RiSc-outcome if they feel that defendant's risk is actually lower or higher than RiSc indicated. Prior research shows that deviation takes place in only 4% of the cases, mostly due to defendant's psychological problems or addictions (Van Wingerden, Moerings, & Van Wilsem, 2011).

The conclusion of a pre-sentence report contains the probation officer's evaluation of the defendant's social background, risk-related social circumstances and risk of reoffending, as well as his/her suitability for a suspended sentence, for special conditions accompanying a suspended sentence, or for other punishments requiring the involvement of the probation agency. Hence, it contains important information for judges when making their sentencing decisions: it enables them to fit the punishment to the crime as well as to the defendant.

Judges have broad discretionary powers to do this, because a key feature of the Dutch criminal justice system is that judges' sentencing decisions are constrained only by the Dutch Penal Code, which sets a uniform minimum penalty (for example, imprisonment should last at least one day) and crime-specific maximum penalties (for instance, 4 years for ordinary theft and 12 years for violent theft). The discretionary power of the judge is further broadened by the different sanction types and modalities (suspended or unsuspended) the judge can choose from. These sanction types can be independently or jointly imposed, either unsuspended or (partially) suspended. Examples of sanction types are community services (performing unpaid work for the benefit of society, for example cleaning public areas), fines and – in certain circumstances – additional measures, such as placement in an institution for mentally ill offenders or deprivation of the proceeds of crime. Finally, for suspended punishments, various special conditions can be specified, which have to be met by the offender during the operational period of the suspended sentence, such as alcohol treatment or aggression regulation therapy. The National Consultation on Criminal Content (LOVS, 2013) has provided judges with orientation points for common offenses, but these are non-binding and judges are free to deviate from it. Moreover, judges are not restricted in the sentencing goals they pursue either, since these are not explicated in the Dutch law. Previous research suggests that there is no dominant sentencing goal in Dutch sentencing *practices* either: different judges pursue different sentencing goals (De Keijser, 2001). Hence, especially compared with other countries, Dutch judges enjoy broad discretionary powers: they are at liberty to impose any sentence they want within the boundaries of the law; there are no binding guidelines, nor are there rules for when to take factors into account as mitigating or aggravating circumstances.

3.4 RISK-BASED PRE-SENTENCE REPORTS: FRAMING THE PERSON OF THE OFFENDER

The goal of this study is to investigate the effects of a structured risk-based pre-sentence report on sentencing outcomes. These outcomes are likely to be affected by a defendant's risk of reoffending because, in line with the ideas of the new penology, risk is a key factor for judges who aim to protect society

with the sentences they impose. Since crime is considered to be a risk that needs to be managed and resources are scarce, resources are expected to be employed in the most effective way: to control high-risk defendants and divert low-risk defendants from imprisonment. There are two types of punishment that judges can impose to place high-risk defendants under long-term control. First, imprisonment physically prevents the defendant from committing crime – at least as long as he/she is incarcerated. Second, suspended sentences with special conditions spread a net of control over defendants.⁴ These special conditions might include interventions such as training in lifestyle, cognitive skills or aggression regulation, or treatment of addictions, all under the supervision of the probation agency. Therefore, we assume that judges who want to protect society from future crimes either eliminate high-risk defendants from society by imposing unsuspended imprisonment terms, or place them in a net of control by imposing suspended sentences with special conditions. Low-risk defendants, on the other hand, are more likely to be diverted from imprisonment by sentencing them to non-custodial punishment types such as solely suspended imprisonment or community service.

We expect that a structured risk-based pre-sentence report enhances these effects, because the narrative of the report is likely to create *framing effects*: judges' sentencing decisions are made dependent on how the situation of the defendant is presented, or 'framed', in the pre-sentence reports (Baron, 2008; Isaacs, 2011).⁵ These framing effects are stronger for defendants from the experimental group, since structured risk-based pre-sentence reports 'impart a sense of moral certainty and legitimacy into the classifications they produce' (Hannah-Moffat, 2013, p. 277), framing the defendant as a certain risk. Confirmation bias causes information consistent with the level of risk stated in the pre-sentence report to be overweighted and inconsistent information to be underweighted. Judges are therefore more likely to attribute the risk label to the defendant as well. We therefore expect that the narrative of the pre-sentence report both consciously and unconsciously (through framing and confirmation bias) enhances the 'new penological' mechanisms: high-risk defendants *with* a structured risk-based pre-sentence report are more likely to be sentenced to 'controlling' types of punishment and less likely to be sentenced to 'diverting' types of punishment than comparable high-risk defendants *without* such a report. For low-risk defendants, we expect the opposite effect, since their pre-sentence reports underline the virtuous, non-criminogenic

4 Suspended imprisonment sentences, either with or without special conditions, cannot be imposed when the length of the unsuspended prison term exceeds four years (art. 14c Penal Code).

5 After all, judges make decisions under uncertain, time-pressured conditions that encourage reliance on cognitive shortcuts. These mental shortcuts not only help judges to efficiently judge cases, but may also create cognitive illusions that produce erroneous judgments (Guthrie et al., 2001), for example because important information is overlooked or even ignored by judges (Isaacs, 2011; Ten Velden & De Dreu, 2012).

aspects of defendants' lives, such as being employed or owning a house, thereby framing defendants *explicitly* as having a low risk of causing future harm to society.

As a side-effect of the dispersive impact of 'new penological' mechanisms (increasing the sentencing gap between low-risk and high-risk defendants), differences in sentencing outcomes between low-risk and high-risk defendants are likely to be greater for defendants with a structured risk-based pre-sentence report than for defendants without such a report.

3.5 DATA AND METHOD

3.5.1 Quasi-natural experiment

To study the effects of a structured risk-based pre-sentence report on sentencing outcomes, the sentences of defendants with such a report need to be compared with the sentences of defendants who were tried in the absence of such a report. We make use of a unique opportunity to investigate these effects by employing a quasi-natural experiment. Subjects are not randomly assigned to either the experimental or the control group, but instead the control group is found in a natural setting: we compare the sentencing outcomes of defendants whose risk of reoffending was assessed by the risk assessment tool RISC *before* trial – and who thus have a risk-based pre-sentence report – with those of defendants who had a RISC assessment *after* trial. Hence, we distinguish two groups that differ in the availability of a structured, risk-based pre-sentence report but that both offer detailed offender information because, in the end, all members of the two groups had their risks assessed via RISC. This enables the creation of an experimental group and a control group in which cases can be matched at a detailed level, thereby increasing the potential for valid comparison between the groups.

This is possible because delinquents' risks of reoffending can be assessed at several stages in the criminal justice processes. Often, RISC is used *before* trial to provide a pre-sentence report, but sometimes it is also used *after* trial, either to determine the defendant's reintegration trajectory from prison⁶ or to determine the kind of supervision by the probation agency, insofar as RISC has not been assessed already *before* trial – which frequently occurred during the introduction period of RISC (2005-2009). As such, this transitional period when RISC was gradually introduced into the Dutch penal system, and in which comparable defendants were sentenced either with or without a structured risk-based pre-sentence report, presents a unique opportunity to determine the impact of these reports on judicial decision-making.

6 This is only done when the defendant has at least three to four months of imprisonment left.

3.5.2 Dataset

The current study utilizes a combination of two datasets: the registry of the Public Prosecutor's Office (OM data⁷) and the RISC database of the Dutch Probation Service over the period 2005-2007. The registry of the Public Prosecutor's Office contains information on the prosecution and conviction of defendants. For each criminal case, information is registered on the type of crime and the decisions of the prosecutor and the judges, including the imposed sentences. Next, the RISC-database contains the scores on the separate items as well as the final risk classification of the defendant.

The combination of the verdict date and the date of the RISC assessment makes it possible to indicate whether the RISC was assessed *before* or *after* trial. Of the 30,565 cases with a verdict date, we deleted cases in which the outcome of the RISC was unknown ($N = 6,019$) (generally first-offenders who deny having committed the crime), cases in which defendants had their risk assessed more than once ($N = 1,594$), and cases in which information on the defendant's social circumstances ($N = 527$) or on the verdict ($N = 789$) was missing. Further, we deleted cases in which defendants were acquitted, dismissed or declared guilty while no punishment is imposed ($N = 312$) and cases in which only a fine is imposed ($N = 86$), because these case outcomes are not available to defendants in the control group. This leaves 21,238 cases: 16,318 defendants in the experimental group and 4,920 defendants in the control group. The defendants in the latter group do not have a structured risk-based pre-sentence report, but they might have an 'old style' unstructured needs-based pre-sentence report.⁸ Because the experimental group and the control group are not readily suitable for comparison owing to potential selectivity biases, the next section outlines the matching strategy to secure comparable groups.

7 OM data are obtained from the Research and Documentation Centre (WODC) of the Dutch Ministry of Security and Justice. This Centre cannot be held responsible for the completeness, correctness and use of the data provided.

8 The control group exists of defendants with an unstructured needs-based pre-sentence report 'old style' written for the current or for a prior case. They might also have a different kind of report in their case files, such as a report on the execution of prior sentences (*advies-en maatregelrapportages*). And finally, they might have none of the above mentioned reports in their case files. Since the Dutch Probation Service only registers the presence of pre-sentence reports for prior cases from the year 2002 on, we were not able to distinguish these different subgroups properly in the control group. However, we are certain that they did *not* have a *structured risk-based* pre-sentence report. Hence, for the current research we compare sentencing outcomes for defendants with such a structured risk-based pre-sentence report to those of defendants without such a report.

3.5.3 Matching procedure

Since defendants are not randomly selected to have a pre-sentence report, defendants in the control group are likely to differ in various ways from the defendants with a risk-based pre-sentence report, for example with regard to the severity of the offense and to criminogenic social circumstances. Thus, to make a fair comparison, it is important to select the cases in such a way that defendants with a risk-based pre-sentence report are as similar as possible to defendants without such a report in terms of available offense, case-processing and defendant characteristics.

To make sure the control group mirrors the experimental group, we match individual cases from one group to individual cases from the other group with the purpose of controlling for the differences between the two groups. To match cases, they need to be identical on several characteristics. We employ 10 of these matching criteria.

Our first matching criterion is the score on the propensity to have a structured risk-based pre-sentence report.⁹ Propensity score matching offers a useful analytical approach for establishing equivalency in observed covariates between groups (Johnson & Kurlychek, 2012). It is a practical solution to take many variables at once into account for the matching, because a collection of confounding covariates is replaced by one function of these covariates: the propensity score. This score is then used as if it were the only confounding covariate. It is derived from a logistic regression analysis with a range of observable factors as independent variables, including offense, case-processing and defendant characteristics, and a variable on the timing of the RISC (*before* or *after* trial) as the dependent variable. The results for this regression analysis are presented in Table 3.1. Based on this analysis, the predicted probability of having a structured risk-based pre-sentence report is derived to be each defendant's propensity score.

9 Propensity score matching has long received little attention in the criminological research field, but from 2004 on, it has been employed in several criminological studies (Jones et al., 2004; e.g. Wermink et al., 2010), also with regard to sentencing outcomes (Johnson and Kurlychek, 2012; Kurlychek and Johnson, 2010).

Table 3.1. Results of logistic regression analysis on the chance of having a structured risk-based pre-sentence report (N=21,238 of which 16,318 coded 'RISc before trial' and 4,920 coded 'RISc after trial')

	Chance of RISc assessment before trial		
	B	S.E.	Exp(B)
<i>Constant</i>	3.01 ***	.11	20.20
<i>Offense characteristics</i>			
Maximum penalty	-.05 ***	.01	.95
Offense type of most serious offense (Ref=Assault)			
Intimidation	-.21 *	.09	.81
Violent theft	-.44 ***	.08	.64
Vices	-.57 ***	.09	.56
Homicide	-.27 **	.10	.77
Other violent crimes	-.54 ***	.16	.58
Forgery	-.37 *	.15	.69
Theft	-.72 ***	.09	.49
Aggravated theft	-.48 ***	.07	.62
Other property crimes	-.32 **	.11	.73
Destruction of property	-.36 *	.15	.70
Violation of public order	-.27 **	.08	.76
Drugs	-.44 ***	.08	.64
Traffic	-.16	.14	.85
Other crimes	-.33 ***	.09	.72
Number of offenses	-.03	.02	.97
<i>Case processing characteristics</i>			
Length of preventive custody (in months)	-.06 ***	.01	.94
Number of prior convictions as a minor			
1-2	-.31 ***	.05	.73
3 or more	-.47 ***	.06	.63
Unknown	-.75 ***	.05	.47
Number of prior convictions as an adult			
1-2	-1.06 ***	.05	.35
3 or more	-1.19 ***	.05	.30
Unknown	-.95 **	.36	.39
<i>Offender characteristics</i>			
Sex			
Female	.05	.06	1.05
Age			
Age 12-20	-.62 ***	.05	.54
Age 31-40	.07	.05	1.07
Age 41-50	.18 **	.06	1.20
Age > 50	.37 ***	.08	1.44
Origin			
Western	-.20 **	.07	.82
Non-Western	-.16 **	.05	.86
Origin unknown	.12	.13	1.13

(Continued)

Table 3.1. – Continued

	Chance of RISC assessment before trial		
	B	S.E.	Exp(B)
<i>Offender social circumstances</i>			
Accommodation	.11 *	.04	1.12
Education and employment	-.26 ***	.04	.77
Financial management and income	.10 **	.04	1.11
Relationships with partner, family and relatives	-.06	.04	.94
Relationships with friends	.05	.05	1.05
Drug misuse	.11 **	.04	1.12
Alcohol misuse	.02	.03	1.02
Emotional well-being	-.12 **	.04	.89
Thinking and behavior	.20 **	.07	1.22
Attitude	.04	.05	1.04
Nagelkerke R ²	.17		

NOTE: Model includes dummy variables for unknown maximum penalty, unknown accommodation and for court districts (not presented). Complete results are available from the authors.

* $p < .05$; ** $p < .01$; *** $p < .001$.

Figure 3.1 shows that the majority of defendants with the highest propensity scores indeed had a risk-based pre-sentence report, but also that there is a large amount of overlap between the propensity score distributions of the experimental and control groups. The defendants within the overlapping propensity score area (shaded grey in Figure 3.1) are eligible for matching.

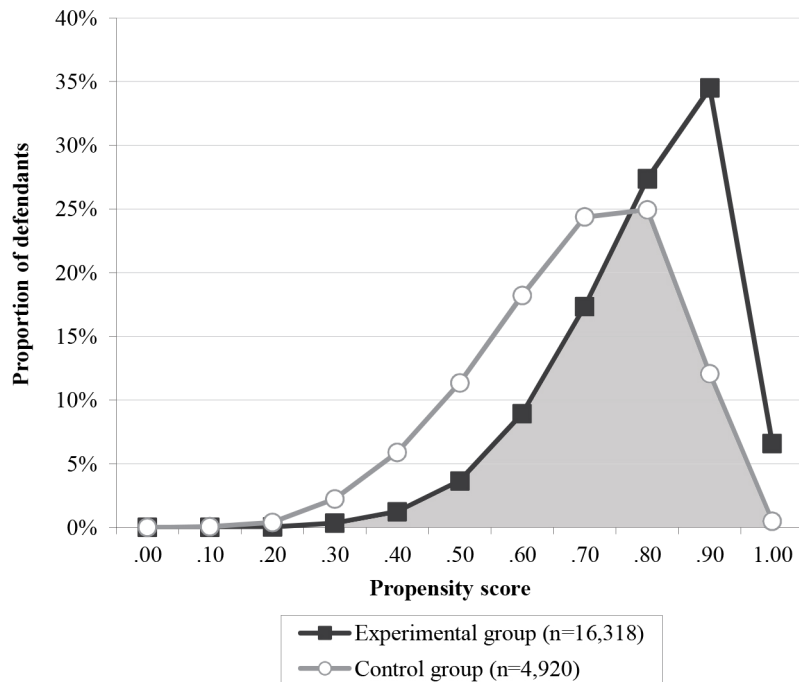


Figure 3.1. Probability densities of estimated scores of the propensity to have the RISC assessed *before* trial

For the matching, we employ a nearest-neighbor matching technique with non-replacement, allowing for a maximum deviation in propensity scores of 0.05. By including the propensity to have a pre-sentence report as a matching criterion, defendants from the control group have the same predisposition to have a pre-sentence report as defendants from the experimental group.

Yet the propensity of a RISC assessment is not the only characteristic relevant for matching defendants. To investigate the effects of a pre-sentence report on sentencing outcomes, characteristics known to be relevant for judicial decision-making also need to be taken into account. These factors include offense, defendant, case-processing and risk characteristics. So, besides the propensity score, we use nine of these characteristics for the matching.

First, the *type of crime* is considered. The type of crime of the most severe offense consists of 16 categories, such as violence, theft, drugs, etc. Furthermore, for cases to be comparable, we take into account whether the offense was an *attempted or a completed crime*. Next, the defendant's *sex* (male or female), *age* (in five categories: 12-20, 21-30, 31-40, 41-50, 50+) and *country of birth* (in four categories: the Netherlands, other Western country, non-Western country, or unknown country of birth) have to be equal for cases to be eligible for matching. The next matching criterion is the defendant's *criminal history*. This is a variable indicating whether the defendant has previous convictions as a youth and/or as an adult (the categories are: none, as a youth, as an adult, both as a youth and as an adult). Besides offense and defendant characteristics, case-processing characteristics are taken into account when matching. We use a variable indicating whether the defendant was taken into *pre-trial detention* (yes or no); and whether he/she was *present at court hearings* (yes, no, or unknown). The final matching criterion is the *outcome of the RISC* (low, medium or high risk of reoffending).

In summary, to match a defendant from the experimental group to one in the control group, they need to be similar in their propensity to have a pre-sentence report (having a difference in propensity score of 0.05 at most), as well as on all nine of the above-mentioned offense, defendant, case-processing and risk characteristics. As such, our requirements for matching a defendant from the control group to one in the experimental group are strict: other studies often use either no additional matching criteria besides the propensity score or only two or three, such as sex and age (for example, Johnson & Kurlychek, 2012; Wermink et al., 2010). Moreover, we employ very specific measures for the offense characteristics: we distinguish 16 different offense types and also take into account whether the crime was attempted or completed, whereas categorizations in most previous research are far less detailed. Our in-depth procedure guarantees a more precise matching of cases from the experimental and the control groups, thereby increasing the comparability of cases from the two groups. Despite our strict requirements, we were able to match 3,059 of the 4,920 defendants from the control group (62 percent)

to a suspect in the experimental group. Our sample therefore consists of 6,118 (2 x 3,059) defendants.

3.5.4 Balancing tests

To test whether the experimental and the control group are comparable, we analyze the differences between both groups on several offense, case-processing and defendant characteristics. Covariate balance checks are conducted on the sample both *before* and *after* the matching. Results are presented in Table 3.2. First, means are reported for the experimental and the control group *before* matching took place. Two-sample *t*-tests show that there are many significant differences between the two groups. For example, defendants from the control group have committed more offenses and more serious ones, they are younger and they have more previous convictions.

Besides the *t*-test, another measure to assess the initial covariate imbalance between the experimental and the control groups is the standardized difference as a percentage (*D*) (Rosenbaum & Rubin, 1985), also known as the standardized bias statistic (SBS). This is the difference in sample means as a percentage of the average standard deviation (Rosenbaum & Rubin, 1985).¹⁰ According to Rosenbaum and Rubin, a *D*-value greater than 20 indicates that the two groups are out of balance. However, more recent scholarship suggests that values above 10 are problematic (Johnson & Kurlychek, 2012). As Table 3.2 shows, some characteristics have a *D*-value greater than 20, such as the severity of the offense, the length of the pre-trial detention and previous convictions, and several others have a *D*-value greater than 10. In conclusion, before the matching the control group differs significantly from the experimental group.

Table 3.2 also shows the differences between these groups *after matching*. Clearly, the experimental group and the control group are very similar now. *T*-tests show significant differences for only one variable, a defendant's housing situation, where the mean score of the experimental group is slightly higher than that of the control group (0.30 vs. 0.27, $p = .02$). Moreover, for all variables, *D*-values are below the critical value of 10, and for none of the characteristics do *D*-values exceed 6.

10 The formula for the standardized difference in percent is:

$$D = 100 \cdot \left(\frac{\bar{X}_{\text{experimental group}} - \bar{X}_{\text{control group}}}{\sqrt{\frac{S_{\text{experimental group}}^2 + S_{\text{control group}}^2}{2}}} \right)$$

where for each covariate, $\bar{X}_{\text{experimental group}}$ is the sample means for the defendants with a risk-based pre-sentence report, $\bar{X}_{\text{control group}}$ is the sample means for the defendants from the control group, and $S_{\text{experimental group}}$ and $S_{\text{control group}}$ are the corresponding standard deviations (see Rosenbaum and Rubin, 1985).

After matching, the two groups thus have highly similar characteristics. Since these offense, case-processing and defendant characteristics are similar for both groups, and the groups differ only in the experimental condition, we can be more confident that potential differences in sentencing outcomes are the result of the presence or absence of a structured risk-based pre-sentence report at sentencing.

Table 3.2. Differences between the experimental and the control group before and after matching

	Before matching				After matching			
	Means		Differences in covariate means		Means		Differences in covariate means	
	Exp. group	Contr. group	Absolute difference	<i>t</i>	Exp. group	Contr. group	Absolute difference	<i>t</i>
<i>Offense characteristics</i>								
Maximum penalty	5.77	7.30	1.53	-22.95 ***	6.71	6.80	.09	-.86
Offense type								
Assault	.26	.15	-.11	15.95 ***	.20	.20	.00	.00
Intimidation	.07	.04	-.02	5.62 ***	.05	.05	.00	.00
Violent theft	.07	.13	.06	-13.88 ***	.13	.13	.00	.00
Vices	.06	.06	.01	-1.44	.06	.06	.00	.00
Homicide	.05	.08	.03	-8.45 ***	.06	.06	.00	.00
Other violent crimes	.01	.01	.01	-3.11 **	.01	.01	.00	.00
Forgery	.02	.02	.00	.78	.00	.00	.00	.00
Theft	.05	.06	.02	-4.35 ***	.06	.06	.00	.00
Aggravated theft	.10	.14	.04	-7.53 ***	.15	.15	.00	.00
Other property crimes	.03	.03	-.01	2.50 *	.02	.02	.00	.00
Destruction of property	.02	.01	.00	1.84	.01	.01	.00	.00
Violation of public order	.07	.07	.00	-.32	.07	.07	.00	.00
Drugs	.09	.11	.02	-4.73 ***	.12	.12	.00	.00
Traffic	.04	.02	-.02	6.78 ***	.02	.02	.00	.00
Other crimes of the Penal Code	.07	.06	-.02	4.68 ***	.05	.05	.00	.00
Number of crimes	1.72	1.86	.13	-9.69 ***	1.87	1.88	.01	-.40
<i>Case processing characteristics</i>								
Length of preventive custody (months)	1.74	2.82	1.09	-24.61 ***	2.60	2.54	-.05	.72
Number of prior convictions as a minor								
0	.59	.40	-.19	23.25 ***	.45	.45	.00	-.10
1-2	.15	.21	.06	-9.53 ***	.20	.20	.00	.48
3 or more	.09	.16	.07	-14.53 ***	.15	.15	.00	-5.4
Unknown	.18	.24	.06	-9.03 ***	.20	.20	.00	.13
Number of prior convictions as an adult								
0	.41	.20	-.21	27.18 ***	.20	.20	.00	.00
1-2	.23	.31	.08	-11.62 ***	.31	.29	-.02	1.29
3 or more	.35	.48	.13	-16.05 ***	.49	.51	.02	-1.18
Unknown	.00	.00	.00	-1.78	.00	.00	.00	.00

(Continued)

Table 3.2. - Continued

	<i>Before matching</i>				<i>After matching</i>			
	Means Exp. group	Contr. group	Absolute difference	<i>t</i>	Means Exp. group	Contr. group	Absolute difference	<i>t</i>
<i>Defendant characteristics</i>								
Sex								
Female	.10	.09	-.01	2.85 **	.04	.04	.00	.00
Male	.90	.91	.01	-2.85 **	.96	.96	.00	.00
Age								
Age 12-20	.17	.26	.09	-14.51 ***	.21	.21	.00	.00
Age 21-30	.29	.31	.02	-2.23 *	.33	.33	.00	.00
Age 31-40	.27	.25	-.02	2.74 **	.27	.27	.00	.00
Age 41-50	.18	.14	-.05	7.85 ***	.14	.14	.00	.00
Age > 50	.09	.05	-.04	9.17 ***	.05	.05	.00	.00
Country of birth								
Netherlands	.75	.70	-.05	6.86 ***	.79	.79	.00	.00
Western	.07	.09	.02	-5.67 ***	.05	.05	.00	.00
Non-Western	.16	.19	.03	-4.94 ***	.15	.15	.00	.00
Origin unknown	.02	.02	.00	2.03 *	.01	.01	.00	.00
<i>Defendant social circumstances</i>								
Accommodation	.25	.28	.03	-3.65 ***	.30	.27	-.03	2.37 *
Accommodation unknown	.12	.18	.05	-9.29 ***	.18	.18	.00	.17
Education and employment	.64	.80	.16	-16.89 ***	.76	.77	.01	-.49
Financial management and income	.54	.62	.09	-9.05 ***	.65	.63	-.03	1.72
Relationships with friends	.47	.59	.12	-15.21 ***	.59	.58	-.01	.74
Drug misuse	.39	.47	.09	-9.45 ***	.49	.49	-.01	.39
Alcohol misuse	.49	.47	-.02	1.90	.52	.50	-.03	1.68
Emotional well-being	.65	.68	.03	-2.97 **	.67	.66	.00	.33
Thinking and behavior	.82	.86	.04	-5.66 ***	.87	.87	.00	.00
Attitude	.59	.64	.05	-6.10 ***	.64	.64	.00	-.33

* $p < .05$; ** $p < .01$; *** $p < .001$.

3.5.5 Analytic approach

To investigate whether the presence of a structured risk-based pre-sentence report enhances risk-based sentencing (that is, ‘controlling’ of high-risk defendants and ‘diversion’ of low-risk defendants), we assess whether high-risk offenders with a structured risk-based pre-sentence report are sentenced to more ‘controlling’ and less ‘diverting’ punishments compared with (very similar) high-risk offenders from the control group, and whether the reverse pattern can be found for low-risk offenders. We do so by comparing the sentencing outcomes of the 3,059 defendants with a structured risk-based pre-sentence report with those of the 3,059 defendants without such a report. Regarding the ‘controlling’ types of punishment, we focus on the decision to impose incarceration (imprisonment, youth detention or placement in an institution for habitual offenders), as well as on the decision to impose a suspended sentence with special conditions. Regarding the ‘diverting’ types of punishment, we focus on the decision to impose solely suspended sentences without special conditions¹¹ and on the decision to impose community service.¹² For the defendants who were sentenced to imprisonment, we also investigate the decision about the length of the unsuspended prison sentence (in days).¹³ Considering the skewed nature of prison sentence lengths, we use (non-parametric) Mann–Whitney U-tests. Thereafter we examine whether differences in sentencing outcomes between low-risk and high-risk defendants are larger for defendants with a structured risk-based pre-sentence report than for defendants without such a report.

3.6 RESULTS

3.6.1 Type of punishment

To assess the effects of a structured risk-based pre-sentence report on sentencing outcomes, we compare sentencing outcomes for low-risk defendants from the experimental group with low-risk defendants from the control group, and

11 The defendants sentenced to *solely* suspended imprisonment without special conditions are thus not sentenced to unsuspended incarceration as well. Since no special conditions are imposed, these defendants only have to meet the general condition that they will not commit another crime during their probationary period. When they breach this condition, they have to serve the suspended term in prison.

12 Defendants sentenced to community service might be sentenced to other sentence types as well. We also analyzed ‘solely’ community service (not combined with detention). Results show similar patterns (not presented).

13 Defendants sentenced to youth detention or to placement in an institution for habitual offender are thus excluded for the analyses on sentence length, since both types of sanctions have a maximum length of two years, while imprisonment has a maximum length of 30 years or life.

vice versa for high-risk defendants. Table 3.3 demonstrates, in line with our expectations, that low-risk defendants from the experimental group are *less likely* than low-risk defendants from the control group to be sentenced to 'controlling' types of punishment: 42 percent of the experimental group is incarcerated compared with 49 percent of the control group ($\chi^2(1) = 8.35$, $p < .01$). For suspended sentences with special conditions, these percentages are, respectively, 41 and 75 ($\chi^2(1) = 187.93$, $p < .001$). Moreover, as expected, low-risk defendants with a structured pre-sentence report are *more* likely to be sentenced to 'diverting' types of punishment. Of the experimental group, 16 percent are sentenced to solely suspended imprisonment, compared with 5 percent of the control group ($\chi^2(1) = 47.04$, $p < .001$). For community service, these percentages are 57 and 52, respectively ($\chi^2(1) = 3.92$, $p < .05$).

However, for high-risk defendants, our findings are not consistent with predictions from a 'new penological' perspective. Contrary to our expectations, the chance of being incarcerated does not differ significantly from the experimental to the control group ($\chi^2(1) = 2.08$, n.s.), and high-risk defendants from the experimental group are not more but *less* likely than high-risk defendants from the control group to be sentenced to special conditions with a suspended sentence (respectively 45 percent and 61 percent; $\chi^2(1) = 32.63$, $p < .001$). Moreover, regarding the 'diverting' types of punishment, high-risk defendants from the experimental group are not less but *more* likely than high-risk defendants from the control group to be sentenced to suspended sentences without special conditions (respectively 3 percent and 0 percent; $\chi^2(1) = 13.76$, $p < .001$). The chance of being sentenced to community service does not differ significantly for high-risk defendants from the experimental and control groups ($\chi^2(1) = 0.01$, n.s.).

As a side-effect of the dispersive 'new penological' mechanisms for low-risk and high-risk defendants, we expect sentencing disparities between low-risk and high-risk defendants to be greater for defendants with a structured risk-based pre-sentence report than for the control group. Overall, risk-based sentencing disparity appears to be somewhat larger in the experimental group, at least as far as detention, solely suspended sentences and community service are concerned. This can mainly be ascribed to low-risk defendants who are even more often steered away from 'controlling' types of punishment (detention) to 'diverting' types of punishment (solely suspended sentence or community service) than low-risk defendants from the control group. To illustrate, community service was assigned to 52 percent of the defendants in the low-risk control condition and to 16 percent of the defendants in the high-risk control condition: a difference of 36 percentage points. In the experimental condition, these percentages were 57 and 16, respectively: a difference of 41 percentage points. 'Controlling' types of punishment involving special conditions proved to be an exception to this rule: differences between high-risk and low-risk offenders seem to be smaller in the experimental group than in the control group.

3.6.2 Sentence length

Next, for the 1,748 defendants from the experimental group and 1,711 defendants from the control group who were sentenced to unsuspended imprisonment, we investigate the differences in average length of the unsuspended prison term within the levels of risk. Table 3.4 demonstrates, as expected, that low-risk defendants from the experimental group are on average sentenced to significantly *shorter* prison terms than are low-risk defendants from the control group (376 compared with 494 days, a difference of 119 days; medians differ by 120 days, with lengths of 300 and 180 days respectively; $U = 46,358$, $p < .01$). However, contrary to predictions from a 'new penological' perspective, sentence lengths for high-risk defendants do not differ significantly between the experimental and the control group ($U = 98,673$, n.s.).

To assess whether the sentencing disparity between low-risk and high-risk defendants is greater for the experimental than for the control group – as expected because of dispersive 'new penological' mechanisms – we compare sentencing differences within the experimental group with those within the control group. Notably, the average prison term is longer for low-risk than for high-risk defendants. Additional analyses (not presented) point out that high-risk defendants are more often sentenced to prison for relatively minor crimes (for example, theft) involving short durations of imprisonment, as compared with low-risk defendants, who are more frequently imprisoned for more severe crimes (for example, certain sexual offenses). Differences in sentence length between low-risk and high-risk defendants are smaller in the experimental group (a difference of 41 days, with equal median sentence lengths), than in the control group (a difference of 98 days in mean length and 120 days in median length). Similar to the disparity we found in type of punishment, the larger risk-based disparity in sentence length for the experimental group can be mainly ascribed to more lenient punishment for low-risk defendants. We conclude that, contrary to 'new penological' expectations, sentencing disparities between low-risk and high-risk defendants are not enlarged when a structured risk-based pre-sentence report is present, but instead diminished.

3.7 DISCUSSION AND CONCLUSION

Over recent decades, the emergence of the risk society and of the corresponding actuarial justice has gained much attention in academic research and debate. These 'new penological' discourses suggest that crime is considered a risk that needs to be managed (Feeley & Simon, 1992). Hannah-Moffat (2013, p. 271) states that punishment is progressively 'being viewed through the lens of actuarial probability' and that 'the introduction of risk into sentencing is an increasing international trend'. In the Netherlands, the risk assessment tool

Table 3.3. Chance of being sentenced to 'controlling' and to 'diverting' types of punishment for the experimental and the control group by risk of reoffending

	<i>n</i>	Exp. group	Control group	χ^2 (Df 1)
'Controlling' types of punishment				
<i>Detention</i>				
Low risk	784	42%	49%	8.35 **
Medium risk	1,635	62%	66%	6.35 *
High risk	640	82%	85%	2.08
Total	3,059	61%	66%	14.85 ***
<i>Special conditions</i>				
Low risk	784	41%	75%	187.93 ***
Medium risk	1,635	54%	70%	94.41 ***
High risk	640	45%	61%	32.63 ***
Total	3,059	48%	69%	276.65 ***
'Diverting' types of punishment				
<i>Solely suspended sentence without special conditions</i>				
Low risk	784	16%	5%	47.04 ***
Medium risk	1,635	8%	2%	45.83 ***
High risk	640	3%	0%	13.76 ***
Total	3,059	9%	3%	103.73 ***
<i>Community service</i>				
Low risk	784	57%	52%	3.92 *
Medium risk	1,635	39%	36%	3.27
High risk	640	16%	16%	0.01
Total	3,059	39%	36%	5.41 *

NOTE: the *n* of the experimental group is equal to the *n* of the control group. Punishment types are not mutually exclusive: defendants can be sentenced to multiple punishment types.

* $p < .05$; ** $p < .01$; *** $p < .001$.

Table 3.4. Mean length of imprisonment in days for low, medium and high-risk defendants

	Experimental group			Control group			Mean	
	n	Mean	Median	n	Mean	Median	Diff.	U
<i>Risk of reoffending</i>								
Low	321	376	180	328	494	300	-119	46,358 **
Medium	986	362	180	923	470	300	-107	400,659***
High	441	335	180	460	396	180	-62	98,673
Total	1,748	358	180	1,711	455	252	-97	1,352,515 ***

NOTE: * $p < .05$; ** $p < .01$; *** $p < .001$

RISC is a textbook example of the emergence of risk assessment in criminal justice practices, because the RISC assessment is used as the foundation of the pre-sentence report. However, to date, the effects of risk-based pre-sentence reports on judicial decision-making are unknown.

The purpose of this paper therefore was to explore the effects of a structured risk-based pre-sentence report on sentencing outcomes. Drawing on a unique large-scale dataset ($N = 6,118$), we compare sentencing outcomes for Dutch defendants with a structured risk-based pre-sentence report with similar defendants without such a report. Each defendant in the 'experimental' condition (with such a report) was carefully matched to a defendant in the control condition, by means of propensity score matching and nine additional (defendant and case) characteristics. In line with the notions of the new penology (Feeley & Simon, 1992, 1994), we expected that – owing to framing effects and confirmation bias – risk-based sentencing would be enhanced by the presence of a structured risk-based pre-sentence report: sentencing outcomes for high-risk defendants with such a report are more 'controlling' (incarceration or suspended sentences with special conditions) and less 'diverting' (solely suspended sentences without special conditions or community service) compared with high-risk defendants without such a report. For low-risk defendants, we expected the opposite effects.

The empirical support for these expectations was mixed. Consistent with our expectations, low-risk defendants with a structured risk-based pre-sentence report are indeed less likely than low-risk defendants without such a report to be sentenced to 'controlling' types of punishment and more likely to be sentenced to 'diverting' types of punishment. Moreover, they receive shorter prison terms. However, our findings for high-risk defendants conflict with 'new penological' expectations: high-risk defendants with a structured risk-based pre-sentence report are *not* more likely than those without such a report to be sentenced to 'controlling' types of punishment; the chances of incarceration do not differ for high-risk defendants from the experimental group and the control group, and high-risk defendants with such a report are not more but *less likely* to be sentenced to suspended sentences with special conditions. In addition, the length of the prison term does not differ significantly for the high-risk experimental group and the high-risk control group. Furthermore, high-risk defendants with a structured risk-based pre-sentence report are *not* less likely than high-risk defendants without such a report to be sentenced to 'diverting' types of punishment. Instead, they are *more* likely to be sentenced to a solely suspended sentence without special conditions, and their chances of being sentenced to community service do not differ significantly from the high-risk control group, nor does their sentence length. Hence, the presence of a structured risk-based pre-sentence report does not increase the chances of high-risk defendants being sentenced to 'controlling' types of punishment, nor does it decrease their chances of being sentenced to 'diverting' types of punishment. In general, therefore, sentencing outcomes for defendants with

a structured risk-based pre-sentence report are less ‘controlling’ and more ‘diverting’ than for defendants without such a report.

A possible explanation is that a defendant’s personal circumstances, structurally presented in the pre-sentence report, are often not considered as aggravating factors, indicating the need to protect society by imposing ‘controlling’ types of punishment, but rather as mitigating factors, indicating possibilities for rehabilitation of the defendant (Mathiesen, 1998; Moerings, 2003). Differences in sentencing outcomes between defendants with and without a structured risk-based pre-sentence report might then be explained by an information effect: judges who do not have a sound grasp of defendants’ personal circumstances cannot take these into account as mitigating factors.

An important question is whether there are other factors that can explain the differences in sentencing outcomes for the experimental and the control groups. Differences in punishment might occur when the experimental and the control groups differ from each other on features relevant to penal decision-making that are not accounted for in this study. However, our matching criteria were very extensive and, as our balancing results in Table 3.2 showed, defendants from the experimental group are very similar to defendants from the control group. Nevertheless, differences in sentencing outcomes might be caused by omitted variables, such as the quality of the lawyer or the content of the criminal record (for example, the number of violent offenses). Yet we have difficulty explaining why these omitted variables would be less or more prevalent in the experimental group than in the control group. We therefore do not find it plausible that these variables cause the differences in sentencing outcomes. We can thus think of no other reason for the less ‘controlling’ and more ‘diverting’ types of punishment for defendants with a risk-based pre-sentence report than that judges (either consciously or unconsciously) take the structured content about the presented criminogenic circumstances of the defendant into account as mitigating factors, indicating an increased potential for rehabilitative efforts.

In conclusion, the current study expands the scope of contemporary sentencing research to the under-studied role of pre-sentence reports at sentencing. Our findings suggest that a pre-sentence report based on a structured clinical risk assessment tool – a hallmark of risk managerialism in the new penology – does not enhance risk-based sentencing in the Netherlands: such a report does not increase the chances of high-risk defendants being sentenced to ‘controlling’ types of punishment, nor does it decrease their chances of being sentenced to ‘diverting’ types of punishment. Instead, a structured risk-based pre-sentence report informing the judge of criminogenic factors in a defendant’s life is linked to less ‘controlling’ and more ‘diverting’ sentencing outcomes.

Therefore we conclude that the penal welfarism account is still prevalent in Dutch judicial decision-making. This corresponds to Field and Nelken’s (2010) observation that old welfarism discourses are not being replaced by new penological discourses, but instead have resulted in new complex and

contradictory interweaving (see also Wandall, 2010). Future research is needed that further investigates the underlying theoretical processes that lead to the 'diverting' effects of risk-based pre-sentence reports. To unravel these theoretical processes, future research could also benefit from studying the effects of pre-sentence reports in other national contexts.

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4 | 'Does he deserve another chance? Or have we had it with him?'

Judges on the role of the risk of recidivism in sentencing¹

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ABSTRACT

In theory, the risk of recidivism is a major factor in sentencing when offenders are sentenced with the purpose of special prevention. In this study we examine the role of the risk of recidivism in actual sentencing practice. Judges say they are more apt to impose special conditions for high-risk offenders and are always open to any indication that offenders want to mend their ways. This bears witness to a sentencing practice characterized by penal welfarism. High-risk offenders are nonetheless sometimes given longer sentences, be it not because of their risk of recidivism but because of their sentencing trend. If offenders do not take advantage of the opportunities they are given at prior convictions to turn their lives around, judges move on to retribution and incapacitation. Sentencing is essentially a mixture of a traditional tendency towards retribution, penal welfarism and new penology.

4.1 INTRODUCTION

The judge's sentencing decision is – barring an appeal – not only the final but perhaps the most important decision of the entire criminal proceedings as well. It is the moment a decision is made about the consequences the crime will have for the offender. What is more, society largely evaluates the functioning of the judiciary on the basis of the sentences enforced (De Roos, 2000). Sentencing is thus not only relevant because of the impact sanctions have on offenders, it is also a cornerstone for the very legitimacy of the criminal justice system. The way a judge arrives at his sentencing decision nonetheless remains very much a black box. In addition to the confidentiality of the judge's chambers,

1 An earlier version of this chapter has been published in Dutch as: "'Krijgt hij nog een kans, of rekenen we af?'. Rechters over de rol van het recidiverisico bij de straftoemeting', *NJB* 2013, 34, p. 2315-2320.

his ample discretionary powers certainly are a contributory aspect as well. Within the limitations of the law, several principal punishment types, accessory sentences and multifarious measures can not only be enforced in combination with each other but also in different modalities: suspended or non-suspended. When the judge selects the penalty to be enforced, he takes various interests into consideration: those of the offender, of the victim, and in a wider sense of all of society. And these are often conflicting interests. Sentences with a view to leading the offender back to a straight and narrow path are a far cry from punishment with a view to reassure society and to do justice to what has been done to the victim.

These conflicting interests are reflected in the various aims of sentencing; though one aim is to safeguard society by keeping the offender off the street (incapacitation), another one is to resocialize him. In concrete cases, the aims of sentencing depend on the severity of the offense (damage to the victim, impact on the legal system), the personal characteristics of the offender and the conditions the offense was committed under or that ensued afterwards. It is quite plausible that the risk of recidivism is also an important factor in determining the sentencing goal and thus in specifying the sentence. After all, if offenders with a high risk of recidivism are involved, the sentencing goal of special prevention will play more of a role than with offenders with a low risk of recidivism. However, if high-risk offenders are given longer sentences because of their risk of future offenses, they are being punished for crimes they have not committed yet, but *might* be guilty of in the future. This is obviously not in keeping with one of the basic principles of the legal system, which is to safeguard one's legal rights: it violates the principle of individual culpability, the legality principle, and the principle of penal law as the *ultimum remedium* (Van der Woude & Van Sliedregt, 2007). Moreover, risk estimates can always be erroneous, with all the ramifications this can imply.

Although a great deal has been written in criminology about the dangers of predictive sentencing (see e.g. Tonry, 1987; Gottfredson, Gottfredson, & Conly, 1989; Netter, 2007; Hannah-Moffat, 2013), we still know very little about the actual role of the risk of recidivism in sentencing. That is why I focus here on the role of the risk of recidivism in sentencing *according to the judges themselves*. Interviews have been conducted with fifteen judges from five different court districts. They have had experience making sentencing decisions in police courts as well as in three-judge criminal courts. A qualitative research method of this kind can tell us more about the factors motivating judges to opt for a specific sanction. It can also reveal the significance judges attribute to specific features and circumstances related to the offense and the offender. It can consequently serve as a valuable supplement to quantitative studies on sentencing.

To get a clear picture of exactly what role the risk of recidivism plays in sentencing according to the judges, I first address the role reserved for the risk of recidivism in theories for the justification of punishment. Thereafter,

I describe what previous research has revealed about the role of the risk of recidivism in sentencing. On the basis of the interviews with judges, I subsequently describe what their view is of the risk of recidivism when they make a sentencing decision.

4.2 THE ROLE OF THE RISK OF RECIDIVISM IN SENTENCING IN THEORY

If the state punishes a citizen, it infringes upon a number of the citizen's fundamental rights. For example, a prison sentence in principle infringes upon the right to privacy, family life and physical integrity.² This is why a state can solely sanction a citizen if and when it is authorized to do so: the punishment not only needs to be lawful, it needs to be justified as well. Theories on the justification of punishment can be divided into two types, retributivist and utilitarian perspectives.

In the retributive approach, punishment is justified by the proportional retribution of the offense *committed*. So it is about the severity of the offense and the culpability of the offender (Von Hirsch & Ashworth, 2005). Retribution is purely retrospective. There is no place in this theory for the risk of *future* criminal conduct. However, the best predictor of future behavior is past behavior; there is a strong link between a person's criminal record and his risk of recidivism.³ Although according to the retributivist perspective, a punishment is essentially given for the *present* offense and not for offenses the offender has already been punished for, there is nonetheless a certain amount of space in retributivism to take recidivism into account in the sentence. According to some retributivists, the repeat offender ought to be given a *recidivist premium*. The offender's culpability is considered greater because he has not mended his ways since the previous conviction (Lee, 2009). Other retributivists such as Ashworth and Von Hirsch feel that repeat offenders should not get a longer sentence, but instead first offenders should get a shorter one. The underlying idea is that everyone makes a mistake sometimes. So judges should be tolerant the first time someone commits an offense. Every time the offender repeats the offense, he should have less subtracted from his sentence so there is a *progressive loss of mitigation* (Roberts, 2008; Von Hirsch, Ashworth, & Roberts, 2009; Roberts & Von Hirsch, 2010). In short, in retri-

2 Sections 10, 11 and 15 of the Constitution and Sections 5 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3 That a person's criminal record is a major predictor of recidivism is clear for example from a study by Wartna (2009).

butivism there is a role for the offender's criminal record,⁴ but not for the risk of reoffending.

A very different approach is the utilitarian one. From a utilitarian perspective, a punishment is justified if it furthers the interests of society as a whole (De Keijser, 2001). So it is a matter of costs and benefits. What are the advantages for society in terms of safety and a reduced risk of recidivism? And what does enforcing the punishment cost? It is not just a matter of the financial costs society has to pay for the execution of the punishment, the suffering of the offender being punished is also an important debit item. As a result of this focus on benefiting society, which is basically its own justification, the utilitarian view is completely oriented towards the future. It is not important what crime someone has committed, nor does it matter what else he did in the past, the only important thing is what is going to be best for society as a whole in the future. In this utilitarian perspective the sentencing goals are, in addition to norm confirmation and enforcement, general and special prevention. There are any number of ways to achieve special prevention: via special deterrence, via incapacitation or via resocialization. Since sentences are justified from this utilitarian perspective when the positive aspects for society compensate for the negative aspects of the sanction, the risk of recidivism definitely plays a role: more drastic sanctions will be justified for high-risk than for low risk-offenders.

In the Netherlands, the retributive and utilitarian approaches are combined into a mixed theory, with retribution constituting both the ground and the borders for punishment but with space within these borders for utilitarian goals (Jörg, Kelk, & Klip, 2012). In a theoretical sense the risk of recidivism is thus embedded in the Dutch sentencing practice. Judges are however free to decide which goals they are striving for with the sanctions they impose. De Keijser has demonstrated that the punishment goals judges say they are striving for can differ widely, and are not necessarily reflected in the punishments they impose in concrete cases (De Keijser, 2001; 2002). What is more, one and the same sentence can serve various aims. This is why it is so hard to determine whether certain sentences are enforced with a certain aim.

There is nonetheless the widespread notion that the protection of society has become more significant as a sentencing goal. This is evident for example in the new penological accounts propagated by American legal scholars Simon and Feeley (1992, 1994). They note that the legal system, previously oriented towards *helping* offenders (penal welfarism with resocialization as the main

4 On the basis of recidivism as an aggravating circumstance, see also the farewell lecture of De Hullu (2003), who notes that recidivism 'undeniably influences how the offender is evaluated as a person' and is thus 'an aggravating aspect of the sentencing factor on good grounds (p. 23) but also advocates a certain amount of reticence vis a vis the legislative recidivism regulation because the aspect of double punishment is hard to reconcile with the proportional retribution as maximizing principle.

sentencing goal) has developed into *actuarial justice*: crime is viewed as a risk that can be managed like any other risk. To minimize the risk as much and as efficiently as possible, every effort is made to prevent high-risk offenders from committing future crimes via long-term incarceration or the monitoring and controlling of their long-term behavior in some other way, i.e. imposing certain behavioral interventions. Since the tendency the new penology is referring to are also assumed to be in evidence in the Netherlands (Van der Woude, 2010; Van Swaaningen, 1996), we expect the risk of recidivism to play a prominent role in sentencing here as well. In fact, theoretically speaking, the risk of recidivism is an essential element in sentencing. Here I examine the extent to which this role of the risk of recidivism manifests itself in actual practice.

4.3 PRIOR RESEARCH

Virtually all the quantitative studies on sentencing in the Netherlands and abroad demonstrate the role of the risk of recidivism in sentencing outcomes. In addition to the severity of the offense, the offender's criminal record is one of the most important factors in sentencing: the longer the list of previous convictions, the longer the prison sentence (Blumstein, Cohen, Martin, & Tonry, 1983; Timmerman & Breembroek, 1985; Kannegieter, 1994). Although the offenders' criminal records are taken into consideration in almost all the recent studies on sentencing, the opposite is true as regards the risk of their recidivism. In the Netherlands and abroad, up to now the risk of recidivism has not been a topic of investigation in quantitative studies on sentencing.

One exception is the study we conducted for the Council for the Judiciary (Van Wingerden, Moerings, & Van Wilsem, 2011). We examined the extent to which the risk of recidivism, as it is estimated using the risk assessment tool RISC, affects sentencing. The results show that the role of the risk of recidivism in sentencing is diffuse and limited. Offenders with a high risk of recidivism according to the RISC do not have a greater chance of being sentenced to prison than those with a low risk of recidivism. There is no significant difference in the duration of their sentences. Many risk-related offender characteristics that are unchangeable or *static* such as sex, age and country of birth do bear a relation to the sentence. Women for example have less of a chance of being sentenced to prison and the duration of their sentences is shorter. Offenders in the 31-50 age group are less likely to be sentenced to prison than those in the 18-30 age group, although the duration of sentences for offenders above the age of 30 is longer. The chance of a prison sentence is greater for offenders from an Eastern European or non-Western country, but their sentence length does not differ from those of offenders born in the Netherlands. A criminal record also increases the chance of a prison sentence. The role of *dynamic* risk factors in sentencing is similarly diffuse. Unlike static risk factors,

these risk factors are changeable. Some factors such as a criminogenic housing situation (at a shelter or on the streets) or work situation (irregular jobs or unemployed) increase the chance of a prison sentence but decrease the length of the sentence. Drug use is also linked to a shorter prison sentence. Many risk factors are thus not necessarily linked to a greater chance of a prison sentence or a longer one. So on the basis of this quantitative study, the role of the risk of recidivism in sentencing is not unequivocal.

Other research methods might perhaps provide greater insight into the role of the risk of recidivism in sentencing. In this same study, a case is presented to fifteen judges. Despite the wide variety in the sanctions the judges state they would impose, all of them accord a prominent position to the risk of recidivism when asked to arrange cards with the facts and circumstances of the case in a sequence rating their importance. Only physical harm to the victim and the offender's prior convictions for crimes of violence committed under the influence of alcohol are considered more important by the judges (Van Wingerden et al., 2011). On the basis of interviews with judges, in the following section I address the exact significance judges attribute to the risk of recidivism in sentencing.

4.4 THE ROLE OF THE RISK OF RECIDIVISM ACCORDING TO THE JUDGES

4.4.1 Estimates of the role of the risk of recidivism

According to all fifteen judges who were interviewed, the risk of recidivism plays an important role in sentencing. However, they do not attribute any importance to the risk of recidivism as such as it is described by the Probation Service in the pre-sentence report. Even though they indicate that they do read the conclusions of the Probation Service about the risk of recidivism, they are more interested in the underlying reasons for this risk. The risk of recidivism cited in the pre-sentence report should follow from the entire story of the personal background and circumstances of the offender. 'I don't just blindly accept the risk of recidivism referred to in the pre-sentence report,' says one judge (Interview F). The judges who were interviewed state they always make their risk assessment. The criminal record of the offender plays an important role in this connection. As one judge says,

'I myself mainly estimate the risk of recidivism based on the criminal record and the impression the suspect makes on me in the file and in court. As far as what the Probation Service has to say about the risk [...] that is not really so useful to me. And sometimes I have a totally different idea about that risk of recidivism. I read the report, I accept it, but can't do much with it' (Interview E).

4.4.2 Influence of the risk of recidivism on sentencing

Although all judges say the risk of recidivism plays a role in their sentencing decision, it is not so clear exactly how they take the risk of recidivism into consideration when making a decision. Are offenders with a high risk of recidivism more apt to be sentenced to prison or to a longer prison sentence, or are they more apt to be sentenced to sanctions involving behavioral interventions? It is clear from the interviews that the risk of recidivism plays more of a role in the selection of the modality and type of sanction than in the duration of the sentence. 'It mainly plays a role in determining the type of sentence I impose, suspended or not, and possibly the conditions themselves' (Interview D). 'Suspects with a high risk of recidivism are more apt to be given a suspended sentence and special conditions' (Interview J). 'This is because of the need to *work on* the offenders with a high risk of recidivism. 'If there is a high risk of recidivism, you have to do something about it.' Another judge clarifies this, 'If the risk of recidivism is high, you have to put special prevention in place' (Interview F). 'You impose more custom-made sanctions if the risk of recidivism is high' (Interview J). Offenders with a low risk of recidivism are less in need of behavioral interventions.

'If the risk of recidivism is low, it doesn't really play a role at all. Because then you only punish the offender for what has already happened, he gets his sentence and that is it. You don't add any kind of suspended sentence. There would be no point to it' (Interview G).

So a lower risk of recidivism does not necessarily mean a shorter sentence, but a high risk of recidivism means more custom-made sanctions and a greater likelihood of a suspended sentence with special conditions being imposed. At any rate a high risk of recidivism does not seem to be a reason to be more apt to impose a prison sentence or make the sentence longer.

4.4.3 In pursuit of hope for the offender

It is clear from what is noted above that judges do take the risk of recidivism into consideration from a penal welfarism perspective. Offenders with a high risk of recidivism are not simply written off. Judges are constantly on the lookout for indications that the offender has made – or wants to make – positive changes in his lifestyle. Judges are well aware that the risk of recidivism is not fixed, that it is subject to change because the circumstances in the offender's life can change. 'It is often just a matter of meeting a really nice woman and suddenly something clicks ... that is the kind of thing it can take to turn someone's life all the way around' (Interview J). Another judge says:

'We never stop hoping they are going to see the light. I sometimes ask about that in court. "When are you finally going to turn the corner? Because if I look at your record ..." I really do mention that sometimes. In practice, it does happen that at a certain moment they turn a corner. When people reach a certain age or start having a certain kind of relationship or when they have children. It can happen' (Interview B, cf. Interviews A, G and J).

Most of the judges who were interviewed indicate that sentences are lower for offenders who want to mend their ways. In one interview, a judge explains how important he feels it is whether an offender is willing to turn over a new leaf.

'I always ask, "What do you want to do with your life? What kind of ideas do you have about the future?" It really matters to me what they say. If they say, "I realize I have messed up the last couple of years and it is not really what I want at all. I am thinking about going back to school, that is what I would like to do," that is what I want to hear, then you can see the kind of picture they have in mind. If they say, "I don't have the slightest idea" or someone says "things are going fine in this suspect's life" or "I do have ADHD or I am a drinker but that does not lead to any problems" then I think that is a pity and I think he is not ready for help or support yet, maybe he will have to get into trouble one more time before he shapes up' (Interview F).

It is clear from the judges' avid interest in whether offenders want to mend their ways how much significance the judges attribute to the idea of resocialization. This is more indicative of a sentencing practice characterized by penal welfarism than by the risk management of the new penology. Wherever possible, judges seem to opt for special prevention via resocialization. They do not lose sight however of the interests of society. Judges also note that offenders might be at a point in their criminal career where they are no longer eligible for suspended sentences. Offenders with a high risk of recidivism then do receive longer sentences, because the judges have simply had it with them and want to punish them. It is clear however from the judges' responses that this consideration is not based as much on the risk of recidivism as it is on the offenders' criminal record and sanctioning history.

4.4.4 Continuing the sentencing trend

Judges not only base their estimate of the risk of recidivism on the information from the pre-sentence report, to an important extent they also base it on the offender's criminal record. And they not only consult the criminal record to see what crimes the offender has been convicted of in the past, they also want to see what sanctions have been imposed. This enables the judges to take the sanctioning trend into account. One judge formulates this as follows, 'A prior prison sentence means he is already on the ladder there' (Interview L). So there

is no point to sentencing an offender to community service if he has repeatedly failed in the past to meet with the community service conditions and has already served a number of prison sentences. Another judge puts it as follows, 'I am not going to go against the sanctioning trend in an individual case by reverting back to community service unless there are very special circumstances' (Interview F).

If judges impose a longer sentence for offenders with a high risk of recidivism, their reasons for doing so thus seem less related to the risk of re-offending than to the sanctions imposed in the past. If despite all the efforts made in the past, the offender is still incorrigible, judges do reach a point where they have had it with him and just settle for out and out punishment. There is no longer any trace of penal welfarism in this case, just retribution and incapacitation.

4.5 CONCLUSION

Although in theory, the risk of recidivism plays an important role within the mixed theory for the justification of punishment, particularly when sentences are imposed with a view to safeguarding society and resocializing the offender, its role in the practice of sentencing has barely received any attention in sentencing studies. That is why this study focuses on the role of the risk of recidivism in actual sentencing practice. To this end, we have conducted interviews with judges. Although there are several disadvantages to interviewing judges about how they arrive at their sentencing decisions, such as the reprimand expressed by Gommer (2007) that it only generates rationalizations in retrospect, which might deviate sharply from what the judges' motivations really were, there is the great advantage above quantitative research on sentencing that it does more than reflect a coherence in a model constructed by the researcher. The interviews provide valuable insight into how judges themselves see the sentencing process as regards precisely the factors that are so hard to measure in quantitative sentencing studies, e.g. a judge's belief that the offender really does want to mend his ways. What is more, the interaction processes between the various sentencing factors can be revealed on the basis of these interviews because they grant insight into the judges' reasons for opting for certain sanctions.

The results of our study show that judges never blindly make decisions on the sole basis of the risk of recidivism as it is estimated in the Probation Services' pre-sentence report. They prefer to make their own risk assessments. This finding is in keeping with the results of quantitative research on the role of the risk of recidivism in sentencing (Van Wingerden et al. 2011). In addition, the judges all indicate that the risk of recidivism is an important factor in their sentencing decision, particularly as regards the type of sanction to impose. Offenders with a high risk of recidivism are not necessarily more likely to be

sentenced to prison, but they do have a greater chance of suspended sentences with behavioral interventions as special conditions. After all, there is *work to be done* on these offenders. This also means that in principle, offenders with a low risk of recidivism are not apt to be given suspended sentences with special conditions, since even without interventions, they will probably stay out of trouble.

Striking about the interviews is that judges never write off high-risk offenders beforehand. They are always on the lookout for indications that the offender has mended his ways or wants to. This is indicative of a sentencing practice more characterized by the resocialization idea of penal welfarism than the risk management idea of the new penology. However, once an offender has had enough chances and has not taken advantage of them, as is evident from prior convictions, the judges reach a point where they have had it with him. They are no longer apt to even consider suspended sentences with special conditions. In these cases, resocialization is no longer a sentencing aim and retribution and special prevention through incapacitation are what it is about. This practice is in keeping with the observation by Hannah-Moffat (2005) that the new penology has not replaced the old sentencing practice based on penal welfarism. Instead the strategies geared toward reducing risk are hybrid and flexible so various sentencing practices can simultaneously support each other.

In short, when assessing the interests of an offender to be kept out of trouble, and the interests of a victim and of society to be safeguarded against the future criminal conduct of the offender, resocialization is an important sentencing goal for judges. However, once an offender has had enough opportunities to mend his ways, the sentencing aim of safeguarding society and of retribution come to play a main role. For the time being, there seem to be no grounds for a fear of predictive sentencing whereby sentencing with a view to preventing future behavior violates the offender's fundamental human rights. Offenders are not given longer sentences because of their high risk of recidivism in itself, but because they have not mended their ways after all kinds of other previous sanctions. Every time he is convicted, the offender moves a little bit higher on the sentencing trend. And the judge is solely apt to deviate from the sentencing trend if he is firmly convinced the offender has turned a corner and is headed for the straight and narrow path.

This seems to be a sentencing practice with a lot to say for it. The sentencing goal is geared toward the individual case. Utilitarian considerations shaped by the risk of recidivism play an important role in this connection. In this line of thinking, judges continue to address the offender's interests in the sense of resocialization but are not unaware of society's interest in its own safety and in retribution. Which side the scale will tip towards depends on the severity of the crime and on the offender being willing and able to change. This hybrid sentencing practice does justice to the interests of the offenders as well as to those of society.

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5 | Sentencing homicide offenders in the Netherlands

Offender, victim, and situational influences in criminal punishment¹

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ABSTRACT

Empirical investigations of criminal sentencing represent a vast research enterprise in criminology. However, this research has been restricted almost exclusively to U.S. contexts, and often it suffers from key data limitations. As such, an examination of more detailed international sentencing data provides an important opportunity to assess the generalizability of contemporary research and theorizing on criminal punishment in the United States. The current study investigates little-researched questions about the influence of prosecutorial sentencing recommendations, victim/offender relationships, and extralegal disparities in sentencing by analyzing unique data on the punishment of homicide offenders in the Netherlands. The results indicate that offender, victim, and situational offense characteristics all exert important independent effects at sentencing and that prosecutorial recommendations exert powerful influences over judicial sentences. The article concludes with a discussion of future directions for comparative sentencing research across international contexts.

5.1 INTRODUCTION

Empirical investigations of criminal sentencing represent a vast research enterprise in the United States, with decades of research focusing on the prevalence and causes of unwarranted racial, ethnic, and gender disparity in punishment (Blumstein, Cohen, Martin, & Tonry, 1983; Spohn, 2000; Zatz, 2000). Few studies, however, have examined social inequality in international punishment contexts, despite recent arguments that ‘it is with an international,

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comparative approach' to crime and justice that 'the greatest gains will be made' (Sampson & Lauritsen, 1997, p. 365). In response, the current research analyzes unique data on the criminal sentencing of indicted homicide offenders during a 12-year period in the Netherlands.

Contemporary research on criminal sentencing in the United States provides substantial contributions, but recent scholarship identifies several key limitations in this work. These limitations include inadequate attention to the role played by other court actors besides the judge, a failure to go beyond publicly available data, a lack of detailed statistical controls and interactions that capture the full gamut of sentencing considerations, and the practice of combining data on various crime types that include mostly minor offenses (Auerhahn, 2007a; Bushway, & Piehl, 2007; Johnson, 2003; Mears, 1998; Thomson & Zingraff, 1981; Wellford, 2007; Wooldredge, 1998).

The role of the prosecutor, in particular, has been identified as a crucial and underinvestigated influence in sentencing. With few exceptions, research on prosecutorial influence is limited to specific case processing decisions that occur prior to sentencing (e.g., Albonetti, 1986, 1987; but see Hagan, 1974). Little is known about the important influence that prosecutorial recommendations exert over final sentencing outcomes. Although these recommendations are common, they are not recorded systematically in publicly available sentencing data. The concordance between prosecutorial recommendations and judicial sentences remains essentially uninvestigated.

In addition, Wellford (2007, p. 399) suggested recently that 'problems derive from the fact that much of contemporary research on sentencing is limited by the data that sentencing commissions collect and make available to researchers'. Offender/victim relationships represent a key element of the punishment process that typically goes uncaptured (Thomson & Zingraff, 1981). As Spohn (2000, p. 469) suggested, 'criminal punishment is contingent on the race of the victim as well as the race of the offender.' Paramount among other omitted variables are measures of situational offense characteristics, such as the location and *modus operandi* of the crime. Therefore, research is needed that better incorporates situational influences beyond those typically available in public sentencing data.

Additionally, relatively few studies focus on the 'ultimate' crime of homicide despite suggestions that 'the paucity of research on sentencing disparity specific to homicide represents a significant gap in the existing literature' (Auerhahn, 2007a, p. 278–279; Franklin & Fearn, 2008). Homicide punishments engender broad moral and symbolic concerns in society, serve as a global barometer of national sentencing policy, and provide a useful analog for the long-standing criminological tradition focusing on homicide offenders (e.g., Wolfgang, 1958). Homicide is also particularly amenable to cross-national comparative research because it tends to have greater definitional specificity than other crimes across national contexts (Fox & Zawitz, 2007; LaFree, 1999).

The current study clarifies the understudied role of prosecutors by examining their sentencing recommendations and subsequent influences on final sentencing outcomes. It incorporates a broad array of offender, victim, and situational characteristics in sentencing, and it expands the scope of contemporary sentencing research to the unstudied international context of the Netherlands. This study offers unique opportunities to assess the broad generality of courtroom research and theorizing that to date have been largely confined to the United States. This opportunity is important given claims that 'perhaps the most glaring gap in the literature is that almost all of the research on sentencing disparity is limited to the contemporary North American – particularly U.S.- context' (Ulmer, 2005, p. 1501).

5.2 CRIMINAL JUSTICE IN THE UNITED STATES AND THE NETHERLANDS

Although there are a myriad of similarities, several important differences exist between the Dutch and U.S. criminal justice systems (see Hoyng & Schlingmann, 1992; Nijboer, 2006; Tak, 2001). The Netherlands has traditionally been known for the comparative leniency of its justice system, but recent years have witnessed a steep increase in the use of incarceration (Boone & Moerings, 2007; Tak, 2001). A single national system governs criminal punishment in the Netherlands, with exclusive jurisdiction over its 19 district courts. Plea bargaining as it exists in the United States is not used in the Dutch system. Although Dutch public prosecutors decide whether and what to charge, they do not provide charging or sentencing concessions in exchange for guilty pleas as is often the case in America. In the case of homicide, prosecutors rarely dismiss charges, but they do decide whether to charge an offender with murder or manslaughter, with the former requiring evidence of premeditation.

The Dutch prosecutor's role in the sentencing phase of homicide trials is public and explicit. Unlike in America, where charging and sentencing negotiations might occur behind closed doors, the prosecutor's sentencing recommendation is part of the formal sentencing record in Dutch courts, providing a unique opportunity to examine the prosecutor's influence in sentencing. In the Netherlands, the prosecutor compiles the dossier, which includes all written reports from the pretrial investigation. The American process of cross-examining witnesses does not exist in the Netherlands; rather, a judicial tribunal of three judges decides what questions to ask (although the defense counsel is permitted to request questions). Homicide cases in the Netherlands often can be tried in a matter of hours or days, rather than weeks, because all parties are provided with the dossier in advance of a trial. In all criminal cases, the prosecutor recommends a punishment, after which the three judges have a two-week period to determine the final sentence, which like most U.S. jurisdictions, is appealable by both the prosecutor and the defense.

U.S. judges often run in partisan elections for fixed terms on the bench, whereas judges in the Netherlands are appointed for life terms.² Moreover, unlike the United States, the Dutch justice system does not use juries for either the determination of guilt or sentencing, in homicide or any other cases. Rather, less serious cases are adjudicated by a single magistrate and more serious cases – including homicide – are heard by a ‘fullbench division’ consisting of a panel of three judges.³ The three judges are required to come to a consensus regarding both the guilt of the offender and the proper sentence.⁴ As in the United States, select juvenile offenders can be punished in adult court under specific circumstances.

In both countries, prison sentences are the norm for convicted homicide offenders, and life imprisonment without parole can be applied in both countries. In the Netherlands, however, there is no death penalty and non-life sentences are limited to 20 years for murder and to 15 years for manslaughter.⁵ In the United States, 37 states and the federal system allow the death penalty and there is no cap on the term of incarceration for convicted offenders. In the Dutch system, the criminal code contains only a sentencing maximum. The minimum term when a prison sentence is imposed is 1 day. There are no sentencing guidelines and no mandatory minimum sentences in the Netherlands. Dutch judges, therefore, enjoy broad discretionary power in both the type and the severity of criminal punishment. The prosecutorial recommendation is not legally binding for the judge, although it is likely to offer a useful anchoring point in judicial sentencing deliberations, and judges are asked to offer reasons for deviating starkly from it. In many ways, the modern Dutch sentencing system resembles indeterminate sentencing regimes that dominated American sentencing in the 1960s and 1970s and still exist in several states today. Whereas truth-in-sentencing laws in some U.S. states require offenders to serve at least 85 percent of their nominal sentence, typically Dutch offenders are released after serving two thirds of their term.⁶

2 Dutch judges are first nominated by a Selection Committee consisting of judges, ministry officials, lawyers, academics, and business representatives before being formally appointed to the bench by Royal Decree.

3 In the United States, some federal districts experimented with ‘sentencing councils’ in the 1960s that resembled the Dutch system. They were composed of loosely organized panels of three judges who would review the presentence report and make a sentencing recommendation, although the final sentence decision remained with the presiding judge. These councils were enacted to reduce interjudge disparity in sentencing, but their popularity stagnated in the face of time, resource, and autonomy concerns (Frankel, 1973, p. 69-74).

4 Whether Dutch judges agree initially is unknown, and the ways they reach their final decisions regarding guilt and sentence is the ‘secret of the judges’ chambers’, but in every case, Dutch judges are required to reach a unanimous consensus.

5 In 2006, the maximum length of a prison sentence for murder in the Netherlands was increased from 20 to 30 years, but the current analyses use data that predate this legislative change.

6 This early release system was modified to a conditional release system in July, 2008, but our data predate this change.

One unique aspect of homicide sentencing in the Netherlands is a treatment option available to Dutch judges for offenders deemed not to be accountable for their actions because of their mental state at the time of the offense. For these offenders, a treatment-based sentencing option abbreviated as Tbs is available.⁷ Tbs is a mandatory treatment order in a special penal institute for the mentally ill.⁸ If an offender is deemed partially unaccountable for his or her crime, then the Tbs treatment might be imposed in conjunction with a prison term. After serving time in prison, the inmate is then transferred to a mental institution, where he or she is evaluated periodically to determine whether and when he or she should be released. This term is indeterminate, and some offenders might spend the rest of their lives in these special facilities. Overall, the various similarities and differences between the United States and Dutch justice systems offer an important opportunity to investigate the common and unique social forces that drive criminal punishments across international borders.

5.3 RESEARCH ON HOMICIDE SENTENCING

Empirical research on the punishment of typical homicide cases is rare.⁹ Few studies investigate large representative samples of homicide cases, and extant research often focuses on particular types of homicide, such as infanticide (Dean, 2004) or intimate partner homicide (Barnard et al., 1982; Easta, 1993). Much of this work relies on relatively small, localized samples of homicide cases, often from a single urban jurisdiction (Auerhahn, 2007a; Lake, 2002; Williams & Rodeheaver, 1991).

7 TBS is an abbreviation for the Dutch word 'terbeschikkingstelling', which translates to the phrase 'at the disposal (of the government)' and identifies cases that involve detention under a Dutch 'entrustment order'. This option is reserved for offenders deemed partially or completely irresponsible for their actions (for a complete discussion of the Tbs sentencing option, see the special issue on Tbs in *Judicial Explorations* (1993), 19 (3); Tak, 2001).

8 Currently, approximately 1,700 offenders are detained under the TBS-treatment option in the Netherlands (DJI, 2007).

9 Existing research on the sentencing of homicide offenders in the United States overwhelmingly focuses on the application of the death penalty. This interest is understandable given the severity, finality, and controversy surrounding death sentences in the United States. Much of this literature demonstrates the importance of offender, victim, and geographical disparities in the application of the death penalty (e.g., Baldus, Pulaski, & Woodworth, 1983; Paternoster, 1984; Radelet, 1981; Williams, Demuth, & Holcomb, 2007). However, death penalty sentences are extremely rare: few homicide offenders are sentenced to death, and only a small percentage of them are eventually executed. Death-eligible homicides and executions are the exception rather than the rule. Research on capital punishment in the United States has limited applicability for understanding homicide sentencing in broader international context because most Western democracies, including the Netherlands, have abolished the death penalty.

Some quantitative studies focus on earlier case processing decisions in homicide cases. For instance, a series of papers by Ronald Farrell and Lynn Swigert analyzed conviction severity for a sample of 444 homicide cases prosecuted in a Northeastern jurisdiction between 1955 and 1973. Their analyses revealed that sex and occupational prestige of both offenders and victims influenced the seriousness of final conviction charges; moreover, these social characteristics interacted to disadvantage specific offender/victim dyads. Males and lower status offenders who targeted female and high-status victims were convicted of the most serious charges (Farrell & Swigert, 1978, 1986; Swigert & Farrell, 1977). Some evidence also was found for the influence of prior criminal record, bail status, and jury trial conviction in these studies, although few significant racial differences emerged.

More recently, Baumer, Messner, and Felson (2000) revisited the role of victim characteristics in homicide, using a broader range of prosecutorial outcomes drawn from 33 U.S. counties. They concluded that 'killings of disreputable or stigmatized victims tend to be treated more leniently by the justice system' (Baumer, Messner, & Felson, 2000, p. 304). Their findings are consistent with a broader literature that finds defendants receive less severe sanctions for victimizing low-status, non-White, and male victims (e.g., LaFree, 1980; Myers, 1979; Spohn & Spears, 1996). Although these studies provide evidence of the importance of offender and victim characteristics in the justice system, they do not investigate the sentencing outcomes of convicted homicide offenders.

Only four studies examine specifically the homicide sentencing decisions of judges. Curry, Lee, and Rodriguez (2004) examined incarceration and sentence length decisions for a sample of violent crimes, including homicides, in seven urban Texas counties. They found evidence that longer sentences were meted out for males who attacked females but reported little evidence for the importance of racial dyads in sentencing. Homicides in this study, however, were analyzed with common violent crimes, including robberies and aggravated assaults. These results, therefore, speak more generally to the punishment of violent offenses rather than to homicide specifically.

Auerhahn (2007a) examined homicide sentences in a sample of 524 males convicted of third-degree murder or manslaughter in Philadelphia, Pennsylvania. Integrating data from several sources, she included a broad array of offender, victim, and situational offense characteristics. She found that charge severity was the most important predictor of sentence length, with offender, victim, and situational factors exerting small and insignificant direct effects. However, constellations of extralegal factors, including age, race, and pretrial detainment, significantly influenced incarceration terms, lending some support for the importance of specific 'criminal stereotypes' in homicide. This work offered a substantial contribution, although it did not include controls for prior criminal offending and was limited to male offenders.

In related work using the same data, Auerhahn (2007b) compared offenses of conviction and final sentence types for intimate partner homicides and non-intimate partner homicides. She focused primarily on the role that gender played in the offender/victim dyad and reported that male defendants convicted of intimate partner homicides were punished more harshly than female defendants. She also found that among male defendants, intimate partner homicides received more severe sanctions than nonintimate partner homicides. This study was unique because it compared one specific type of homicide to the broad class of more general homicide cases, although it did not disaggregate among different types of non-intimate partner homicide.

Most recently, Franklin and Fearn (2008) examined the role of gender dyads in homicide sentencing. Although they explained less than 15 percent of the variance in sentence lengths, their findings indicated that male offenders who target female victims received the longest sentences; however, they found little evidence for the importance of racial dyads. As Auerhahn (2007a, p. 302) argued persuasively, despite the contributions of extant work, 'more specific analyses are needed to sort out what role, if any, homicide circumstance plays in sentencing'.

5.4 THEORETICAL PERSPECTIVES ON HOMICIDE SENTENCING

Although theoretical advances in sentencing research have developed slowly (Hagan, 1989), several contemporary theoretical frameworks offer useful guidance for understanding punishment processes in criminal courts. Attribution, organizational efficiency, courtroom community, and focal concerns perspectives all offer unique insights into how court actors make punishment decisions.

Attribution perspectives maintain that prosecutors and judges are organizational actors whose decision-making is constrained by limited time and information (Albonetti, 1991). Because court actors seldom have complete information, they are forced to rely on a decision-making schema that draws on experiences, normative courtroom mores, and societal stereotypes to form attributions of offender risk and criminality. These attributions represent decision-making shortcuts that reduce cognitive uncertainty and help maximize organizational efficiency. Early theoretical work on the attribution of homicide offenders suggested that court actors responded to specific cultural stereotypes of criminality (e.g., 'the normal primitive'), which integrated racial and class conceptions into attributions about the predisposition of violence (Swigert & Farrell, 1977). Certain classes of homicide offenders and offenses were more likely to be defined as primitive and amoral, evoking greater outrage and increased sanctions. From this perspective, then, offender and victim characteristics that are associated with attributions of increased dangerousness or greater likelihood of future criminality should increase punishment.

Attribution processes, however, do not take place in a social vacuum. Rather, they occur as part of a group dynamic that involves not only the sentencing judge but also other members of the courtroom workgroup. Courtroom community theory, therefore, argues that case processing is the result of a collective decision-making process among the courtroom elite (Eisenstein & Jacob, 1977). The most important members are, arguably, the judge and public prosecutor, with the defense counsel playing a less central but still important role. Group dynamics such as the stability and familiarity of the court workgroup, as well as external influences such as the role of the local media, sponsoring agencies, and environmental surroundings, factor into the process of defining appropriate punishments. Criminal courts also can be understood as organizations specializing in the effective disposition of criminal offenders (Dixon, 1995). Over time, courtroom workgroups develop localized norms regarding 'normal crimes' (Sudnow, 1965), which include appropriate punishments for commonly encountered constellations of offender, victim, and offense characteristics – what are sometimes referred to as 'going rates' (Nardulli, Eisenstein, & Flemming, 1988). Accordingly, organizational efficiency represents one of the most important goals of the court; a goal that is shared by the members of the courtroom workgroup and helps to shape individual punishment outcomes (Dixon, 1995).

Many of these key theoretical arguments can be integrated under the broad rubric of the focal concerns perspective (Steffensmeier, Ulmer, & Kramer, 1998). Focal concerns argue that courtroom decision-making is a product of attributional decision-making processes that result from time and information constraints in an organizational setting. The focal concerns perspective specifically provides three key sentencing considerations, as follows: 1) blameworthiness and culpability, 2) dangerousness and community protection, and 3) individual/organizational practical constraints. Attributions of blameworthiness typically reflect the offender's role in the crime, the criminal intent, and the overall severity and heinousness of the offense. Attributions of dangerousness incorporate the offender's prior record along with various offense, offender, and victim characteristics tied to assessments of future risk. Given organizational decision-making constraints, court actor assessments of culpability, dangerousness, and future criminality are likely to be influenced by stereotypes tied to offender characteristics, which might contribute to inequities in sentencing among offenders of different social strata. Drawing on the broad insights of these related perspectives, this research enumerates several specific theoretical expectations.

5.5 THEORETICAL EXPECTATIONS

The unusual level of detail available in the Dutch homicide data, along with the unique aspects of the Dutch justice system, allows us to test various theoret-

ical predictions regarding courtroom decision-making. We begin by attempting to replicate several common findings on criminal punishment outcomes in the United States. Perhaps the most robust finding in studies of sentencing disparity is that the severity of the offense is routinely one of the most important predictors of sentencing severity (Kleck, 1981; Spohn, 2000; Zatz, 2000). In the case of homicide offenders, premeditation is especially likely to evoke attributions of increased dangerousness. Offenders convicted of murder should, therefore, be punished more severely than those convicted of manslaughter. Offenders convicted for multiple offenses also will likely be sentenced to longer prison sentences. In contrast, offenders deemed partially unaccountable for their actions because of their mental state at the time of the offense should be viewed as less culpable. Because their sentence can include a mandatory treatment order in a special penal institution for the mentally ill, their prison sentences are likely to be shorter. In line with prior research and theorizing, then, we predict the following:

Hypothesis 1:

Offenders convicted for murder instead of manslaughter, for multiple crimes, for homicides with multiple victims and for offenses not involving mandatory treatment (Tbs) will be punished most severely.

The characteristics of the prior criminal record of the offender also are strong and consistent predictors of sentencing severity. Offenders with long and violent prior records are likely to be viewed as greater risks for recidivism, as are those with previous stays of incarceration. We therefore expect that:

Hypothesis 2:

Offenders with longer and more violent prior criminal records and those with prior periods of incarceration will be punished most severely.

Contemporary theorizing also emphasizes the importance of extralegal factors in punishment. Race, age, and gender are likely to be tied to judicial attributions of dangerousness and future risk (Steffensmeier, Ulmer, & Kramer, 1998). These processes might operate in similar ways in the United States and the Netherlands, given their similar age-graded and gendered offending patterns (Gartner, 1990; LaFree, 1999; Nieuwbeerta & Leistra, 2007). Prior research in the United States, for instance, demonstrates that the criminal tendencies of racial minorities are more likely to be attributed to internal rather than to external causes (Bridges & Steen, 1998), which likely reflects some degree of in-group favorability (Allport, 1954; Brewer, 1999). Although the Netherlands is relatively homogenous with regard to race, it is characterized by important variation in ethnic origin. In 2006, for instance, only 52.0 percent of inmates were native Dutch. Foreign nationals constituted nearly half the Dutch prison population, with the largest groups coming from Suriname (8.7 percent), the

Netherlands Antilles (6.9 percent), and Morocco (6.2 percent) (see <http://www.dji.nl>). These ethnic cleavages mirror racial inequalities in the United States, so it seems plausible that ethnic disparities might similarly characterize punishment processes in the Netherlands.

Alternatively, female offenders might be viewed as less blameworthy and less of a risk for future violence. Gender disparity might occur for several reasons, including judicial chivalry or paternalism (Anderson, 1976; Franklin & Fearn, 2008) as well as gender-specific concerns over the social costs of imprisonment (Steffensmeier, Kramer, & Streifel, 1993). There is little reason to think these processes should differ among Dutch offenders. Although some scholars suggest that gender disparity should vary by crime (Daly, 1994), little work focuses on gender disparity in homicide (Franklin & Fearn, 2008; Williams et al., 2007). Moreover, recent work suggests that extralegal disparities often are cumulative and interactive, resulting from criminal conceptions involving several offender characteristics (Auerhahn, 2007a; Spohn & Holleran, 2000; Steffensmeier, Ulmer, & Kramer, 1998). Typically, this work suggests the greatest disadvantages accrue for young, male, minority offenders. We, therefore, test the following:

Hypothesis 3:

Young, male, and non-European foreign offenders will be punished more severely than older, female, and Dutch offenders, with increased punishments for offenders who are young, male, and non-European foreigners.

Although less research examines them, victim characteristics also might be tied to attributions of dangerousness and culpability. Very young and very old victims might be perceived as most vulnerable, producing stronger attributions of blame and resulting in greater punishments. Similarly, offenses committed against female and Dutch victims might be viewed as most egregious, resulting in more severe sanctions. Research on death penalty cases in the United States, for instance, found that homicides committed against minorities are less likely to result in death sentences (Baldus, Pulaski, & Woodworth, 1983; Baumer, Messner, & Felson, 2000; Paternoster, 1984; Radelet, 1981). One possible theoretical explanation for this pattern of findings is that court actors engage in a process of 'victim discounting' where crimes committed against males and minorities are deemed less worthy of punishment (e.g., Kleck, 1981). We therefore expect that:

Hypothesis 4:

Offenses involving young, old, female, and Dutch victims will be punished more severely than those involving middle-aged, male, and foreign victims.

In addition to the direct effects of offender and victim characteristics, it also is likely that these factors will interact to affect punishments. Male offenders

who attack female victims, for instance, might be judged especially dangerous, whereas offenses committed by foreigners against Dutch victims might arouse special feelings of enmity. Studies of the death penalty in the United States find some support for these expectations. For example, Radelet and Pierce (1985) show that Blacks accused of killing Whites are particularly likely to have their initial police reports 'upgraded' by the prosecutor, resulting in an increased likelihood of the death penalty. A similar logic might apply for victim gender, with particularly harsh punishments for males who target female victims (Franklin & Fearn, 2008; Williams, Demuth, & Holcomb, 2007). We, therefore, investigate offender/victim interactions based on the following:

Hypothesis 5:

Offender/victim race and gender will interact to produce the most severe punishments for males who victimize females and foreigners who victimize Dutch.

Several additional offense and incident factors also are likely to be important in sentencing. As Auerhahn (2007a, p. 282) lamented, 'there is very little existing literature regarding the effects of situational characteristics of the homicide event on sentencing outcomes'. Important details regarding the *modus operandi*, type of weapon, and location of the event might be particularly apt to influence judicial attributions of blameworthiness and culpability. Given the theoretical salience of these oft-omitted case details, we expect their inclusion to increase predictive accuracy significantly in models of judicial sentencing behavior. The details of the offense that signal increased community risk should increase punishment, whereas factors that indicate lower levels of blame should mitigate punishment. Incident characteristics associated with greater punishment might include the use of more lethal weapons (e.g., firearms), crimes committed in public rather than in private places, and crimes committed outside the realm of the immediate family. Based on these observations, we predict the following:

Hypothesis 6:

Offenders who use lethal weapons, commit their crimes in public places, and target non-family members will be punished most severely.

Punishment outcomes result from a dynamic process involving multiple court actors. Courtroom community perspectives suggest that judicial sentencing decisions are likely to be influenced by interactions with other court actors such as the prosecutor. Judges strive to maintain good working relationships to facilitate more efficient case disposition, so the sentencing recommendation of the prosecutor is likely to be weighed heavily by the judge at sentencing. However, judicial sentences might at least partially mitigate the recommended punishments of prosecutors. Prosecutors are likely to pursue more severe punishments, and they might even factor 'judicial discounting' into their

sentencing recommendations. Little empirical work investigates these issues, but we expect the following:

Hypothesis 7:

Prosecutorial sentencing recommendations will be positively related to, but more severe than, actual judicial sentences.

5.6 DATA AND METHOD

The current study uses unique data on the sentencing of Dutch homicide offenders to investigate these propositions. These data are based on a larger research project (see Nieuwbeerta & Leistra, 2007) and include all homicide events, both murder and manslaughter, committed during a 12 year period (1993–2004). To construct this Dutch Homicide Database, many sources of information were used. Homicide events were identified initially using The Netherlands National News Agency and annual summaries from Elsevier magazine. Both sources contained detailed information about the characteristics of the homicides, including suspect and victim information. The Dutch police also were asked to provide any additional information on the suspects, victims, and circumstances of each homicide.

Criminal records for all suspects were collected separately through the Central Judicial Documentation Department of the Dutch Ministry of Justice, which allowed each case to be tracked through subsequent stages of prosecution and sentencing, using the computer registry of the Public Prosecutor's Office. Together, this final data set provides a unique resource that brings together information about the offender, victim, and crime, as well as its subsequent prosecution and sentencing for homicide offenders punished during a 12-year period in the Netherlands.

The initial data collection produced a total of 2,638 suspects who were indicted on charges of homicide.¹⁰ Of these, sentencing data were available for 2,172 suspects, 1,911 of whom were sentenced to a known, variable term of incarceration. Consistent with prior work on homicide in the United States (Auerhahn, 2007a), we focus on variable terms of incarceration because they account for nearly 90 percent of all Dutch homicide sentences.¹¹ Additional

10 A total of 2,917 homicides occurred from 1993 to 2004, but 346 were never solved by the police, 130 were solved but the suspect either committed suicide or was prosecuted abroad, and 133 cases had unknown sentencing dispositions. An additional 313 cases were waived by the prosecutor for evidentiary or other reasons, resulting in a final total of 1,995 homicides involving 2,638 suspects (some cases involved multiple suspects).

11 The remaining cases consisted of 46 offenders who were sentenced to a youth facility rather than to an adult prison, 97 offenders who were sent to TBS-only treatment facilities, 40 offenders excused from subsequent legal proceedings (e.g., for medical reasons), 21 offenders sentenced to prison but for unknown terms of incarceration, and 32 offenders with unknown

information regarding prosecutorial sentence length recommendations was available for a total 1,613 suspects.¹² We analyze the data under three different restrictions: first, for all cases involving known data on prosecutorial prison recommendations; second, for all cases involving known data on judicial sentencing outcomes; and third, for the subset of cases where information was available on both prosecutorial recommendations and judicial sentences, which consisted of a total of 1,328 homicide cases.

5.6.1 Dependent variables

The primary dependent variable of interest is the number of years of imprisonment that convicted homicide offenders are sentenced to serve by Dutch magistrates.¹³ Because there is no statutory minimum in the Netherlands, imprisonment terms can range from as little as 1 day up to 15 years for manslaughter and up to 20 years for murder.¹⁴ For analyses of sentencing recommendations, sentence length is measured as the number of years requested by the prosecutor. The length of imprisonment is the most salient outcome because nearly all offenders receive incarceration terms. This value is consistent

sentences. We also excluded the 25 offenders (out of the total 2,172 offenders) sentenced to life imprisonment. To ensure that this did not bias our findings, we reestimated all models coding life imprisonment as a 20-year sentence. This had no substantive impact on our results, with the lone exception being that 'criminal sphere' became statistically significant, although it demonstrated only a small, positive effect on recommended and imposed sentence length. This likely reflects the fact that life sentences in the Netherlands often are applied to offenders who kill other criminals in the course of their criminal behavior.

- 12 As with judicial sentences, we limit our focus to variable terms of incarceration, which accounted for most prosecutorial recommendations. Other known types of prosecutorial recommendations included life imprisonment ($n = 34$), TBS-only treatment ($n = 63$), sentences to a youth facility rather than to an adult prison ($n = 29$), and dismissals or acquittals ($n = 110$).
- 13 Analyses of sentence length often include a correction term to account for potential selection bias (Berk, 1983). We do not include this additional regressor because few convicted homicide offenders do not receive some term of imprisonment. This results in a low degree of censoring that makes sample selection bias at this stage unlikely, and prior work suggests under these circumstances the correction term is likely to make estimates worse rather than better (Bushway, Johnson, & Slocum, 2007; Stolzenberg & Relles, 1990, 1997). However, it is important to recognize that important selection effects might occur at prior stages of case processing (arrest, initial charging decisions, etc.) that cannot be captured in analyses of sentence length alone – this is a common limitation characteristic of most research that examines sentencing outcomes.
- 14 The upper limits on incarceration result in sentence lengths that are relatively normally distributed. This finding indicates that unlike recent analyses conducted in the United States (e.g., Auerhahn, 2007a; Franklin & Fearn, 2008; Ulmer & Johnson, 2004), it was not necessary to transform the dependent variable logarithmically. For comparison purposes, we also examined alternative specifications with a logged measure of sentence length, but the results were substantially the same, so we report the original metric of years of imprisonment.

with recent work on homicide sentencing in the United States (Auerhahn, 2007a; Franklin & Fearn, 2008).

5.6.2 Independent variables

The Dutch Homicide Database contains numerous predictor variables, including case, offender, victim, and incident characteristics. Relevant case factors include offense severity and case processing characteristics. The severity of the homicide is captured with a dichotomous measure of whether an offender was convicted of murder (requiring premeditation and intent) or manslaughter (requiring only intent), with murder coded 1. Homicide cases that involve additional charges for other crimes are captured with a variable coded 1 for multiple crimes. Additional details of the case include whether multiple offenders were involved and whether multiple victims were involved. Each detail is captured with a dummy variable coded 1 for cases involving more than one offender or more than one victim.¹⁵ The last case factor measures whether a sentence includes a term of mandatory treatment (Tbs) in addition to a prison term, with Tbs coded 1.

The criminal history of the offender is incorporated using several measures collected from the Dutch Ministry of Justice.¹⁶ Prior criminal convictions are captured with a three-category ordinal variable to distinguish offenders with no criminal history from those with minor versus major criminal records. The approximate mean of the distribution is used to distinguish minor from major criminal histories, with 1 to 9 coded as minor and 10 or more coded as major. A similar strategy is used to capture prior convictions for violent crimes. Offenders are coded as having no prior record of violence or as having minor or major records of violence. Minor records capture offenders with one to three violent crime convictions, and major criminal records include offenders with four or more violent priors. Prior bouts of incarceration also are captured with a measure of the total years spent in prison prior to the current homicide charge, divided by the number of years at risk for imprisonment beginning

15 Additional models also were examined, including measures of the number of criminal charges and the number of offenders and victims as ordinal variables (e.g., one victim, two victims, or three or more victims). The decision was made to collapse these measures in the interest of parsimony after preliminary examination indicated that the substantive results remained unchanged.

16 Data on criminal history had to be collected independently from the Dutch Ministry of Justice. We succeeded in doing so for 84 percent of all cases. To address the fact that we have missing data on this variable, we include a dummy variable for missing criminal history data in all statistical models. This technique provides unbiased coefficients for our other variables of interest and is useful to prevent the unnecessary listwise deletion of these cases.

at age 12 years. This result represents the proportion of one's life previously spent imprisoned.

Several offender characteristics also are examined. The age of the offender is captured with an ordinal variable consisting of four categories (12-17 years, 18-30 years, 31-50 years, and more than 50 years). The use of an ordinal measure allows for nonlinearity in the age effect (Steffensmeier, Kramer, & Ulmer, 1995) and simplifies subsequent interactions. Gender is measured with a dummy variable with males coded 1. Nationality is captured with three dummy variables separating Dutch, European, and non-European offenders. To investigate the joint impact of offender factors, three-way interactions also are examined for age, gender, and nationality, and young, male foreigners (combining European and non-European offenders) are the primary group of interest.

Several victim characteristics also are examined, which mirror the offender variables. The age of the victim is included with the same categorical measure as the offender. Gender is dichotomized male and female, and nationality separates foreign victims (European and non-European) from Dutch victims. The few cases involving multiple victims from different age or nationality categories were combined into the 'unknown' age or nationality category to prevent these hybrid cases from affecting the estimates for single victim age and nationality groups.¹⁷ Several interaction terms also were created to examine the intersection of offender and victim characteristics. These included two-way interactions for offender/victim gender and offender/victim nationality, with male-on-male and Dutch-on-Dutch homicides serving as the two reference categories.

The situational characteristics of the criminal incident also are examined, which include information on when, where, and how the homicide was committed. The *locus delicti*, or the location of the event, is coded using several categories distinguishing homicides committed in homes from those committed in bars/clubs, outdoors, along a roadside, or in other/unknown locations. Similarly, the *modus operandi* includes the type of weapon and method, such as a shooting, stabbing, strangling, or other form of killing, whereas the type of homicide identifies specific kinds of murder or manslaughter, including parricide, infanticide, intimate partner homicides, and killings that occur in conjunction with sexual crimes, robberies, or homicides in the criminal sphere.¹⁸ The reference categories for these incident characteristics are intimate partner homicides, occurring in the home and committed with a firearm.

17 Six percent of cases involved multiple victims; however, only a small proportion of those involved multiple victims from different age, gender, or nationality groups. Recoding of these cases to reflect the victim with the highest social status had no substantive impact on our findings.

18 Homicides within the criminal sphere are homicides involving offenders and victims that are both criminally involved. For example, homicides that occur among rivals in the course of drug trafficking activities are commonly classified in this way.

Finally, fixed effects for both year and district court also are included in the model to control for potentially important fluctuations in punishment across time and place. Although the fixed-effects approach precludes examination of district-level predictors in sentencing, it is useful in accounting for unobserved heterogeneity in sentencing outcomes across courts and over time. These effects are omitted from tables in the interest of space, but complete results are available from the authors.

5.7 RESULTS

5.7.1 Descriptive analyses

Table 5.1 provides descriptive statistics for our three subsamples of homicide cases. On average, Dutch prosecutors recommend approximately 8.5 to 9.0 years of incarceration for homicide, but Dutch judges sentence cases between 7.0 and 7.5 years. Prosecutors also are less likely to include Tbs treatment as part of an offender's sentence compared with judges. Among all homicide indictments, approximately 70 percent were charged with murder rather than with manslaughter, but only approximately 50 percent were sentenced for murder. These numbers provide some preliminary evidence that prosecutorial sentence recommendations are relatively more severe than the actual sentences meted out by Dutch judges. Figure 5.1 provides a comparison of the separate distributions for prosecutorial sentence recommendations and final judicial sentences for comparison purposes. It is clear from the figure that prosecutorial recommendations, on average, are relatively more severe than the prison terms meted out by Dutch judges.

Table 5.1 also demonstrates that nearly half of all homicides involved multiple offense charges or multiple suspects, but only 6 percent involved multiple victims. Not surprisingly, most offenders had prior convictions, but less than half had prior convictions for crimes of violence. More than 90 percent of offenders were male, most of which were between the ages of 18 and 30 years. Approximately half of all offenders were of Dutch nationality, with a large proportion (approximately 40 percent) coming from non-European countries. Victim characteristics are in many ways similar. More than 70 percent of victims were male, and approximately half of all victims were of Dutch origin. Jointly considered, offender sex dyads are remarkably similar to those in the United States (cf. Franklin & Fearn, 2008); approximately two thirds of homicides involved a male perpetrator and victim, whereas a quarter involved a male-on-female killing. The most common ethnic dyads involve Dutch offenders and victims, which accounted for 37 percent of all homicides.

Nearly half of Dutch homicides occurred within private residences, equal proportions were the result of a firearm or stabbing incident, and homicides among intimate partners and within the criminal sphere both comprised

approximately 20 percent of the data. Although we do not report district-level statistics, the largest districts involved the most homicides, with Amsterdam, Rotterdam, and The Hague accounting for more than 40 percent of all murders and manslaughterers.

Table 5.1. Descriptive statistics for Dutch homicide data, 1993–2004

	Prosecutor sample (n=1,613)		Judge sample (n=1,911)		Judge/Pros sample (n=1,328)	
	Mean	SD	Mean	SD	Mean	SD
<i>Dependent variables</i>						
Prosecutorial recommendation	8.76	4.57	9.17	4.41	9.17	4.41
Judicial sentence	6.99	4.15	7.56	4.19	7.42	4.06
<i>Independent variables</i>						
<i>Case characteristics</i>						
Multiple crimes charged	.47	.50	.49	.50	.48	.50
Indicted for murder	.69	.46	.74	.44	.73	.44
Tbs recommendation	.14	.35	.11	.31	.16	.36
Sentenced for murder	.46	.50	.55	.50	.54	.50
Tbs sentence	.17	.38	.21	.40	.20	.40
Multiple suspects	.47	.50	.42	.49	.44	.50
Multiple victims	.06	.24	.06	.23	.06	.23
<i>Offender's criminal history</i>						
No criminal history	.23	.42	.22	.42	.23	.42
Minor criminal history	.36	.48	.36	.48	.35	.48
Major criminal history	.27	.45	.27	.45	.28	.45
No violent criminal history	.56	.50	.55	.50	.56	.50
Minor violent criminal history	.21	.41	.23	.42	.22	.42
Major violent criminal history	.08	.28	.08	.28	.08	.28
Criminal history missing/unknown	.14	.35	.14	.35	.14	.34
Mean years in prison	.03	.07	.03	.07	.03	.07
<i>Offender characteristics</i>						
Male offender	.91	.29	.92	.27	.92	.27
Female offender	.09	.29	.08	.27	.08	.27
Offender age 12-17	.02	.15	.02	.12	.01	.12
Offender age 18-30	.55	.50	.54	.50	.55	.50
Offender age 31-50	.38	.48	.39	.49	.38	.49
Offender age >50	.05	.22	.05	.21	.05	.23
Dutch offender	.52	.50	.52	.50	.51	.50
European offender	.07	.25	.06	.25	.07	.25
Non-European offender	.41	.49	.42	.49	.42	.49
Male, young and foreign offender	.27	.44	.27	.44	.27	.44
<i>Victim characteristics</i>						
Male victim	.73	.45	.71	.45	.72	.45
Female victim	.25	.43	.26	.44	.26	.44
Unknown/multiple victim gender	.03	.16	.03	.16	.03	.16
Victim age 0-11	.03	.16	.02	.15	.02	.14
Victim age 12-17	.02	.14	.02	.14	.02	.13
Victim age 17-30	.35	.48	.34	.47	.35	.48
Victim age 31-50	.42	.49	.43	.50	.43	.50
Victim age >50	.15	.36	.14	.35	.14	.35
Unknown/multiple victim age	.04	.20	.04	.20	.04	.20

(Continued)

Table 5.1. – Continued

	Prosecutor sample		Judge sample		Judge/Pros sample	
	Mean	SD	Mean	SD	Mean	SD
<i>Victim characteristics - continued</i>						
Dutch victim	.47	.50	.47	.50	.47	.50
European victim	.06	.24	.06	.24	.06	.24
Non-European victim	.27	.45	.26	.44	.28	.45
Unknown/multiple victim nationality	.19	.39	.21	.40	.19	.39
<i>Offender/victim characteristics</i>						
Male, male	.66	.47	.65	.48	.66	.47
Male, female	.22	.42	.24	.43	.24	.43
Male, both	.02	.15	.02	.14	.02	.15
Female, male	.07	.25	.06	.23	.06	.24
Female, female	.02	.15	.02	.14	.02	.13
Female, both	.00	.07	.01	.07	.01	.07
Dutch, Dutch	.35	.48	.35	.48	.35	.48
Dutch, European	.02	.15	.03	.16	.02	.15
Dutch, Non-European	.06	.24	.06	.23	.06	.24
Dutch, unknown/multiple	.09	.28	.09	.28	.08	.27
European, Dutch	.03	.16	.02	.15	.02	.16
European, European	.02	.16	.02	.15	.03	.16
European, Non-European	.01	.10	.01	.09	.01	.09
European, unknown/multiple	.01	.09	.01	.10	.01	.09
Non-European, Dutch	.10	.30	.10	.30	.10	.30
Non-European, European	.01	.12	.01	.11	.01	.12
Non-European, Non-European	.20	.40	.20	.40	.21	.41
Non-European, unknown/multiple	.10	.30	.11	.31	.10	.30
<i>Incident characteristics</i>						
<i>Location</i>						
House	.48	.50	.48	.50	.48	.50
Road	.34	.47	.32	.47	.34	.47
Park, woods, or water	.06	.24	.06	.24	.06	.24
Bars, clubs, diners etc.	.09	.29	.09	.29	.09	.28
Other location	.04	.19	.04	.20	.03	.18
<i>Modus Operandi</i>						
Firearm	.36	.48	.38	.48	.38	.49
Stabbing	.32	.47	.35	.48	.34	.47
Blunt object	.09	.29	.08	.27	.09	.28
Physical violence	.07	.26	.05	.22	.05	.21
Strangulation/suffocation	.10	.30	.10	.30	.10	.30
Other method	.06	.23	.04	.21	.05	.21
<i>Type of Homicide</i>						
Infanticide	.02	.14	.02	.14	.02	.12
Paricide	.01	.11	.02	.13	.01	.12
Intimate homicide	.19	.40	.22	.41	.21	.41
Family homicide	.07	.25	.06	.24	.06	.24
Arguments (non-family)	.24	.43	.25	.43	.23	.42
Robbery	.19	.39	.17	.38	.19	.39
Sexual crimes	.13	.33	.11	.31	.12	.32
Criminal sphere	.02	.15	.02	.15	.02	.15
Other/unknown homicide	.13	.34	.12	.33	.13	.34

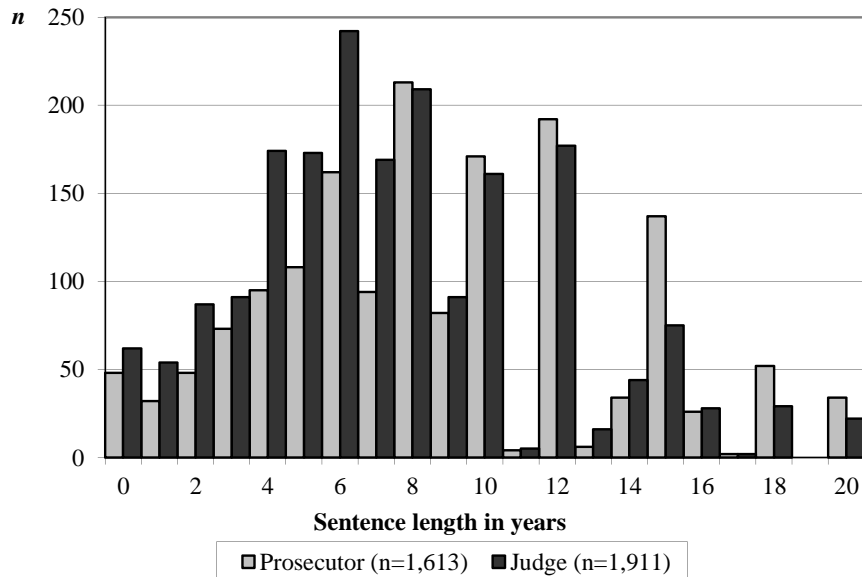


Figure 5.1. Distribution of prosecutorial recommendations and judicial sentences

5.7.2 Multivariate analyses – main effects

Table 5.2 reports our findings from multivariate statistical models examining the impact of various offense, offender, and incident characteristics.¹⁹ All multivariate analyses use ordinary least-squares regression with robust standard errors. The first model estimates the effects of case, offender, victim, and incident characteristics on prosecutorial sentencing recommendations. The second model examines these effects for actual prison sentences imposed by Dutch judges, and the third model investigates the impact of the prosecutor's recommendation on the final sentence, as well as the extent to which case, offender, victim, and incident characteristics remain important after controlling

19 In the interest of space and presentability, table 5.2 does not report coefficients for the blocks of dummy variables capturing year and district-level fixed effects or for dummy variables for missing/unknown data (e.g., unknown victim origin). Complete results including these additional estimates are available from the authors.

for this effect.²⁰ The outcome of interest for all analyses is the recommended or actual sentence in years.

Overall, the factors that influenced prosecutorial sentence recommendations and judicial sentences were substantially similar. As expected, several case characteristics had strong effects. Prosecutors recommended sentences that are 1.62 years longer for murder compared with manslaughter, and judicial sentences align closely with these recommendations, imposing sentences that are 1.74 years longer. Prosecutor recommendations that include some term of Tbs treatment are 2.27 years shorter, whereas judicial sentences are 1.96 years shorter. Both prosecutors and judges are more severe with offenders who commit multiple crimes or who target multiple victims, but homicides involving multiple suspects were not treated differently from those with a single perpetrator.

Somewhat surprisingly, prior convictions have little influence on sentencing recommendations or final punishments. Supplemental investigation demonstrated that this was not a product of our coding strategy as continuous measures of prior offending also produced null findings. Our measure of prior incarceration, however, proved to be a strong predictor of punishment. The difference in punishment for two offenders, one who was never incarcerated and one who spent all his life incarcerated, would be 4.90 years for the prosecutor and 5.86 years for the judge.

Several offender characteristics influenced Dutch punishments, providing empirical support for theoretical propositions rooted in attribution and focal concerns perspectives. Prosecutorial recommendations were 2.19 years shorter for female offenders, which translated into a difference of 1.73 years in actual sentence lengths. Some evidence exists for age effects in punishment. Relative to 18–30-year-old offenders, juveniles were sentenced on average to 1.89 years less incarceration. Strong evidence indicates that Dutch offenders were treated with sentencing leniency relative to non-Europeans. Prosecutors recommended sentences that were 1.47 years longer when the suspect was non-European, which resulted in sentences that were almost an entire year longer on average. There was no evidence that the unique combination of being a young, male, foreign offender produced additional compound disadvantages in sentencing,

20 This analytic approach in model 3 is similar to analyses of guidelines sentencing that include a measure of the presumptive sentencing recommendation of the guidelines as a predictor of the judge's final sentence length (Engen & Gainey, 2000), except that we include a measure of the *prosecutor's recommendation* as a predictor of the final sentence length. To ensure that multicollinearity was not a problem in any of our analyses, we examined model diagnostics including variance inflation factors (VIFs) and tolerance statistics. None of the reported findings were affected by collinearity as evidenced by the fact that virtually all variables had VIFs below 2 and none approached problematic scores near 4. As might be expected, the bivariate correlation between the prosecutor's recommendation and the final sentence length was strong ($r = .81$), but the VIF for this variable was only 1.49.

Table 5.2. OLS Regressions for Dutch prosecutorial recommendations and judicial sentence lengths

	Prosecutor sample (n=1,613)		Judge model (n=1,911)		Judge/pros. model (n=1,328)	
	B	S.E.	B	S.E.	B	S.E.
Constant	6.73***	.84	6.21***	.69	.09	.57
<i>Case characteristics</i>						
Prosecutorial recommendation	-	-	-	-	.69***	.02
Multiple offenses	.87***	.22	.74***	.19	-.12	.15
Murder	1.62***	.23	1.74***	.18	.60***	.15
Tbs treatment	-2.27***	.31	-1.96***	.23	-.42*	.19
Multiple suspects	.14	.23	.07	.20	-.12	.16
Multiple victims	3.26***	.79	2.88***	.66	.08	.58
<i>Offender's criminal history</i>						
Minor criminal history	-.54	.29	.10	.24	.25	.19
Major criminal history	-.06	.38	-.15	.32	.25	.26
Minor violent criminal history	-.16	.29	.12	.24	-.18	.19
Major violent criminal history	-.05	.45	.45	.38	.01	.31
Mean years in prison	4.90**	1.73	5.86***	1.48	1.75	1.14
<i>Offender characteristics</i>						
Female offender	-2.19***	.38	-1.73***	.34	-.39	.27
Offender age 12-17	-1.04	.67	-1.89**	.69	-1.05	.57
Offender age 31-50	-.19	.28	.06	.24	.09	.19
Offender age >50	-1.39**	.50	-.80	.44	-.46	.34
European offender	.52	.48	.74	.40	.27	.32
Non-European offender	1.47***	.32	.92***	.27	.32	.22
Young male foreigner	-.68	.38	-.06	.32	.15	.26
<i>Victim characteristics</i>						
Female victim	1.20***	.30	.96***	.25	.51*	.20
Victim age < 12	3.27***	.99	1.93*	.83	-.27	.65
Victim age 12-17	-.20	.74	.25	.60	-.62	.54
Victim age 31-50	.66**	.24	.43*	.20	.30	.16
Victim age > 50	.71*	.35	.63*	.30	.18	.24
European victim	-1.09*	.45	-1.12**	.38	-.04	.31
Non-European victim	-.47	.29	-.78**	.24	-.07	.19
<i>Incident characteristics</i>						
Road	.53*	.24	.47*	.21	.32	.16
Park, woods or water	.88	.46	.94*	.38	.23	.31
Bars, clubs, diners etc.	.31	.39	.21	.33	.28	.26
Other location	.14	.55	.54	.43	.07	.39
Stabbing	-1.03***	.27	-.78***	.22	-.25	.18
Blunt object	-.97*	.39	-.64	.34	-.24	.27
Physical violence	-2.66***	.45	-.86*	.43	.16	.36
Strangulation/suffocation	-.51	.41	-.44	.34	-.07	.27
Other or unknown modus	-.29	.49	-.47	.45	-.64	.36
Child killing by parent	-2.57*	1.08	-2.75**	.90	-.09	.72
Parent killing by child	-1.41	.93	-2.81***	.68	-1.18	.60
Other family sphere	.07	.47	-.73	.40	-.04	.32
Argument	-.04	.37	-.36	.29	-.09	.24
Criminal sphere	.76	.41	.61	.34	-.11	.27
Robbery	2.60***	.44	1.63***	.38	.38	.30
Sexual crime	2.61***	.70	1.67**	.59	.27	.48
R ²	.32		.31		.68	

* $p < .05$; ** $p < .01$; *** $p < .001$

but these results do offer strong support for the overarching expectation that age, gender, and nationality influence Dutch punishments.

A similar pattern of findings emerged regarding victim characteristics. Homicides that involved female victims resulted in sentencing recommendations that were 1.20 years longer than for male victims. This translated into sentences that were just .96 years longer on average. Targeting victims younger than the age of 12 years resulted in especially severe dispositions, increasing prosecutorial sentence recommendations by 3.27 years and resulting in judicial sentences that were 1.93 years longer. Victim nationality also influenced sentence lengths. Homicides that involved European victims were associated with both recommended and actual sentences that were shorter than for Dutch victims (by 1.09 and 1.12 years, respectively), with similar but less pronounced effects for non-Europeans. Overall, these results suggest that Dutch prosecutors and judges are substantially influenced by both offender and victim characteristics.

Several details of the homicide incident itself also influenced significantly the punishment behavior of prosecutors and judges. Regarding the *locus delicti*, homicides committed in private residences were punished with relative leniency compared with public forums. In particular, homicides committed on or near roads were associated with approximately half a year of additional incarceration for both prosecutors and judges, whereas homicides committed in other outdoor public venues, such as parks, woods, or near water, received nearly a full year of additional incarceration. The *modus operandi* also influenced punishments, particularly for prosecutorial recommendations. As expected, homicides committed with a firearm received the most severe dispositions, although not all *modus operandi* contrasts reached statistical significance. For example, homicides that resulted from a knifing or stabbing received sentence recommendations that were approximately a year shorter than for firearms, which translated into sentences that were .78 years shorter. In addition, compared with intimate partner homicides, parent and child killings received significantly less punishment, whereas homicides involving robbery or sexual crime resulted in significantly greater punishments. The type of homicide and the way in which it is committed, then, arguably represent important courtroom considerations. These results largely align with theoretical expectations that those homicides that are committed in private, without lethal weapons, and involving acquaintances rather than strangers tend to be viewed as less deserving of severe punishment.

The last model in Table 5.2 includes the prosecutor's sentence recommendation as an additional predictor of final sentences. This model is similar to guidelines analyses that include the presumptive sentence as a predictor of sentence length (Engen & Gainey, 2000). It provides an assessment of both the impact that the prosecutor's recommendation exerts on the final sentence and the extent to which case, offender, victim, and incident characteristics affect sentencing after controlling for prosecutorial recommendations. When the

recommended sentence is included, few other sentencing factors remain statistically significant, which suggests that the sentence recommendation largely (or almost fully) mediates the other punishment considerations for the judge at sentencing. Clearly, this finding reflects the fact that prosecutors and judges are influenced by similar sentencing criteria, as evidenced by the first two models in Table 5.2. For every additional year of incarceration recommended by the prosecutor, the judge sentences the offender to an additional .69 years. As expected, then, judges are influenced strongly by the prosecutor's sentencing recommendation, but ultimately, they tend to mete out less punishment than requested by the prosecutor.

5.7.3 Multivariate analyses – interaction effects

Several theoretical predictions also involved interactions between offender and victim characteristics. Table 5.3 reports the results of models using the same set of predictors as Table 5.2 but with cross-product interaction terms included instead of separate offender or victim characteristics. The effects of all noninteraction effects are omitted from tables in the interest of space, but full results are available from the authors.

In line with expectations, offender and victim gender interact to produce additional sentencing severity for male offenders who target female victims, resulting in 1.04 years of additional incarceration time. A parallel advantage accrues for females who victimize males – they receive recommended sentences that are 2.41 years shorter and actual sentences that are 1.58 years less than for homicides involving two males. These results support the contention that offender and victim characteristics jointly produce compound disadvantages for some offender/victim sex dyads.

Similar findings occur for offender and victim nationality. Both Europeans and non-Europeans who target Dutch victims are punished more severely than similar Dutch offenders; they receive sentences that are from 1.04 to 2.34 years longer. Somewhat surprisingly, European offenders who targeted European victims received more lenient punishment. Once again, prosecutorial recommendations demonstrate strong association with judicial sentences, but net of these recommendations, judges continue to punish male/female and non-European/Dutch dyads with increased severity. Taken as a whole, these results provide compelling evidence that offender/victim relationships affect sentencing severity significantly, with punishment outcomes that are most lenient for females who kill males and harshest for foreign offenders who kill Dutch victims.

Table 5.3. Offender/victim interactions for Dutch prosecutorial recommendations and judicial sentence lengths

	Prosecutor sample (<i>n</i> =1,613)		Judge model (<i>n</i> =1,911)		Judge/pros. model (<i>n</i> =1,328)	
	B	S.E.	B	S.E.	B	S.E.
Gender (offender, victim)						
Male, Male (ref.)	-	-	-	-	-	-
Male, Female	1.06**	.32	1.04***	.27	.59**	.22
Female, Male	-2.41***	.44	-1.58***	.39	-.20	.31
Female, Female	-.45	.73	-.73	.67	-.05	.55
Nationality (offender, victim)						
Dutch, Dutch (ref.)	-	-	-	-	-	-
Dutch, European	.62	.67	-.29	.53	-.14	.45
Dutch, non-European	.51	.44	-.36	.38	.20	.30
European, Dutch	2.56***	.66	2.34***	.57	.70	.45
European, European	-1.60*	.69	-1.51*	.61	-.14	.47
European, non-European	-.25	1.03	-.61	.97	.03	.77
Non-European, Dutch	1.77***	.42	1.04**	.35	.57*	.28
Non-European, European	.06	.84	.55	.79	1.40*	.60
Non-European, non-European	.89*	.37	.14	.31	.24	.25
R ²	.33		.32		.69	

Notes: Table 5.3 reports the interaction terms from models run with the same variables reported in Table 5.2. Cross-product terms for interactions involving mixed-gender victims and unknown nationalities were not reported.

* $p < .05$; ** $p < .01$; *** $p < .001$

5.7.4 Explained variance

The final analysis examines the explanatory power of different sets of predictors to assess more accurately their unique contribution to explained variation in the length of prosecutorial recommendations and judicial sentences. Eight separate regressions were run for both prosecutors and judges, with blocks of explanatory variables entered stepwise. The first model includes only the control measures for year and district court, with subsequent models adding indicators of legal case characteristics, criminal history, offender characteristics, victim characteristics, and offender-victim interactions. The final model adds the prosecutorial sentencing recommendations as an additional predictor of judicial sentence lengths.

As Table 5.4 and the corresponding Figure 5.2 demonstrate, year and district dummies account for only approximately 5 percent of the variation in sentence lengths. This finding is consistent with recent work on contextual effects in U.S. jurisdictions (e.g., Johnson, 2006; Kautt, 2002; Ulmer & Johnson, 2004). The legal case characteristics explain an additional 13 percent to 14 percent of the variance, whereas criminal history accounts for only an additional 2 percent. Adding both offender and victim characteristics and incident

characteristics explains an additional 5 percent to 6 percent of the variation in sentencing, respectively. Finally, inclusion of the prosecutor's sentence recommendation clearly dominates the final model, increasing its explained variance by 37 percent. This provides empirical support for widespread assumptions about the important role prosecutors play in the sentencing process.

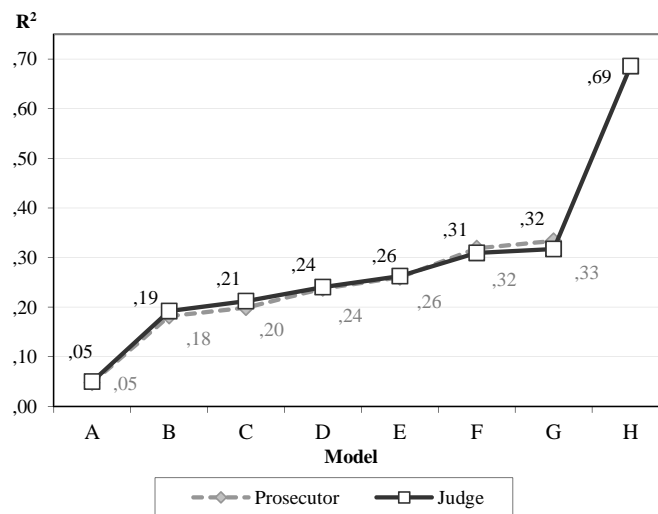


Figure 5.2. Explained variance across sentencing models in Dutch homicide data

5.8 DISCUSSION

In his summary of contemporary sentencing research, Ulmer recently concluded that 'more cross-national and comparative research would greatly broaden knowledge of sentencing and sentencing disparity [...] especially in the global society of the 21st Century' (Ulmer, 2005, p. 1501). The current study answers the call for international research on criminal sanctions by examining the sentencing of homicide offenders in the Netherlands during a 12-year period. Drawing on the unique strengths of the data, we examine little-researched questions about the influence of prosecutorial sentencing recommendations, victim/offender relationships, and situational offense characteristics. Our results provide qualified support for a variety of hypotheses rooted in contemporary theorizing from criminal courts in America. Table 5.4 summarizes empirical support for these theoretical predictions.

Table 5.4. Support for hypotheses regarding punishment of Dutch homicide offenders

Hypothesis	Prediction	Support
1	Homicides involving murder, multiple crimes, multiple victims, and no TBS will be punished more severely.	+
2	Offenders with more serious prior records will be punished more severely.	+ / -
3	Young, male and foreign offenders will be punished more severely. These characteristics will interact to increase severity.	+ / -
4	Offenses involving young, old, female and Dutch victims will be punished more severely.	+
5	Males who victimize females and foreigners who victimize Dutch will be punished more severely.	+
6	Homicides involving lethal weapons, public places, and non-family members will be punished more severely.	+ / -
7	Prosecutorial recommendations will be positively related to but more severe than judicial sentences.	+

NOTES: + Hypothesis supported; - Hypothesis not supported; +/- Hypothesis partially supported.

Not surprisingly, murder was punished more severely than manslaughter, and homicides that involved multiple offenses and multiple victims received longer prison sentences, whereas sentences involving mandatory treatment (Tbs) were associated with shorter prison terms. Overall, this finding offers strong support for hypothesis 1 that legal case characteristics exert substantial influences in sentencing. Notably, these legal factors accounted for the greatest share of the variation in sentence lengths, which is consistent with prior work in the United States (Kleck, 1981; Spohn, 2000; Zatz, 2000).

Hypothesis 2 received only partial support. Our measures of prior convictions and prior violent convictions were not related to either prosecutor or judge sentencing determinations, but our measure of prior incarceration was related both strongly and significantly to punishments. In part, this might reflect the fact that homicides are serious and rare crimes and prior criminal histories predominantly consist of low-level, nonviolent offenses, although our measure of prior violence also failed to predict sentencing outcomes. Prior incarcerations might simply be a better measure of offender risk or a more salient consideration for court actors in the sentencing process. Such a conclusion is consistent with prior work that finds prior record measures incorporating previous incarcerations are better predictors than those based on prior arrests or convictions (Spohn & Welch, 1987). The current findings reproduce this result in the context of the Dutch criminal justice system.

Although a spate of studies examines extralegal disparities in the United States, limited research has attempted to investigate these effects in other national contexts. Rooted in focal concerns and attribution perspectives, hypothesis 3 predicted similar age, nationality, and gender disparities to characterize the sentencing of Dutch homicide offenders. Our results provide considerable support for this expectation. Female offenders were sentenced to significantly shorter terms of incarceration, whereas non-European foreigners received significantly longer sentences. Very young and very old offenders also received

partial leniency at sentencing. These results suggest that a similar attribution process characterizes sentencing in the Netherlands as in the United States, with ascriptive status characteristics linked to court actor perceptions of culpability and dangerousness at sentencing. However, unlike in the United States (e.g., Spohn & Holleran, 2000; Steffensmeier, Ulmer, & Kramer, 1998), we found no evidence that these offender characteristics interacted to produce compound disadvantages for young, male, foreign offenders. This distinction is important for future studies to investigate across international contexts.

The results for victim characteristics described in hypothesis 4 largely mirror the findings for offender characteristics. Homicides involving female and Dutch victims typically receive longer prison sentences, and offenses involving very young or old victims are punished more severely. These results highlight the importance of including victim characteristics in analyses of sentencing outcomes (Auerhahn, 2007a; Franklin & Fearn, 2008; Williams, Demuth, & Holcomb, 2007). Moreover, victim effects also interact with offender characteristics in important ways.

As predicted by hypothesis 5, criminal sentences were particularly severe for homicides involving male offenders and female victims, as well as for those involving foreign offenders who victimized Dutch citizens. These findings suggest that attributions of culpability and dangerousness might be gendered and racialized for offenders and victims in combination, which might reflect a dual attribution process involving both offender stereotyping and victim discounting. However, sentencing differences also might reflect other unaccounted-for sentencing considerations. For instance, nearly 40 percent of female-on-male homicides involved the killing of an intimate partner. Unfortunately, we lack information on whether they are related to prior intimate partner abuse or to the retaliatory behaviors of battered women. If these cases involve such mitigating circumstances, then they could partially explain our observed gender effects. Future research, both quantitative and qualitative, is needed to tap the specific theoretical mechanisms underlying these interactive effects.

Hypothesis 6 suggested that the additional characteristics of the criminal incident itself should influence prosecutorial and judicial sentence determinations. Support was found for this expectation, with crime incident characteristics increasing predictive accuracy for prosecutors and judges by 5 percent and 6 percent, respectively. Specifically, more severe sentences were expected for crimes committed with a lethal weapon, although the type of weapon employed was more important than the simple use of a weapon: crimes involving firearms were singled out for particularly harsh penalties. This result might reflect the relative scarcity of firearms in the Netherlands. Possession of firearms is prohibited, and in 2000, only 30 firearm-related incidents were reported to the police for every 100,000 inhabitants (Spapens & Bruinsma, 2002). The fact that possession of firearms is so rare might explain why a killing by means of a firearm is considered particularly heinous and deserving

of increased punishment. Furthermore, as hypothesized, crimes committed in public spaces also typically received longer sentences, although these effects were modest in size. Homicides committed in private households received relatively shorter sentences, and non-family homicides received the stiffest penalties, particularly for those committed in conjunction with robbery or sexual crimes. In general, incident characteristics that convey increased attributions of societal threat and dangerousness tend to result in longer prison terms. The unique lethality of firearms might serve as a sentencing cue that an offender is particularly dangerous, whereas public victimizations, especially those committed in the act of another criminal event, invoke greater fear of victimization and greater public outrage, resulting in stiffer sentences.

Our final prediction in hypothesis 7 suggested there would be an important association between prosecutorial sentencing recommendations and judicial sentences. Overall, prosecutors seem to rely on very similar criteria in their determination of sentencing recommendations. When prosecutorial recommendations are included in the model of sentencing outcomes, they clearly dominate explained variation in sentences. However, our findings do not necessarily indicate a simple process of judicial ‘rubber stamping’ of prosecutorial recommendations. Despite their strong relationship, judicial sentencing outcomes are somewhat more lenient than prosecutorial recommendations. This might reflect a stronger desire for punishment among prosecutors, or it might indicate a process of ‘sentence discounting’ in which prosecutors anticipate judicial sentence reductions. Qualitative research on both prosecutors and judges is needed to sort out the complex and dynamic processes that underlie courtroom workgroup interactions vis-à-vis courtroom decision-making.

Overall, the findings from this study provide some empirical support for the generalizability of prior research on criminal sentencing in the United States to a broader international context. Well-established findings, such as leniency toward female offenders, seem to transcend international borders. Perhaps even more surprising is that nationality effects in the Netherlands are consistent with prior research on race effects in the United States – typically, foreigners are punished more severely than Dutch citizens. This finding suggests that the stereotypical attribution processes often described as emblematic of American courtrooms might represent a more universal organizational decision-making process characteristic of criminal courts generally. Future research is needed to replicate the current results in additional countries for additional crime types to establish more concretely the broad generalizability of contemporary theory and research on criminal punishment in society.

5.9 CONCLUSION

In his recent Presidential Address to the American Society of Criminology, LaFree (2007, p. 14) opined: 'Stating that you are in favor of more comparative cross-national research in criminology is a bit like saying that you are opposed to premeditated murder: hardly anyone will disagree with you'. Despite widespread support for cross-national investigations of crime and justice, remarkably little contemporary research investigates criminal sentencing across national borders. This lack of research is unfortunate because investigating sentencing outcomes in an international context can substantially advance contemporary research and theorizing on courtroom decision-making processes and outcomes. The current work moves in this direction by analyzing the criminal punishment of homicide offenders in the Netherlands. It investigates the broad applicability of contemporary courtroom theorizing and addresses several common empirical shortcomings. In doing so, it contributes to a long-standing research tradition examining the relative importance of offender, offense, victim, and situational crime characteristics in the complex interactional processes that define criminal punishment in society.

Despite its contributions, the current work also has its limitations. Although these data have many advantages, they lack information on earlier criminal justice processes and latter case outcomes like appellate court decisions. Ideally, even more detail on offender and victim characteristics would be incorporated, such as drug and alcohol abuse histories, socioeconomic statuses, and measures of victim provocation, in addition to prosecutor, judge, and courtroom community characteristics. It is, therefore, important for researchers to continue to work to compile more detailed data on additional factors relevant at sentencing. Future work also would benefit from the pursuit of additional crime-specific analyses. Some factors that are relevant at sentencing are clearly important for certain crimes but not for others (e.g., weapon use for violent crime, dollar loss for property crime, and drug amounts for drug crime). Future work also should continue to pay special attention to the role of additional court actors besides the sentencing judge. As the current results indicate, the prosecutor plays an important role in the punishment process, although relatively few studies explicitly incorporate this influence.

It also is important for future research to tackle the substantial challenge of conducting international comparative analyses more efficiently. Cross-national comparisons are complex and difficult to accomplish, but the payoff of such comparative research will be worth the effort (Frase, 2001). Researchers could begin to capitalize on both the similarities and the differences of courtroom environments across diverse national contexts. Such endeavors are likely to provide unique opportunities to assess the broad generality of contemporary theory and research, for as Michael H. Tonry and Richard Frase (2001, p. 3) have argued, it is important to never forget that 'we can learn things about crime and punishment by looking across national boundaries'.

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There's more to sentencing than imprisonment

The effects of offender characteristics on multifarious sentencing outcomes¹

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ABSTRACT

Sentencing research focusing solely on unsuspended imprisonment does not do justice to the practice of sentencing, where so many other types of punishment are also imposed, and often simultaneously. To investigate the extent to which this imprisonment bias might generate incomplete and consequently biased findings when testing the focal concerns theory, we compare the effects of offender characteristics on imprisonment, other types of punishment, and a combination of various sanctions. The findings suggest that the effects of offender characteristics differ for each type of punishment. If combinations of various sanctions are included, some offender characteristics no longer have mitigating or aggravating effects and might even have the reverse effects. This is why future sentencing research should aim to include all the types of sanctions.

6.1 INTRODUCTION

For both judges who impose sanctions and for researchers sentencing is no simple matter. It is complex because of the ambiguity as to what a fair sentence is, and because of the numerous sentencing options within the formal sentencing framework. The Penal Code enables judges to combine various principal and accessory punishments and measures, which can also be imposed in various modalities (suspended or unsuspended).² The law gives judges ample

1 An earlier version of this chapter has been published in Dutch as: 'Straffen omvat meer dan gevangenisstraf. De effecten van daderkenmerken op de straftoemeting voor het gehele sanctiepakket', *Tijdschrift voor Criminologie* (2014, (56) 1, p. 3-23) (DOI: 10.5553/TvC/0165182X2014056001001).

2 The range of sanctions has also been expanded to include sanctions based on special laws, e.g. disqualifying someone from driving (Article 179 Roads and Traffic Act) and closing down a company (Article 7 Sub C Economic Offenses Act) or placing it under state supervision (Article 8 Part 2 Economic Offenses Act).

discretionary power to decide which sentence to impose. The wide range of sanctions combined with the judges' ample sentencing freedom has the advantage of equipping judges to individualize the sentences, which are thus made-to-order. At the same time though, it means the sentencing process is not transparent and can lead to unjustified inequality. According to Van Kalmthout (2000, p. 33), 'from a perspective of equality and legitimacy', present-day sentencing 'can hardly be called acceptable'. Not only does this inequality detract from the legitimacy of the sentencing, it detracts from the legitimacy of Dutch criminal law as a whole. This is why research into sentencing is so important; revealing the factors in the sentencing process can contribute towards a more transparent administration of justice and provide tools to improve the sentencing consistency.

In recent decades, quantitative sentencing studies have greatly increased our knowledge about sentencing but are generally characterized by two limitations. Firstly, they often only focus on unsuspended prison sentences and not on *other types of sanctions or modalities*. Secondly, they fail to adequately address the *combinations* of sanctions that are so widely imposed. In the Netherlands in 2011, offenders were sentenced to an average of 1.4 types of sanctions not including the suspended modalities (Van Rosmalen, Kalidien, & De Heer-De Lange, 2012). Due to these limitations, the severity of the *total imposed sanction* is not adequately addressed in quantitative sentencing studies.³ This not only applies to research in the Netherlands; in the past three decades studies in the United States have rarely if ever focused on combinations of sanctions, though judges do impose them.⁴

After all, sanction severity not only manifests itself in unsuspended prison sentences, it is also evident in other types or combinations of punishment. Under certain circumstances, other types of punishment can even be viewed as more severe than unsuspended prison sentences. Survey studies on the perceived severity of various sanction types and lengths, the *penal metrics* or *exchange rates*, show that 75% of the offenders perceive a sizeable fine or a lengthy suspended sentence as more severe punishment than a short prison sentence (Spelman, 1995) and that offenders consider a suspended sentence of three years more severe than an unsuspended prison sentence of a month (Sebba & Nathan, 1984). Other studies show for example that if given a choice between five years of probation or one year in prison, almost half the offenders

3 The first limitation applies less to *qualitative* sentencing studies where judges are interviewed, since they are often asked what sentence they would impose in the form of an open question (see e.g. Beyens, 2000; Van Wingerden et al., 2011). This makes it easy to see why judges do or do not impose certain sentences. But qualitative studies fail to devote enough attention to *combinations* of sanctions or how the types or combinations of sanctions are interrelated. No precise amount of punishment is studied (Beyens 2000).

4 In the 1970s and 1980s, studies were conducted that classified various types and combinations of sanctions, e.g. on a sanction severity scale of 93 points going from a suspended sentence to a life sentence in prison or the death penalty (Spohn et al., 1985; Uhlman, 1978).

would prefer to serve the time in prison (Crouch, 1993). In addition, due to its unspecified duration, the Dutch measure of placement in an institution for mentally ill offenders is perceived as a more severe sanction than a prison sentence (Heidanus, 2013).

Earlier quantitative studies present an incomplete picture of sentencing practice, since they do not address the entire range of sanctions. Factors assumed in earlier studies to play a role in sentencing might well appear to play a different role if combinations with other sanctions are also taken into account. Offenders addicted to drugs might for example run less of a risk of a prison sentence because the measure of placement in an institution for habitual offenders is more likely to be imposed. If this measure is included in the study, drug addiction might no longer be viewed as a mitigating circumstance.

This is why this paper examines the extent to which the findings of earlier sentencing studies hold up or alter if sentencing research is expanded from only the unsuspended prison sentence to the total sentence imposed. Since the judge makes a selection from the total range of sanctions to suit each offender, we focus particularly on the effects of individual offender characteristics. We examine the extent to which the effects of offender characteristics hold up if the analyses do not solely focus on unsuspended prison sentences, but also include (combinations of) other sanctions imposed by the judge. This enables us to pose the following question: *To what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?*

6.2 EARLIER SENTENCING STUDIES

Quantitative sentencing research has shown that many offender characteristics play a role in the judges' sentencing decisions. Recent studies in the Netherlands show for example that women are less severely punished than men (Boone & Korf, 2010; Johnson et al., 2010; Van Wingerden et al., 2011). In addition, offenders who were born in the Netherlands or look Dutch are less severely punished, but the effects of age and the offenders' prior criminal record are less unambiguous (Johnson et al., 2010; Van Wingerden et al., 2011; Wermink et al., 2012). The offender's social circumstances are also related to the sentencing. Offenders who are unemployed, have criminogenic friendship ties or an alcohol problem are more severely punished (Van Wingerden et al., 2011).

These Dutch findings are similar to those in the United States, where sentencing research originated. These studies have also shown less severe punishment for women (Curry, 2010; Doerner & Demuth, 2010; Koons-Wit, 2002), young offenders (Doerner & Demuth, 2010; Spohn & Holleran, 2000) and also the oldest ones (cf. a curvilinear age effect) (Steffensmeier et al., 1995).

Blacks and Hispanics are punished more severely than whites, although these effects are frequently indirect or play a role in interaction with other factors (Spohn, 2000); in particular young, black men are punished the most severely (Steffensmeier et al., 1998). The social circumstances of the offenders are however rarely taken into consideration in American sentencing studies. The studies that do take them into consideration often fail to present an unambiguous picture, for example as regards educational level (Koons-Wit, 2002; Wooldredge, 2010) and labour market position (Chiricos & Bales, 1991; Myers, 1988).

As is noted above, earlier quantitative sentencing research in the Netherlands failed however to do adequate justice to the complexity of the wide range of sanctions. In some studies, no attention at all is devoted to any sanctions other than unsuspended prison sentences (Komen & Van Schooten, 2006; Van Tulder & Diephuis, 2009; Wermink et al., 2012). Since other sanctions and combinations of sanctions are overlooked, this leads to an incomplete survey of sentencing. Other studies do take various types of sanctions into consideration, for example by separately analyzing different types of principal punishments and modalities (e.g. Jongman et al., 1984; Van der Werff & Van der Zee-Nefkens, 1978; Van Wingerden et al., 2011), but here again, without doing adequate justice to combinations of sanctions. There are also studies that make an effort to address combinations of sanctions by using other sanction types such as the placement in an institution for the mentally ill (Tbs), as independent variables in the regression models estimating the chance and length of the unsuspended prison sentence (Johnson et al., 2010; Van Tulder & Van der Schaaf, 2012; Van Wingerden & Nieuwbeerta, 2010). This however entails issues of endogeneity; it assumes that the judge first decides whether to the order the placement in an institution for the mentally ill and only then addresses the matter of whether to impose an unsuspended prison sentence. This sequence of decisions is not plausible; in actual practice the judge would make the decisions integrally rather than independently of each other.

In view of the focus in earlier research on the unsuspended prison sentence, studies that include the total range of sanctions could produce new testing results from the *focal concerns theory* perspective (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998), the most widely used framework in sentencing studies. From this perspective, the judges' decision-making is constrained by limited information and time and in this context, the court's judgment can be either consciously or unconsciously influenced by amongst others earlier experiences with comparable cases, prevalent stereotypes and prejudices (Albonetti, 1991). Under this assumption of bounded rationality, three focal concerns are believed to lead the court's judgment: (1) the blameworthiness of the offender; (2) the extent to which the suspect is dangerous and society needs to be protected from him; (3) practical considerations (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998). These practical considerations can pertain to such issues as insufficient prison capacity, the court not having

time, or problems taking care of the offender's children in the event of a prison sentence. Many of the findings related to the importance of offender characteristics in the matter of sentencing are viewed from this focal concerns perspective. Given the second focal concern that the judge is trying to protect society from danger in the future, the fact for example that young men of non-Western descent are more likely to be sentenced to prison sentences and to longer ones is interpreted as a confirmation of the assumption that groups whose circumstances more frequently tend to promote recidivism are sentenced to more severe punishment (e.g. Steffensmeier & Demuth, 2000).

Since in Dutch jurisprudence, judges also often impose other sanctions in addition to prison sentences as well as combinations of sanctions, the question is what this means when it comes to testing hypotheses within the focal concerns theory. Which social groups are these other sanctions imposed upon and how severe are these sanctions? From the second focal concern perspective, i.e. preventing danger and protecting society, the prediction would be that these are the same groups that are more likely to be sentenced to prison sentences and to longer prison terms, such as young men of non-Western descent in unfavorable social circumstances. But from the perspective of the third focal concern, i.e. practical considerations, other predictions might be made. Offenders of non-Western descent might be likely to be sentenced to prison, but since language barriers are sometimes a problem, they are less likely to be sentenced to community service orders. Similarly, shorter prison sentences for women, perhaps because they need to take care of their children, can be counterbalanced by longer periods of community service. If the entire range of sanctions is taken into consideration, there are scenarios where it might not be so much a question of less severe sentencing as of counterbalancing the punishment alternatives in the sense that if one sanction is imposed less frequently or less severely for a particular social group, another sanction would be imposed more. In a scenario of this kind, the differences between social groups as regards the total punishment would be smaller or disappear altogether compared with punishment patterns based on unsuspended prison sentences.

This is why some researchers seek a solution for addressing the entire range of sanctions by converting the imposed sanctions into sanction points. Two aspects are important in this connection, i.e. the conversion key used to relate various sanctions to each other and the number of types of sanctions and modalities involved. Earlier sentencing studies using sanction points almost always used the conversion key of the Public Prosecutor's decision supporting system BOS/Polaris⁵ (Berghuis, 1992; Berghuis & Mak, 2002; Bosmans & Pemberton, 2012; Lodewijks et al., 2010; Pemberton & Bosmans, 2013), where one

5 Indication Framework for Prosecution (*Netherlands Government Gazette* 2012, 26824). Different relations between incarceration and fines can be deduced however from the Penal Code and the National Consultation Board of Chairmen of Penal Sectors (LOVS) guidelines.

day in prison is equivalent to two hours of community service and a fine of 35 euros.⁶ As regards the second aspect, the types of sanctions and modalities included when calculating the sanction severity, the studies referred to above include the period of incarceration as well as the community service and fine. In his studies, Berghuis (1992; Berghuis & Mak, 2002) also includes the orders of placement in an institution for mentally ill offenders and in an institution for juveniles. The study by Assink et al. (2010) includes forfeiture and driving disqualifications and is the only study where suspended sanctions are taken into account when calculating the sanction severity.

6.3 METHOD

To determine the extent to which the effects of offender characteristics hold up if the analyses do not solely focus on unsuspended prison sentences and also focus on other sanctions imposed by the judge, perhaps in combination, firstly we study the effects of offender characteristics on separate types of sanctions. After all, the results of sentencing studies limited to unsuspended prison sentences can only be distorted if the offender characteristics have different effects on different types of sanctions and modalities.

The characteristics of the offense and the court proceedings, such as the severity of the criminal act, the duration of the pre-trial detention, and the district where the case is tried are included in the analyses as control variables. To gain insight into the differences in the effects of the offender characteristics on different types of sanctions, we constantly conduct multivariate regression analyses with the same independent variables (offense, trial and offender characteristics), but vary the dependent variables (various sanctions). In addition to the duration of the unsuspended prison sentence ($n=9,928$), we focus on the three other most common types of sanctions and modalities, i.e. the duration of the suspended prison sentence ($n=13,196$), the duration of the unsuspended community service ($n=8,674$) and the duration of the suspended community service ($n=2,492$). The selection effects are limited by including offenders not sentenced to the punishment in question in the analysis as having a sentence duration of zero. Since the sentence duration is not normally dis-

6 Since these guidelines are regularly updated, the studies referred to above are still based upon older versions, where one day of incarceration is equivalent to a fine of twenty-three, twenty-five or twenty-nine euros. Van Tulder (2011) deviates from the BOS/Polaris guidelines by assuming that one day of incarceration is equivalent to fifty euros. He also uses a conversion key that he feels is more in keeping with "society's perceptions", i.e. one day of incarceration is considered equivalent to eight hours of community service. Assink et al. (2010, Assink & Pepels 2010) also deviate from the Decision Supporting System / Polaris. They consider one day of incarceration equivalent to ten hours of community service and a fine of 250 euros. Moreover, a fixed number of sanction points is allocated for incarceration.

tributed, we conduct the analyses on the natural logarithm of the sentence duration.⁷ To determine the extent to which the effects differ between the models, we examine whether an effect is statistically significant ($p < 0.05$) in one model but not in the other. In addition, in the case of effects that are statistically significant in both the models, we see whether the direction of the relations is the same.

Although comparing the effects of offender characteristics demonstrates the extent to which they differ for different types of sanctions, it still fails to take combinations of sanctions into consideration so that the analyses still fail to do justice to the entire sanction. This is why the second model focuses on the total range of sanctions with the sanctions and possible combinations of sanctions converted into *sanction points*.⁸ Firstly, we consider the unsuspended prison sentence, community service and fine. To do so, as in numerous other studies, we use the conversion key of the BOS/Polaris, i.e. one day of incarceration is equivalent to two hours of community service and a fine of 35 euros.⁹ Secondly, we also include the suspended version of these sentences. Following the example of Assink et al. (2010), we calculate the severity of suspended sentences by multiplying the sanction severity if the sentence were unsuspended by the chance of the offender committing another offense within two years.¹⁰ For adult offenders, this is 0.275 (Wartna et al., 2011). Lastly, we include the measures stipulating the institutionalization of habitual offenders and mentally ill offenders when calculating the sanction severity. Since as a rule the measure stipulating the institutionalization of habitual offenders goes into effect for two years, this measure is considered equivalent to incarceration for two years (730 days). The measure stipulating institutionalization of mentally ill offenders is considered equivalent to incarceration for 1,864 days, i.e. the average length of stay in 2005-2007 of 5.1 years (Nagtegaal et al., 2011).

7 Since it is impossible to calculate a natural logarithm of zero, first a sentence duration of one is added in all the cases (cf. Johnson & Kurlychek 2012).

8 We also conduct factor analyses to see whether the underlying *sanction factors* can be discovered in the various sanction types and severities. This does not turn out to be the case.

9 The same analyses are also conducted with a different conversion key (one day of incarceration is equivalent to eight hours of community service and a fine of eighty euros). The results largely coincide with the results based on the other conversion key. However, offenders with at least three juvenile convictions are now punished significantly more severely than offenders with no prior convictions and offenders born outside of Europe are no longer punished significantly differently than offenders born in the Netherlands. Lastly, offenders with problems in the fields of education and employment are now no longer punished significantly more severely, and offenders with problems in the field of family relations are now punished significantly less severely than offenders without these problems.

10 This period of two years is in keeping with the average duration of the probation of the offenders in our data of 2.04 years.

6.4 DATA

Every criminal case is different. To be able to compare the outcomes of criminal cases, as many of the characteristics as possible need to be controlled for. To conduct good sentencing research, the data set thus needs to contain detailed information about the offense, case processing and offender characteristics. In this study, sentencing is therefore examined based on data from the Recidivism Assessment Scales (RISC) file of three probation agencies (3RO) and the Public Prosecutor's data. In the RISC file, all risk assessments based on RISC from the period 2005-2007 are registered. The file contains a variety of characteristics and social circumstances of the offender that can be relevant to the sentencing. We linked the file to the registry of the Public Prosecutor, containing information on the cases' prosecution and sentencing outcomes in first instance. Merging the two data sets produces a file containing detailed information about offense, case processing and offender characteristics as well as about sentencing (N=22,031).¹¹ The descriptive statistics of the data are shown in Appendix 6.1.

Combinations of sanctions are quite common in the file. A total of 41,614 sanctions are imposed, an average of 1.9 for each offender.¹² Table 6.1 summarizes the combinations of sanctions; 72% of the offenders given an unsuspended prison sentence are also given a suspended prison sentence and 14% are given unsuspended community service as well. Only 18% of the offenders given an unsuspended prison sentence are given this punishment 'separately'.¹³ These statistics underline the relevance of studying the complete punishment in sentencing research.

11 See Van Wingerden et al. (2011) for an extensive description of the file.

12 The following sanctions are included: unsuspended and suspended principal punishments, accessory punishments, placement in an institution for mentally ill offenders, for habitual offenders, or for juveniles and driving disqualification.

13 Punishments are considered 'separate' if they are not imposed in combination with the sanctions in this table. Juvenile detention, Placement in an institution for juveniles and driving disqualifications are not included here.

Table 6.1. Combinations of sentencing types (N=22,031)

Type of Punishment or Sentence Type (N = 22,022)	Principal punishments						Accessory punishments				Measures	
	Imprisonment		Community Service		Fine		Disfranchisement	Forfeiture	Withdrawal from circulation	Tbs	ISD	
	Unsuspen- ded	Suspen- ded	Unsuspen- ded	Suspen- ded	Unsuspen- ded	Suspen- ded						
Total (N)	9,928	13,196	8,674	2,492	1,106	689	797	1,564	1,297	.0	278	562
Separately (%)	18.2	10.5	14.7	39.2	25.9	60.8	1.3	.8			12.6	85.4
Principal punishments												
Imprisonment	-	54.3	16.1	2.6	9.0	2.9	19.6	78.7	68.7	85.6	7.7	
Unsuspen- Suspended	72.1	-	64.9	1.6	28.7	3.6	35.0	69.4	65.5	2.2	.0	
Community Service	14.0	42.7	-	55.3	12.7	6.4	51.2	27.1	32.0	.0	.0	
Unsuspen- Suspended	.6	.3	15.9	-	7.2	1.2	8.3	2.8	4.0	.0	.0	
Fine	1.0	2.4	1.6	3.2	-	27.3	34.5	2.5	3.6	.4	.2	
Unsuspen- Suspended	.2	.2	.5	.3	17.0	-	6.4	1.2	.4	.4	.0	
Accessory punishments												
Disfranchisement	1.6	2.2	4.7	2.6	24.9	7.4	-	3.4	1.5	.7	.0	
Forfeiture	12.4	8.2	4.9	1.8	3.5	2.6	6.6	-	27.4	10.4	4.4	
Measures												
Withdrawal from circulation	9.0	6.4	4.8	2.1	4.2	.7	2.5	22.7	-	11.5	2.5	
Tbs (institution for the mentally ill)	2.4	.0	.0	.0	.1	.1	.3	1.9	2.5	-	.0	
ISD (institution for habitual offenders)	.4	.0	.0	.0	.1	.0	.0	1.6	1.1	.0	-	
Note: The table has to be read vertically. Example: of the 8,674 unsuspended community service orders 16.1% is imposed in combination with an unsuspended imprisonment sentence. Because judges can combine more than two punishment types the percentages in the columns add up to more than 100%.												

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6.5 RESULTS

6.5.1 Sentencing effects of offender characteristics on incarceration and other sanctions

Table 6.2 shows the results of the regression analyses for various sanctions. In some respects, the effects of offender characteristics on the duration of unsuspended prison sentences exhibit similarities to their effects on other types of sanctions. For example, women are sentenced to significantly shorter unsuspended as well as suspended terms in prison than men. However, it is not true of any offender characteristic at all that it has the same significant effect on all four types of sanctions. It is not uncommon for counterbalancing to occur; an offender characteristic might coincide with a less severe sentence for one type of sanction, and a more severe one for another. Thus women might get a shorter prison sentence, but longer suspended community service. In addition, offenders under the age of 21 get shorter unsuspended prison sentences than offenders between the ages of 21 and 30, but longer suspended ones. What is more, unlike the case with unsuspended prison sentences, the offenders' country of birth does not play a role in the duration of the suspended prison sentence, and the duration of community service is *shorter* for offenders born abroad.¹⁴ The effects of the offenders' criminal record are different for each type of sanction. For example, for offenders with at least three juvenile convictions prison terms are longer but community service terms are shorter. The effects of the offenders' social circumstances are also not the same for all the types of sanctions. Problems in the field of housing, education and employment lengthen the duration of incarceration but shorten the duration of community service. And problems related to emotional well-being tend to coincide with shorter unsuspended prison and community service sentences but bear no significant relation to the suspended variants. There are also differences in the effects as regards problems in the fields of thinking patterns, behavior and skills. They do *not* bear a significant relation to the duration of unsuspended prison sentences, *lengthen* suspended prison sentences and *shorten* unsuspended community service sentences.

14 As regards placement in an institution for mentally ill offenders, there is also a different direction in the correlation between the offenders' country of birth and the sanction imposed. Offenders born abroad have significantly less of a chance of being placed in an institution for the mentally ill. (Due to a lack of space, the results regarding the placement in an institution for mentally ill offenders are not presented here, but are available upon request from the authors).

Table 6.2. OLS-regression analyses on the length of the different punishment types (N=22,031)

	Imprisonment		Community Services		Total
	Unsus. B	Susp. B	Unsus. B	Susp. B	B
Constant	.07	1.27***	2.11***	1.02***	2.43***
<i>Offense characteristics</i>					
Maximum penalty	.09***	.07***	.06***	-.02***	.10***
Maximum penalty unknown	.41***	-.56***	-.38**	-.25**	-.31***
Offense type of most serious offense (Ref=Assault)					
Intimidation	.23***	.05	-.22***	-.12***	-.01
Violent theft	.73***	.81***	-.11	-.21***	.52***
Vices	.31***	1.28***	.57***	-.35***	.84***
Homicide	.40***	.54***	.14	-.23***	.53***
Other violent crimes	.76***	1.02***	.14	-.23**	.60***
Forgery	.15	.68***	.82***	-.26***	.84***
Theft	-.27***	-.50***	-.17*	-.30***	.35***
Aggravated theft	.30***	.22***	.19***	-.23***	.42***
Other property crimes	.37***	.41***	.63***	-.20***	.69***
Destruction of property	-.08	-.98***	-.64***	-.03	-.61***
Violation of public order	.07	.32***	.26***	-.18***	.22***
Drugs	.99***	1.18***	.46***	-.33***	.74***
Traffic	.06	-.98***	-.14	-.61***	.44***
Other crimes	.18***	1.07***	.71***	-.30***	.67***
Number of offenses	.22***	.34***	.21***	-.01	.23***
<i>Case processing characteristics</i>					
Length of preventive custody (months)	.58***	.01	-.37***	-.06***	.25***
Court district (Ref.=Utrecht)					
Alkmaar	-.27***	-.19*	.23**	.26***	-.06
Almelo	-.09	.29**	.18*	-.05	-.07
Amsterdam	-.36***	-.20**	.10	.19***	-.08*
Arnhem	-.32***	-.12	.11	.20***	.01
Assen	-.21**	-.30**	-.19*	-.01	-.16**
Breda	-.24**	.05	.31***	-.02	.02
Den Bosch	-.31***	.11	.10	-.10*	-.03
Den Haag	-.27***	.01	.28***	.08*	-.07
Dordrecht	.16*	.54***	.02	-.35***	.28***
Groningen	-.27***	-.24**	.24**	.20***	-.07
Haarlem	-.04	-.13	.01	.11*	-.05
Leeuwarden	.09	-.10	.26**	-.04	.14**
Maastricht	-.24**	-.16	.25**	.17**	.01
Middelburg	-.16	-.39***	.33**	.30***	-.03
Roermond	-.12	-.05	.13	.10	.10
Rotterdam	-.41***	.08	-.05	-.09*	-.12**
Zutphen	-.20**	.14	.13	-.02	.03
Zwolle	-.38***	-.26**	.12	.14**	-.19***

(Continued)

Table 6.2 – Continued

	Imprisonment		Community Services		Total
	Unsus. B	Susp. B	Unsus. B	Susp. B	B
<i>Offender characteristics</i>					
Sex (Ref.=Male)					
Female	-.21***	-.17***	-.05	.16***	-.22***
Age (Ref.=21-30)					
12-20	-.14***	.19***	.26***	-.02	-.07**
31-40	-.12***	-.10**	-.12***	-.01	.01
41-50	-.12***	-.20***	-.29***	.05	-.04
> 50	-.11*	-.13*	-.56***	-.05	-.14***
Country of birth (Ref.=Netherlands)					
Western	.09*	-.06	-.20***	-.05	-.05
Non-Western	.11***	-.06	-.15***	-.05*	-.04*
Origin unknown	.06	-.06	-.25**	-.13*	-.08
Number of prior convictions as a minor (Ref.=0)					
1-2	.05	.13**	-.01	-.08**	.05*
3 or more	.14***	-.08	-.20***	-.09**	.04
Unknown	-.08**	.07	.16***	-.12***	.08***
Number of prior convictions as an adult (Ref.=0)					
1-2	.16***	.14***	.04	-.09***	.09***
3 or more	.28***	.08*	.01	-.17***	.18***
<i>Offender social circumstances</i>					
Accommodation	.35***	.00	-.35***	-.09***	.04*
Accommodation unknown	.55***	-.21***	-.56***	-.09***	.31***
Education and employment	.05*	-.10**	-.12***	-.06**	-.05**
Financial management and income	.09***	.08*	.04	.00	.14***
Relationships with partner, family and relatives	-.06**	.05	-.05	.08***	-.03
Relationships with friends	.21***	.08	.06	-.10***	.20***
Drug misuse	-.21***	-.15***	-.09**	-.02	.03*
Alcohol misuse	.06**	.13***	.15***	-.01	.07***
Emotional well-being	-.24***	.04	-.23***	.00	-.22***
Thinking and behavior	.04	.30***	-.10*	.05	-.05
Attitude	-.07*	-.47***	-.13***	-.06**	-.06**
R ²	.65	.15	.27	.11	.60

* $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

In short, the effects of offender characteristics on the duration of unsuspended prison sentences differ in a number of ways from their effects on other types and modalities of sanctions in that there seem to be indications of counterbalancing. Features that coincide with a more severe sanction of one type regularly coincide with a less severe sanction of another type. This is why sentencing studies limited to unsuspended prison sentences can present a distorted picture. The question, after all, is how the counterbalancing of the

effects affects the total sanction severity. Are they evenly counterbalanced so that in the end the totality of sanctions is unaffected by offender characteristics? Or do we nonetheless see that certain offender characteristics affect one type of sanction more than another, leading in the end to a more severe total sanction?

6.5.2 Sentencing effects of offender characteristics; unsuspended prison sentences compared with the totality of sanctions

In the last column of Table 6.2, the results are shown of the total sanction severity model via the conversion into sanction points. We compare them with the results of the unsuspended prison sentence model commonly used in earlier studies. Are there any differences?

The results show that some offender characteristics have comparable effects in both the models. In the total sanction severity model, women are still less severely punished than men. So although women are treated more punitively than men as regards the duration of suspended community service, the final result is that they are less severely punished. The same holds true for offenders with problems in the fields of emotional well-being and attitude. They too are punished less severely in the unsuspended prison sentence model as well as the total sanction severity model. Comparable aggravating effects are observed as regards the offenders' prior convictions as an adult and problems in the fields of housing, financial situation, relationships with friends and drinking. As regards these offender characteristics, the findings of the unsuspended prison sentence model thus hold up.

However, the effects of other offender characteristics do differ in the two models. As regards offenders between the ages of 31 and 40 or 41 and 50 or with problems in the field of family relations, the mitigating effects on prison sentences disappear when other sanctions and combinations of other sanctions are also included in the study. The mitigating effects on prison sentences are counterbalanced by the aggravating effects on other sanctions. Aggravating effects similarly disappear in the case of offenders born in other Western countries or with at least three juvenile convictions. The other way around, in the unsuspended prison sentence model, there are no significant effects in the case of offenders with one or two juvenile convictions, but these offenders are significantly more severely punished in the total sanction severity model. So the total balance is very different for these offender characteristics than in the unsuspended prison sentence model.

What is more, the effects of the offender characteristics in one model are the reverse of what they are in the other. If the study is not confined to incarceration but expanded to include other sanctions and combinations of other sanctions, offenders born in a non-Western country are punished less rather than more severely than their Dutch counterparts. This kind of reverse effect

is also observed in offenders with problems in the fields of education and employment, who are also less severely punished in the latter model. Drug abuse also has reverse effects, but in the other direction; offenders with drug problems are punished less severely in the unsuspended prison sentence model and more severely in the total sanction severity model.

6.6 CONCLUSION

It is clear from this study that offender characteristics have different effects on different types of sanctions. Their effects on the duration of unsuspended prison sentences are virtually the reverse of their effects on suspended community service. This counterbalancing seems quite logical since suspended community service is considered much less severe than an unsuspended prison sentence. However, the different effects emphasize the importance of not confining sentencing research to unsuspended prison sentences. After all, offenders can sometimes be punished less severely as regards one type of sanction and more severely as regards another.

This study also shows that regarding certain offender characteristics, it does not matter whether other types of sanctions or combinations of sanctions are included. In the unsuspended prison sentence model as well as the total sanction severity model, women are punished less severely than men. This finding reinforces the conclusions of earlier studies. Moreover, since the findings of earlier studies are incomplete – a shorter prison sentence for women might for example be somewhat counterbalanced by lengthier suspended community service – this study demonstrates that shorter prison sentences for women cannot be completely explained by the fact that they are punished in a different way. Even if other sanctions are included, women still seem to be punished less severely than men.

There are however also offender characteristics whose effects do differ if the unsuspended prison sentence model is compared with the total sanction severity model. Offenders born in a non-Western country might get a longer unsuspended prison sentence than their Dutch counterparts, but in the total sanction severity model, they are treated less punitively, be it that the difference in the severity of the sanctions is extremely small. So the punitive treatment of non-Western offenders as to unsuspended prison sentences is counterbalanced by less punitive treatment as to other types of sanctions. One explanation might be that some foreign-born offenders do not have a fixed domicile or residence in the Netherlands and are therefore less apt to be sentenced to community service or a suspended conviction with special conditions since it would not be easy for the Probation Department to contact them about doing the community service or implementing the special conditions. In addition to fines, unsuspended prison sentences are essentially the only sanctions appropriate for them. So in this sense they are treated less punitively, which

is counterbalanced by the fact that other types of sanctions are much more frequently imposed. In the end if the complete range of sanctions is taken into consideration, the total punishment thus shows that offenders from different backgrounds are barely treated any differently as to the sanction severity. Hence, there is a striking discrepancy between these findings and those of studies solely focused on incarceration (Johnson et al., 2010; Van Wingerden et al., 2011; Wermink et al., 2012).

In a more general sense, this study shows there is some support for our assumption of punishment counterbalancing as regards certain groups of offenders: certain punishment types are less frequently or less severely imposed, while others are imposed more frequently or more severely, with barely any differences in the total punishment in the end. Nonetheless we certainly do not see the differences between the punishment of different social groups being completely eliminated. There continue to be clear differences and in some cases new differences between social groups emerged.

6.7 DISCUSSION

Side by side with the new sentencing patterns revealed in the present study, it should be noted that it also provides insight into the focal concerns theory, the leading theoretical framework in this field (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998). In comparing the results, it is striking that unsuspended prison sentences, the traditional focus of sentencing studies, exhibit regular parallels with certain types of sanctions (suspended prison sentences) and reverse patterns with other types of sanctions (suspended community service). Different types and durations of punishment are apparently considered appropriate for different types of offenders, and not only as regards the offender characteristics sex and country of birth, but the offenders' criminal records and various social circumstances as well. In the context of Dutch jurisprudence, where the judge has a large extent of discretionary power, more future research will be required to examine the types and lengths and combinations of sanctions that are imposed in relation to the focal concerns, i.e. the extent of the offenders' culpability and dangerousness and multifarious practical considerations.

When various types of sanctions are compared, there is always the discussion in the background about one mode of punishment being inherently more severe than another. A suggestion for future research might be to not only examine the total sanction severity as it is expressed via sanction points, but to also examine the sanction severity as it is perceived, e.g. by offenders and judges. American studies have shown for example that a suspended prison sentence of a considerable length is perceived as more severe than a shorter unsuspended prison sentence (Crouch, 1993; Spelman, 1994). Although it can help provide insight into the judges' motivation for imposing certain sentences,

barely any survey research of this kind has been conducted in the Netherlands. To duplicate the actual practice of Dutch jurisprudence, vignettes could be used to present various combinations of sanctions to respondents for their evaluation.

In addition, it is important for future research to devote further attention to calculating the total punishment severity. In the present study, the BOS/ Polaris guidelines are taken as point of departure and although they are the official guidelines, in a sense this conversion key is an arbitrary one. A contributing factor is that the contents of some of the sanctions are unclear. What do the special conditions mean for example if the offender has to follow the instructions of the Probation Service? The stability of these effects with other conversion keys should also be determined in future research. Perhaps the above proposal to ask judges how severe they perceive various types of sanctions might provide useful information. Another alternative would be to apply various scale techniques such as factor analysis to examine the systematic empirical aspects in the decisions to impose certain sanctions. Although we failed to distinguish any underlying factors in our first efforts when jointly analyzing all the punishments (see footnote 61), this could be further explored in future studies via alternative analysis strategies. In addition, sentencing studies that convert various types of sanctions into one sanctioning measure overlook the fact that sentencing factors can play different roles in different types of sanctions (Blumstein, Cohen, Martin & Tonry, 1983). The offenders' financial situation can play a different role for example in the amount of a fine than in the duration of a prison sentence. By using one and the same sentencing measure, it is quite possible that these specific effects do not emerge from the analyses and vice versa, that the observed effects are not relevant to every type of sanction.

Lastly, in the study of various penal alternatives, combinations and levels of severity, it is important to examine the influence of a number of supplementary characteristics such as the material severity of the offense, the way it was committed, and the choice of the victim (see e.g. Johnson et al., 2010). Supplementary research also needs to be conducted on other populations; the present population of offenders that had their risk assessed by means of RISC relatively frequently pertains to offenders who commit offenses of above average seriousness. The question is how considerations pertaining to the severity of the sanction are expressed as regards less serious offenses. It should be noted in this connection that with respect to alternative populations – if there are no RISC files– it is not possible to go as deeply into the importance of offender characteristics such as those involving all kinds of personal and social circumstances.

Despite these limitations, our study provides theoretical and empirical arguments as to why future sentencing studies should not confine themselves to unsuspended prison sentences and should also include other sanctions and combinations with other sanctions in their research.

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Appendix 1: Descriptive statistics (N=22,031)

	Min.	Max.	Mean	S.D.
<i>Dependent variables</i>				
Length of the unsuspended imprisonment (ln)	0	9.29	2.29	2.67
Length of the suspended imprisonment (ln)	0	6.59	2.57	2.21
Length of the unsuspended community service (ln)	0	6.15	1.73	2.20
Length of the suspended community service (ln)	0	5.48	.43	1.20
Total sentence severity (ln)	0	9.29	4.26	1.66
<i>Independent variables</i>				
<i>Offense characteristics</i>				
Maximum penalty	0	30	5.87	3.92
Maximum penalty unknown	0	1	.01	.10
Offense type				
Assault	0	1	.07	.25
Intimidation	0	1	.26	.44
Violent theft	0	1	.08	.27
Vices	0	1	.06	.24
Homicide	0	1	.05	.22
Other violent crimes	0	1	.01	.10
Forgery	0	1	.02	.13
Theft	0	1	.05	.21
Aggravated theft	0	1	.10	.30
Other property crimes	0	1	.03	.18
Destruction of property	0	1	.02	.12
Violation of public order	0	1	.07	.26
Drugs	0	1	.09	.28
Traffic	0	1	.03	.17
Other crimes of the Penal Code	0	1	.08	.26
Number of crimes	0	3	1.72	.84
<i>Case processing characteristics</i>				
Length of preventive custody (in months)	0	27	1.95	2.67
Court district				
Alkmaar	0	1	.05	.21
Almelo	0	1	.03	.18
Amsterdam	0	1	.12	.32
Arnhem	0	1	.06	.23
Assen	0	1	.04	.19
Breda	0	1	.03	.18
Den Bosch	0	1	.08	.27
Den Haag	0	1	.14	.34
Dordrecht	0	1	.03	.16
Groningen	0	1	.04	.20
Haarlem	0	1	.08	.28
Leeuwarden	0	1	.03	.17
Maastricht	0	1	.03	.18
Middelburg	0	1	.02	.15
Roermond	0	1	.02	.16
Rotterdam	0	1	.08	.26
Utrecht	0	1	.05	.22
Zutphen	0	1	.03	.18
Zwolle	0	1	.04	.20

(Continued)

Appendix 1 – Continued

	Min.	Max.	Mean	S.D.
<i>Offender characteristics</i>				
Sex				
Female	0	1	.90	.30
Male	0	1	.10	.30
Age				
Age 12-20	0	1	.16	.37
Age 21-30	0	1	.29	.46
Age 31-40	0	1	.27	.44
Age 41-50	0	1	.19	.39
Age > 50	0	1	.09	.28
Country of birth				
Netherlands	0	1	.72	.45
Western	0	1	.07	.26
Other origin	0	1	.18	.38
Origin unknown	0	1	.02	.15
Number of prior convictions as a minor				
0	0	1	.56	.50
1-2	0	1	.16	.36
3 or more	0	1	.10	.30
Unknown	0	1	.19	.39
Number of prior convictions as an adult				
0	0	1	.39	.49
1-2	0	1	.22	.42
3 or more	0	1	.39	.49
Unknown	0	1	.00	.05
<i>Offender social circumstances</i>				
Accommodation	0	2	.27	.47
Accommodation unknown	0	1	.14	.35
Education and employment	0	2	.68	.58
Financial management and income	0	2	.54	.56
Relationships with partner, family and relatives	0	2	.74	.58
Relationships with friends	0	2	.50	.50
Drug misuse	0	2	.40	.57
Alcohol misuse	0	2	.43	.59
Emotional well-being	0	2	.64	.54
Thinking and behavior	0	2	.84	.50
Attitude	0	2	.66	.53

7 | Summary and general discussion

7.1 SUMMARY

7.1.1 Introduction

This study examines the sentencing decisions of judges. In most cases it is not just the final decision in the criminal proceedings, it may be the most important one as well, for it stipulates the consequences of an offense for the offender. Moreover, the public's opinion on the performance of the judiciary is mainly based on the sentences imposed (De Roos, 2000). So sentencing is not only relevant because of the impact the punishment has on the offender, it is indeed a cornerstone of the legitimacy of the entire criminal justice system. Nonetheless, there are still questions about the factors judges take into account when they make their sentencing decisions, and why they do so. In addition, it is unclear in which way these factors are interrelated, causing indirect or intermediate effects on sentencing outcomes. By addressing these questions, this study aims to improve our understanding of judges' sentencing decisions. Special attention is devoted to the effects of risk-related offender characteristics and circumstances on sentencing outcomes.

The findings of the current study are summarized below. Thereafter, I discuss the overall findings on risk-based sentencing, as well as the theoretical and practical implications of my study. I conclude with some methodological considerations and suggestions for future research.

7.1.2 Effects of offender characteristics and the intermediating effects of risk-related offender circumstances

In Chapter 2 the first research question is addressed: *to what extent are the effects of demographic offender characteristics on sentencing outcomes mediated by his risk-related personal circumstances?* Using the focal concerns perspective (Steffensmeier & Demuth, 2000; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier, Ulmer, & Kramer, 1998) as the main theoretical framework in sentencing research, offender characteristics are generally assumed to affect sentencing outcomes because judges – either consciously or unconsciously – use them to assess the offender's blameworthiness and dangerousness.

However, the focal concerns perspective does not clearly specify which factors explicitly contribute to the attribution of blameworthiness and dangerousness or precisely how they affect these attributions. Important progress on this issue can be made by linking it to prior research findings on predictors of (re)offending, that suggest which personal offender circumstances increase the risk of reoffending. Examples include homelessness (Lee, Tyler & Wright, 2010), family disruptions (Sampson, 1987), low socioeconomic status (Farrington, 2007), low educational attainment (Makarios, Steiner & Travis III, 2010), unemployment (Haynie, Weiss & Piquero, 2008; Van der Geest, Bijleveld & Blokland, 2011) and relationships with delinquent peers (Akers, 2009; Sampson & Laub, 1993; Sutherland, 1947; Warr, 1998). I address this 'missing link' in sentencing theory by investigating whether these risk-related circumstances of the offender serve as key mediators in the relation between demographic offender characteristics and sentencing. By investigating the effects of the offender's social circumstances as mediators – rather than merely including them as controls – I follow Ulmer's (2012) and Baumer's (2013) suggestion that modeling indirect or mediating effects is needed in order to improve the traditional approach to sentencing research.

In my study I find the offender's sex, age and country of birth to be related to sentencing outcomes: female and young offenders are punished more leniently, and foreign-born offenders more severely. The effects of gender and country of birth are mitigated by including detailed offender circumstances, though gender differences remain even after controlling for risk-related personal circumstances of the offender. In addition, age differences are not significantly mediated at all. This suggests that though risk-related personal circumstances of offenders are important in determining sentencing outcomes, they do not fully account for the effects of the demographic offender characteristics. So despite very detailed information on the risk of reoffending, judges still appear to be influenced by stereotypical attributions linked to the offender's sex, age and country of birth. A possible explanation is that even if judges have no information constraints, they may still be affected by time constraints. Due to limited time for the disposal of the case, the available information on the offender's blameworthiness or dangerousness may be supplemented by existing stereotypes and offender preconceptions.

7.1.3 Effects of structured risk-based pre-sentence reports on sentencing

In Chapter 3 the second research question is addressed: *to what extent does a structured risk-based pre-sentence report enhance risk-based sentencing?* The focus is not on the effects of characteristics and risk-related personal circumstances of the offender as in Chapter 2, but on the effects of offender's risk of reoffending as it is communicated to the judge via a pre-sentence report. By examining

the role of pre-sentence reports in sentencing, I address another factor relevant to penal decision-making that has barely been researched up to now.

According to new penological accounts (Feeley & Simon, 1992, 1994), crime is considered a risk like any other risk that needs to be managed. To do so efficiently, whatever scarce resources are available are used to keep high-risk offenders under control and – the other side of the coin – to divert low-risk offenders from prison. The risk assessment tool RISC is a textbook example of the emergence of risk assessment in Dutch criminal justice practices since it serves as the foundation for the pre-sentence report. Risk-based pre-sentence reports narratively describe offender's risks in several fields of life and conclude by classifying him as a low, medium or high-risk offender, thereby framing him as a certain risk to society.

I investigate whether a risk-based pre-sentence report enhances risk-based sentencing: are high-risk defendants with a risk-based pre-sentence report indeed more likely to be sentenced to more 'controlling' types of punishment (incarceration or suspended sentences with special conditions) and less likely to be sentenced to 'diverting' types of punishment (e.g. community service, suspended sentences) than high-risk defendants without such a report? I expect the opposite to hold true for low-risk defendants. To compare the sentencing outcomes of offenders with a structured risk-based pre-sentence report to those of similar offenders without such a report, I use extensive matching techniques (propensity score matching combined with a matching on nine additional defendant and case characteristics). With this method, I follow Baumer's (2013) call to adopt alternative estimation procedures for identifying determinants of sentencing (see also Ulmer, 2012).

The findings suggest that a pre-sentence report based on a structured clinical risk-assessment tool – a hallmark of risk managerialism in the new penology – does not enhance risk-based sentencing. It does not increase the chance of high-risk defendants being sentenced to controlling types of punishment, nor does it decrease their chance of being sentenced to diverting types of punishment. Instead, a structured risk-based pre-sentence report informing the judge about criminogenic factors in a defendant's life relates to less controlling and more diverting sentencing outcomes regardless of the risk the defendant presents.

Possibly, judges might not consider defendant's personal circumstances structurally presented in the pre-sentence report as aggravating factors indicating a need to protect society by imposing controlling types of punishment, but rather as mitigating factors indicating possibilities for rehabilitation of the defendant (see Mathiesen, 1998; Moerings, 2003). Differences in the sentencing outcomes of defendants with and without a structured risk-based pre-sentence report might then be explained by an information effect in the sense that judges without a sound grasp of a defendants' personal circumstances are less able to take them into consideration as mitigating factors. With risk factors regarded as mitigating factors, the penal welfarism account rather than the new peno-

logical one still seems prevalent in judicial decision-making in the Netherlands. This corresponds to Field and Nelken's (2010) observation that old welfarism discourses have not been replaced by new penological ones, but instead resulted in new complex and contradictory interweaving (see also Hannah-Moffat, 2005; Wandall, 2010).

7.1.4 Judges' views on the risk of reoffending as a sentencing determinant

In Chapter 4 the third research question is addressed: *how is the risk of reoffending related to sentencing according to judges?* The risk of reoffending is a major feature of utilitarian sentencing goals justifying punishment and thereby also of the mixed theory alleged to be dominant in Dutch sentencing (De Keijser, 2001a; 2001b). In this mixed or hybrid theory, retribution is the essence of punishment and also constitutes its upper limit. Punishment cannot be more severe than required by the severity of the offense and blameworthiness of the offender (Von Hirsch & Ashworth, 2005). Below this upper boundary, utilitarian goals may be pursued. To justify punishment imposed with the aim of incapacitating or rehabilitating the offender, his risk of reoffending is of the utmost importance. Nevertheless, to date, the role of the risk of reoffending has barely been studied in empirical sentencing research.

Contrary to the prior chapters, I use a qualitative research method in Chapter 4 to investigate the role of the risk of reoffending in sentencing. Fifteen judges are interviewed. This research method supplements the quantitative approach in the previous chapters in several important ways. The interviews provide valuable insight into the judges' considerations about sentencing, especially regarding factors that are hard to capture with quantitative research methods such as the judges' *perceptions* of the risk of reoffending. In addition, using interviews as a research method can reveal the *motives* of judges for taking certain aspects into account when making a sentencing decision.

The findings suggest that judges attribute great importance to the offender's risk of reoffending when making their sentencing decision, but do not blindly accept how it is described in the pre-sentence report. They prefer to make their own risk assessment instead, using the information on offender's criminogenic circumstances from the pre-sentence report, as well as information on prior convictions from the offender's criminal record. The judges state that the risk of reoffending is especially relevant to their decision on the *type* of punishment. A high risk of reoffending does not make them more apt to sentence the offender to prison, but it does tend to trigger *suspended* prison sentences with behavioral interventions as a special condition, because they feel these offenders need 'fixing'. Low-risk offenders are less likely to get suspended sentences with special conditions, since they are expected to stay on the right track anyhow.

The interviews further show that the judges do not write off high-risk offenders beforehand. They always tend to look for signs that the offender is willing to turn over a new leaf. In line with the findings in the previous chapter, this implies that in sentencing practice, the penal welfarism notion of rehabilitation prevails over the new penology's idea of risk control. However, the judges note that some offenders failed to take advantage of opportunities given to them at sentencing in the past. Prior sentences, with their rising 'sentencing trend', are an important consideration for judges on this matter. If the judges feel an offender has had adequate chances, rehabilitation is no longer pursued and retribution or incapacitation become the dominant sentencing considerations. These findings are in line with Hannah-Moffat's (2005) comment that new penology has not replaced the 'old' sentencing practice of penal welfarism, but has resulted instead in hybrid and flexible strategies supporting various sentencing practices at the same time.

7.1.5 Factors related to sentencing homicide offenders

Although the previous chapters broaden the scope of sentencing research by examining previously overlooked aspects of sentencing regarding offender's risk of reoffending, certain questions about determinants of sentencing still remain unanswered. Chapter 5 addresses some of the remaining and previously overlooked issues, such as how victim characteristics, victim-offender-interactions, offense characteristics (*locus delicti*, *modus operandi*), and prosecutorial sentencing recommendations affect sentencing outcomes. The Dutch Homicide Database (N=1,911) goes into great detail about these issues and provides a unique opportunity to study these little-researched factors and interactions. This chapter focuses on the fourth research question: *to what extent are offense, offender, victim and case-processing characteristics related to the sentencing of homicide offenders?* Focusing on homicide fills another gap in the existing sentencing literature, since so few studies focus on this 'ultimate' crime (Auerhahn, 2007b), even though homicide punishments play such an important role in public opinion and concerns about sentencing in general.

I test seven hypotheses on the sentencing of homicide offenders (see Table 5.4). The findings suggest that the *severity of the offense* is related to the sentencing outcome in that the more severe the offense, the more severe the punishment. Sentences involving mandatory treatment for the mentally ill (Tbs) are associated with shorter prison terms. Second, *prior convictions* are not related to the sentencing outcomes, but prior incarceration is significantly and strongly related to harsher punishment. Third, as to *offender characteristics*, sex, age and country of birth affect the sentencing outcomes. Women receive significantly shorter prison terms than men, and non-European foreigners significantly longer sentences than Dutch-born offenders. Very young and very old offenders are also treated leniently at sentencing. Fourth, as to *victim character-*

istics, the findings suggest that homicides involving female, Dutch-born and very young or old victims are punished more severely. Moreover, in line with the fifth hypothesis, *victim and offender characteristics interact*, yielding particularly severe sentences for male offenders who murder females or foreign-born offenders who murder Dutch-born victims. Sixth, *circumstances of the offense*, e.g. *locus delicti*, *modus operandi* and type of crime, also affect the sentencing outcome. Homicide in public spaces is associated with longer sentences than homicide in private households. Homicide involving firearms leads to particularly severe sentences, and non-family homicide to the stiffest penalties, particularly if committed in conjunction with robbery or sexual crimes. In general, incident characteristics that convey more of a danger and threat to society tend to result in longer prison terms. Lastly, although sentencing outcomes are somewhat more lenient than prosecutorial recommendations, prosecutorial sentencing recommendations are strongly related to sentencing outcomes.

Overall, my findings suggest that factors rarely studied in the past such as characteristics of the offense (*locus delicti* and *modus operandi*) and the victim as well as prosecutorial sentencing recommendations help account for differences in sentencing outcomes. To better explain the differences in sentencing outcomes, future research should therefore include these usually omitted factors as well.

7.1.6 Why sentencing research should consider alternative, more complete measures of sentence severity

Chapter 6 focuses on the fifth research question: *to what extent do we need to reconsider our knowledge about offender characteristics as sentencing factors when the scope of the research is expanded to include the entire range of sanctions?* Sentencing research is generally limited to unsuspended prison sentences. This is an important flaw, since sentences typically consist of a myriad of sentencing options. Various sanction types are jointly imposed, some unsuspended (definitely carried out), others suspended (only carried out if the offender violates certain conditions). Combinations of sanction types frequently occur: in 2011 offenders were sentenced to an average of 1.4 punishment types, not including suspended sentences (Van Rosmalen, Kalidien & De Heer-de Lange, 2012). Moreover, research on perceptions of punishment severity, e.g. using surveys to establish punishment exchange rates, suggests that under certain circumstances, other sanction types are considered more severe than unsuspended prison sentences (e.g. Crouch, 1993; Spelman, 1995). Findings from prior sentencing research focusing solely on unsuspended imprisonment are thus incomplete and might be biased. This bias raises questions about the tenability of findings from prior research. Does our knowledge of sentencing

determinants need to be revised as sentencing research broadens its scope to a more complete and realistic picture of the imposed sentences?

To answer this question, I first compare the effects (i.e. outcomes of multivariate regression analyses) of offender characteristics from a model that – like sentencing research in general – only captures unsuspended prison sentences to the effects from similar models that capture other sanction types. My findings suggest that the effects of offender characteristics vary for different sanction types. The effects of unsuspended imprisonment and suspended community service are nearly mirrored. This seems logical, since suspended community service is considered a much lighter sentence than unsuspended imprisonment. Yet, these divergent effects underline the importance of broadening the scope of sentencing research to a more complete measure of the sentences imposed. After all, offenders can sometimes be punished less severely as regards one type of sanction and more severely as regards another.

Therefore, I also compare the effects of offender characteristics from the model confined to unsuspended prison sentences to those from a model including different sanction types and their combinations in one comprehensive measure of sentence severity. The results indicate that some offender characteristics have similar effects in both models. If other sanction types and combinations are taken into account, women for example are still punished less severely than men. Problems involving emotional well-being and attitude also have mitigating effects in both models. Comparable aggravating effects are observed for the offender's criminal record as an adult, problems regarding his housing or financial situation, relationships with friends and alcohol use. So a more complete measure of the sentences imposed does not affect the outcomes as regards these offender characteristics.

However, other offender characteristics do have effects that differ on the two models with regard to the statistical significance of the findings. Mitigating effects for offenders aged 31-40 and 41-50, or with problematic family ties disappear if other sanction types and combinations are taken into account. Likewise, the aggravating effects for offenders from other Western countries or with three or more juvenile convictions disappear. Conversely, there are no significant effects on sentencing outcomes in the imprisonment model for offenders with one or two prior juvenile convictions, but in the model including other sanction types, they are punished more severely than offenders without prior juvenile convictions.

Moreover, certain offender characteristics have opposite effects in the two models. If sentencing research is not limited to unsuspended imprisonment but broadened to other sanction types and combinations, offenders from non-Western countries are no longer punished *more* severely than those born in the Netherlands, but slightly *less* severely. Perhaps these offenders are more harshly punished with unsuspended imprisonment *because* they are less eligible for suspended sentences or community service. For they are more likely to have no permanent address in the Netherlands, making it difficult for pro-

bation agencies to contact them about the execution of their sentence. These reverse effects are also observed for offenders with education and employment problems. Offenders with a steady job are less likely to be sentenced to unsuspended imprisonment, possibly because judges do not want them to lose their jobs. However, this employment discount for unsuspended imprisonment sentences is overcompensated by a more punitive approach regarding other sanction types. Drug abuse also has the opposite effect: offenders with drug problems are punished *less* severely in the imprisonment model and *more* severely if other sanction types are also considered. The aggravating effect of drug abuse there can be ascribed to the ISD-measure, i.e. placement in an institution for habitual offenders, which is also factored in the sentence severity.

My study reveals that there seem to be indications of counterbalancing: Features that coincide with a more severe sanction of one type regularly coincide with a less severe sanction of another type. Therefore, my findings call for a careful interpretation of prior research conclusions, since studies limited to unsuspended prison sentences might have overlooked and misinterpreted relations between offender characteristics and sentencing outcomes. The aggravating or mitigating effects of certain characteristics either appear, disappear or are inverted if other sanction types or combinations are taken into account. Future research should therefore continue to develop new methods that present a more complete picture of sentencing practice.

7.2 GENERAL DISCUSSION

7.2.1 Taking the offender's characteristics and risk-related social circumstances into account

Risk and sentencing

Developments in criminal justice practice regarding the emergence of actuarial justice (Feeley & Simon, 1992, 1994), entailing the introduction of the risk assessment tool RISC as the foundation of the pre-sentence report, led me to focus on two related matters: the effects of risk-based pre-sentence reports and of the offender's personal characteristics on sentencing. The introduction of the risk-based pre-sentence report in Dutch criminal justice practice drew attention to the extent to which judges consider risk-related information on the offender's demographic characteristics and social circumstances when making their sentencing decision. In line with new penological discourses (Feeley & Simon, 1992, 1994) I expected the emergence of actuarial justice to steer sentencing practice towards risk-based sentencing, so that offenders with characteristics or social circumstances indicative of a high risk of harm to society in the future are punished more severely than low-risk offenders. In

other words, so that in an effort to protect society, high-risk offenders are more likely to be sentenced to prison and to longer prison terms.

The current study builds on prior sentencing research my colleagues and I conducted (Van Wingerden, Moerings, & Van Wilsem, 2011) on the role of the offender's RISC-categorization, distinguishing low, medium or high-risk offenders, in sentencing. Our findings of that prior study suggest that – controlled for various offense, case-processing and offender characteristics – offenders with a high RISC-outcome are not sentenced more severely than those with a low RISC-outcome. We conclude that, contrary to new penological discourses, the offender's risk categorization is not a major sentencing determinant. Hence, we did not find evidence of actuarial justice in Dutch sentencing practice. The present study delves deeper into the role of the offender's risk of reoffending in sentencing, focusing more on the effects of offender's risk-related social circumstances and on the effects of a risk-based pre-sentence report on the sentencing outcome.

The importance of studying the risk of reoffending as a sentencing determinant

It is important to note that the risk of future crimes is not to be confused with crimes committed in the past, even if a criminal record is a strong predictor of future crimes (see e.g. Wartna, Tollenaar & Bogaerts, 2009). This distinction is relevant to the scope of sentencing research. The offender's criminal record is a well-known sentencing determinant. Various sentencing studies suggest that the more extensive the offender's criminal record, the more severe the punishment (e.g. Jongman & Schilt, 1976; Kannegieter, 1994; Oomen, 1970; Timmerman & Breembroek, 1985). The effect of the risk of reoffending on sentencing has however barely been studied. With the exception of my prior study, it is uncharted territory.

Second, in theories about the justification of punishment, the offender's criminal history and the risk of reoffending are fundamentally distinct grounds for punishment. The retributivist approach leaves some room for the offender's criminal record in sentencing via the 'recidivist premium' or 'progressive loss of mitigation' (see Lee, 2009; Roberts, 1997), but from this retributivist perspective there is no justification for taking the risk of future crimes into account (Von Hirsch, Ashworth & Roberts, 2009). Conversely, from the utilitarian perspective on the justification of punishment, *prior crimes* are not relevant, but instead the *risk of reoffending in the future* is a key factor in sentencing with the goal of incapacitation or rehabilitation and justifies more intensive punishment for high-risk than low-risk offenders (De Keijser, 2001a). The theoretically distinct roles of past crimes and the risk of future ones merit particular attention to the understudied role of offender's risk of reoffending in sentencing practice.

The dangers of risk-based sentencing

Risk-based sentencing, aiming at the selective incapacitation (Mathiesen, 1998) of high-risk offenders, might be justified from a utilitarian perspective but there are numerous pitfalls. Legal scholars are concerned about how risk-based sentencing could affect the legal nature of the criminal justice system, changing it from a reactive system to a proactive form of intervention (Moerings, 2003; Moerings & Van Wingerden, 2007; Van de Bunt & Van Swaaningen, 2004; Van der Woude, 2010). Punishing someone not for what he has done but for what he might do in the future violates the *ultimum remedium* nature of the system. Worse still, he is not punished for what *he* might do, but for what an average offender with the same characteristics is statistically expected to do (Blokland & Nieuwbeerta, 2006; Netter, 2007). Moreover, risk assessment leads to inequality in the criminal justice system, with a disparately harsh impact on minorities and the poor (Tonry, 1987). In addition to these ethical issues, there are practical ones regarding the low accuracy levels of risk assessment tools (Gottfredson, 1987; Netter, 2007). These tools seem more objective than they actually are, it is unclear what period of time their predictions are valid for, and they do not factor in changes in the offender's environment (Van Koppen, 2008). Hannah-Moffat summarizes the issues as regards risk-based sentencing, cautioning that 'the uncritical acceptance of science and related risk technologies can jeopardize due process, produce disparities and discrimination, undercut proportionality and individuality, and escalate the severity of sentences' (Hannah-Moffat, 2013, p. 291).

Findings regarding risk-based sentencing

Because of the theoretical importance of the risk of reoffending to the justification of punishment and the issues pertaining to risk assessment tools for criminal sentencing, we need to know more on the role of the risk of reoffending in sentencing practice. The current study presents various findings in this connection.

Firstly, judges adjust their sentencing decision in accordance with the offender's characteristics. All the chapters describing quantitative research methods reveal that offender characteristics such as sex, age and country of birth are significantly related to sentencing outcomes. However, as Chapter 2 demonstrates, the effects of offender characteristics do not fully disappear when risk-related social circumstances are taken into account. So judges might factor in demographic characteristics, but for reasons other than risk management.

Secondly, my findings indicate that the offender's risk-related social circumstances bear a relation to the sentencing outcomes. Judges adjust the sentence to the offender's circumstances such as homelessness, unemployment or substance abuse. However, risk-related circumstances do not always affect sentencing outcomes in the expected direction. For certain social circumstances such

as the offender's attitude to criminal behavior are negatively related to sentencing outcomes, so that the more troublesome the attitude, the lighter the punishment. Here again, judges seem to take an offender's social circumstances into account in individualizing the punishment, but not in a way that social circumstances indicative of a higher risk of reoffending imply more severe punishment.

Moreover, the findings in Chapter 3 suggest that if a risk-based pre-sentence report *frames* an offender as presenting a high risk of reoffending, judges do not sentence him to more 'controlling' sentences (i.e. unsuspended imprisonment or special conditions with a suspended sentence) than comparable high-risk offenders without such a report. Instead, risk-related offender information presented in a pre-sentence report seems to *mitigate* the sentencing outcome. So pre-sentence reports based on a risk assessment tool do not seem to have caused judges to adopt risk-based sentencing.

This corresponds to findings in Chapter 4, noting that judges say they do not punish offenders more severely if the risk of reoffending is higher. Instead, a high risk of reoffending is considered a reason to impose a suspended sentence with special conditions like behavioral therapy, since they feel the offender is in need of 'fixing'. Offenders are only punished more severely for failing to take advantage of the opportunities judges gave them in the past.

Hence, judges do take the characteristics and risk-related social circumstances of the offender into account to some extent, but factors indicative of a higher risk of reoffending do not always imply harsher punishment. Though features of Garland's (2001) risk society and Feeley and Simon's (1992, 1994) actuarial justice are observed in Dutch society (Downes & Van Swaaningen, 2007; Van Swaaningen, 1996; Van der Woude, 2010), actuarial justice does not seem to dominate the practice of sentencing in the Netherlands: penal welfarism is still prevalent in Dutch judicial decision-making.

7.2.2 Theoretical and practical implications

Theoretical implications

The current study has several theoretical implications. Nowadays the focal concerns perspective (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998) is the main theoretical framework in sentencing research. From this perspective, judges address three points of focal concern when making a sentencing decision: 1) the offender's blameworthiness; 2) his danger to society; and 3) the practical constraints. Since judges do not have unlimited information and time to address these focal points with certainty, they rely on cognitive short cuts that invoke past experiences, stereotypes and social prejudices (Albonetti, 1991). Yet the focal concerns perspective does not clearly specify

which factors explicitly contribute to attributions of blameworthiness and dangerousness or which direction they affect them in.

My study on the effects of offender characteristics on sentencing outcomes and the intermediating effects of the offender's risk-related social circumstances (Chapter 2) suggests that important theoretical progress can be made on this issue by explicitly linking the focal concerns perspective to prior research findings on predictors of (re)offending. Since the judges' attributions, stereotypical images and patterned responses are likely to be driven by the very characteristics proven to be risk factors, this offers valuable leads for constructing research models and hypotheses in sentencing research. Addressing this 'missing link' in sentencing theory also gives sentencing research new opportunities to shift the focus from identifying disparities in punishment to explaining and understanding them (Wellford, 2007).

My study also tests the applicability of contemporary sentencing theory by focusing on sentencing outcomes outside the United States. Studying sentencing outcomes in cross-national contexts can greatly broaden the knowledge on sentencing and sentencing disparity (Ulmer, 2012) and substantially advance the theorizing. My findings suggest many similarities in the factors affecting sentencing outcomes in the United States and the Netherlands, thus supporting the generalizability of the theoretical framework to contexts outside the United States. However, there are also differences between the findings from my Dutch studies and those from the United States. These differences might constitute important leads for future research on the *causes* of the differential effects on sentencing outcomes.

Implications for policy and practice

In addition to the theoretical implications, my study has important implications for sentencing policy and practice. The broad discretionary powers of judges are a major hallmark of the Dutch sentencing system and make it feasible to individualize sentencing, but my findings demonstrate that this has resulted in considerable disparity in sentencing outcomes. For example, as noted in Chapter 2, females and Dutch-born offenders are punished more leniently than male and foreign-born offenders. I further show that the offender's social circumstances such as unemployment, ties to family and friends, and addictions, cannot fully account for these differences: disparity still exists. In Chapter 5 I demonstrate a similar disparity in the sentencing of homicide offenders. Controlled for all the other factors, females are punished more leniently than males, and sentencing outcomes are more severe for offenders born outside Europe than for Dutch-born offenders. Moreover, offender and victim characteristics interact leading to additional sentencing severity for male offenders who victimize females and for foreign-born offenders who victimize Dutch-born offenders. In Chapter 6 I demonstrate that women are still punished less severely than men if the research scope is broadened from imprison-

ment to other sanction types and combinations. Even if the aggravating effects for offenders born in a non-Western country or with education and employment problems invert to a mitigating effect, they are still punished *differently* than the reference groups.

Although Dutch jurists agree that characteristics and social circumstances of the offender are to be factored in at sentencing to make the punishment fit the crime *as well the offender* (e.g. Duker, 2003; Kelk, 2001; Schuyt, 2009), the individualization of punishment has a tense relation with the equality principle, since fitting the sentence to the offender means a risk of sentencing offenders unequally. However, sentencing disparity does not necessarily imply discrimination, because there might be very legitimate reasons to sentence different cases differently. Women, for example, might be sentenced more leniently because compared to men they are more often their children's primary caregivers. Sentencing disparity is only discriminatory if the demographic characteristics or social circumstances of the offender that are objectionable – typically on moral or legal grounds – are related to sentencing outcomes when all other relevant variables are adequately controlled (Blumstein, Cohen, Martin, & Tonry, 1983). So if offenders are punished more severely *merely* because of their sex, race or employment status, this is not only undesirable, it is illegitimate as well. It conflicts with the principle of equality and the prohibition of discrimination as stipulated in Section 1 of the Dutch Constitution, Article 14 of the European Convention on Human Rights, and the Recommendation (1992 (17)) of the Council of Europe.

Yet since there is also discrimination when sentencing outcomes are affected by factors objectionable on moral grounds, the issue of individualizing punishment as it relates to the equality principle is more complicated. Moral views are not universal, they are subjective and change over time. So it can be disputed which factors are to be considered objectionable on moral grounds. For example, is a problematic childhood a factor judges can take into account as a mitigating circumstance? Is unemployment an objectionable sentencing determinant in times of recession when unemployment rates are high, but not in times of economic growth when there are plenty of jobs?

The issue of equality in sentencing is even more complicated since ignoring certain offender characteristics might diminish sentencing disparity, but it can also lead to judgments considered to be unfair. For is an offender who loses his job if he is sentenced to prison not punished more severely than unemployed offenders who are sentenced to prison? Is it not only fair then to tend to sentence an offender who stands to lose his job to non-custodial punishment types?

Yet, confronted with sentencing disparity, jurists tend to appeal to the reverse side of the equality principle and prescribe that unequal cases be treated unequally to the extent of their inequality (Duker, 2003; Schoep, 2008; Schuyt, 2009). This 'inequality principle' is usually enforced by referring to the uniqueness of each criminal case: every case has its specifics justifying

different sentencing outcomes in cases that seem comparable from a distance. And since these specifics, such as the precise provocation of the crime or the content or tone of the arguments at the trial, cannot be fully grasped by quantitative research methods, sentencing disparities found in quantitative research are generally attributed to the uniqueness of the case – not to unjustified unequal treatment.

Of course it is very legitimate to claim that disparity in sentencing outcomes is to be attributed to characteristics not adequately controlled for if at all. Yet the issue of sentencing disparity cannot be simply dismissed by this uniqueness appeal. What circumstances make a case so unique? How and why do these aspects affect the sentencing outcomes? Is it even right to take these circumstances into account at all?

Unfortunately, my study does not reconcile the equality principle and the individualization of punishment. Although it is important to note that my findings merely suggest *relations* between the offense, case-processing and offender characteristics and not *causal* relations, my findings call for an *aroused awareness* on the part of judges about the factors they consider when making a sentencing decision. My findings can contribute to a normative discussion about the desirability of taking certain offender characteristics into account at sentencing. Judges and legal scholars might refer to the uniqueness of the case to explain and legitimize a sentencing disparity, but my study will hopefully encourage them to reflect upon the reasons for taking certain characteristics into account.

In addition to the normative implications, my findings might also have practical implications. The National Consultation on Criminal Content has provided judges with non-binding orientation points for common offenses since 1998 (Landelijk Overleg Vakinhoud Strafrecht, 2013). These orientation points are based on common practice and updated regularly. The guideline states that the punishments indicated are based on standard cases, so that the special features of an offense or offender are still to be factored in by the judges themselves. However, it does not specify what these special features are. For some offenses, the orientation points explicitly cite certain ‘aggravating and/or mitigating factors’, e.g. the location of the offense of pickpocketing (‘surveyable space with many people such as a tram, bus, train, railway station and airport’), but it is not clear how these factors should affect the sentencing outcomes. Should pickpocketing in a crowded train be punished more severely or less severely than on a quiet street? Perhaps sentencing research findings can provide greater insight into how ‘special features’ of an offense or offender are related to sentencing outcomes. Including these ideas in the guidelines could add more of a direction to the orientation points, thereby contributing to a more equal sentencing practice. Moreover, since the orientation points are said to be based on common practice, their foundation and accountability could be consolidated by explicitly acknowledging findings from sentencing research.

7.2.3 Methodological considerations and suggestions for future research

Despite its contributions, my study has its limitations. Although the data include uniquely detailed offense and offender characteristics, even more detailed information on the offense and offender characteristics and circumstances would ideally have to be included to present a complete picture. Prior research also suggests that victim characteristics affect sentencing outcomes (Auerhahn, 2007a; Franklin & Fearn, 2008; Williams, Demuth & Holcomb, 2007), but except for the information in Chapter 5, my data do not include them. Moreover, my data lack information on earlier criminal justice processes and later case outcomes such as appellate court decisions and information on prosecutor, judge and courtroom community characteristics. So it is important for researchers to compile more complete data on factors relevant at sentencing (Wellford, 2007).

Chapter 2 raises interesting questions on the mechanisms of assessing an offender's blameworthiness and danger to society. It suggests that the stereotypical attributions judges rely on when making a sentencing decision might not be rooted in information constraints but in time constraints. Despite the availability of detailed information on the offender's risk-related social circumstances, judges still rely on stereotypical attributions based on demographic offender characteristics. Unfortunately, I was not able to take the time factor into account. Future research incorporating the judges' time constraints might develop new insight into the underlying decision-making mechanisms of the focal concerns perspective.

A different variable not included in my study pertains to previously imposed sentences. Chapter 5 suggests that it is not the offender's criminal history, but his *sentencing history* that is significantly related to the sentencing outcome. The number of years the offender has already spent in prison increases the length of the prison sentence to be imposed. The importance of the offender's sentencing history is also stressed in Chapter 4. The interviews show how much importance the judges attach to the sentencing trend when deciding whether or not non-custodial sentences are to be considered. Non-custodial sentences are not even considered for offenders previously sentenced to unsuspended imprisonment, especially quite recently, because each sentence has to be a step up on the 'sentencing ladder'. My study advocates including previous sentences in sentencing research to take the sentencing trend into account.

Another limitation of the research presented in Chapters 2, 3 and 5 is that the scope, like that of sentencing research in general (e.g. Curry, 2010; Doerner & Demuth, 2010; Wermink, 2014), is limited to unsuspended prison sentences even though sentencing typically consists of a myriad of sentencing options. Various sanction types are often jointly imposed, some unsuspended (definitely carried out), and others suspended (only carried out if the offender violates certain conditions). Sentencing research limited to unsuspended imprisonment

thus only covers a small part of all the sentences imposed and cannot properly view the severity of the sentence since it overlooks other sentencing types that are singularly or jointly imposed. Due to this imprisonment bias, sentencing research has created a large discrepancy with the reality of sentencing. I address this issue in Chapter 6. The findings suggest that although for certain offender characteristics, the effects in the model only including unsuspended imprisonment are similar to the those in the model that also includes other sanction types or combinations, for other offender circumstances aggravating or mitigating effects appear, disappear or are inverted when other sanction types or combinations are taken into account. Future research should therefore broaden its scope to include non-imprisonment sentences as well, devoting attention to both combinations of sanctions and suspended sanctions. To tackle the imprisonment bias, researchers should create innovative methods that present a more realistic approach of the practice of sentencing.

In that line I also encourage future researchers to use the available data in a more thoughtful manner. For example, with respect to measurement of the severity of the offence, sentencing researchers generally confine themselves to use merely the maximum length of imprisonment possible in the Penal Code and the type of the most severe offence. Even though the severity of the offense will always be a rough estimate when based on the official data, the accuracy of measuring the offense severity can be increased by using the available verdict data in order to take factors into account that legally aggravate or mitigate the maximum penalty. For my research, I refined the traditional method by taking all legal factors into account when calculating the maximum penalty possible: I adjusted the maximum penalty in case of recidivism (art. 43a PC), crimes committed by public servants (art. 44 PC), attempted crimes (art. 45 PC), preparatory crimes (art. 46 PC), an accessory to the crime (art. 49 PC), multiple offences (art 57 PC), and crimes committed with a terroristic aim (e.g. art. 288a PC). Given the increased accuracy, future research should also refine their measurements by considering the total legal framework regarding the maximum penalty.

A final limitation pertains to generalizing the findings. Firstly, I only examine sentencing outcomes in the Netherlands. Since the Dutch sentencing system is characterized by very broad discretionary powers on the part of judges, the findings cannot be generalized beforehand to cross-national sentencing contexts where the discretionary powers of judges are much smaller. However, comparing sentencing patterns in different countries could greatly broaden our knowledge on sentencing (Ulmer, 2012). Since many of my findings are similar to those from sentencing research in the United States, some support is provided for the generalizability of the theoretical framework to contexts outside the United States. Secondly, although my data on sentences for homicide (Chapter 5) cover all homicides, the extent to which the findings can be generalized to other crimes is unclear, especially since homicide is the 'ultimate' crime: the extreme severity of the offense might lead to different

considerations when assessing an offender's blameworthiness and danger to society than in more ordinary cases. In the other chapters, the data are not limited to homicide, but encompass all kinds of offense types. These chapters do not exhibit an offense type bias, but questions on the generalizability of the findings still remain since the data pertain to cases where the offender's risk of recidivism is assessed via the risk assessment tool RISC. There are no clear rules about when RISC is used, but it is generally not applied to offenders who had their risk assessed within the past year, nor to cases where the court session is scheduled to be held within ten or eleven weeks. Moreover, RISC is not likely to be used for minor offenses, which are thus under-represented in my sample. These selections related to the use of RISC-data may thus affect the generalizability of my results. Future research should make an effort to overcome this bias by studying the sentencing outcomes of all criminal cases. This is problematic though, since cases where RISC is not used lack valuable information on risk-related social circumstances of the offender. Since the RISC-data I use stem from the introductory period of the RISC-tool (2005-2007), future researchers might start by replicating my study with more recent data. The replication of my study in Chapter 4 would also be useful. Expanding the number of judges interviewed will contribute to the generalizability of the findings.

Last but definitely not least, I would like to note the importance for future sentencing research to shift from the traditional focus on whether or not there is sentencing disparity to explaining why and when it exists in different contexts and what the specific underlying social and psychological mechanisms are (see also Spohn, 2000; Ulmer, 2012; Zatz, 2000). Chapter 2 specifically suggests that future research disentangle the three distinct focal concerns of sentencing. In retributivist and utilitarian theories about the justification of punishment, the focal concerns of offender's blameworthiness and risk of reoffending are fundamentally distinct grounds for sentencing. The offender's blameworthiness is the key factor for sentencing from a retributivist perspective, while offender's danger to society is the key factor for sentencing from a utilitarian perspective aiming for special prevention (Von Hirsch & Ashworth, 2005; Von Hirsch e.a., 2009). The question is thus: are females for example punished more leniently because judges consider them less blameworthy or less dangerous? Or is the sentencing disparity due to the third point of focal concern? Are there more practical constraints as regards detaining women related for example to their role in taking care of children? By unraveling the specific focal concerns, greater insight can be gained into *why* certain offender characteristics are related to certain sentencing outcomes.

Despite the limitations, my study contributes to the field of sentencing research by using data with a unique level of detail, providing greater insight into the previously overlooked effects of the offender's social circumstances (Chapter 2), the risk of reoffending as reported to the judge via a structured risk-based pre-sentence report (Chapter 3), and of offense and victim character-

istics and offender-victim interactions (Chapter 5). In addition, I have interviewed judges to explore their views on the role of the risk of reoffending at sentencing (Chapter 4). I also demonstrate how important it is for sentencing research to consider alternative measures of the sentence severity, including types of punishment other than unsuspended imprisonment and combinations of sanctions (Chapter 6). My study also contributes to sentencing literature by using distinct quantitative and qualitative research methods to study sentencing outcomes. The use of qualitative research methods has proven to be valuable for understanding sentencing decisions, especially regarding factors that are hard to grasp in quantitative research such as the judges' *perceptions* of the risk of reoffending. Moreover, greater insight is gained into the judges' *motives* for imposing certain sentences, thus shifting the focus from *where* sentencing disparity exists to *why* it exists.

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Samenvatting en algemene discussie

STRAFTOEMETING IN NEDERLAND. REKENING HOUDEN MET RISICO-GERELATEERDE DADERKENMERKEN

SAMENVATTING

Introductie

Dit onderzoek gaat over de beslissingen van rechters over de op te leggen sanctie. Deze straftoematingsbeslissing van de rechter is – behoudens hoger beroep – niet alleen het sluitstuk, maar misschien ook wel de belangrijkste beslissing van het hele strafproces. Hier wordt immers besloten welke consequenties het delict voor de dader heeft. Bovendien beoordeelt de samenleving het functioneren van de rechterlijke macht ook in hoge mate op basis van de opgelegde straffen (De Roos, 2000). Straftoemeting is daarmee niet alleen relevant vanwege de impact die een sanctie op de dader heeft, het is ook een belangrijke pijler voor de legitimiteit van het hele straf(proces)recht. Desalniettemin is er nog veel onbekend over de wijze waarop rechters de straf toemeten: welke factoren weegt hij mee? Waarom? En in hoeverre hangen de effecten van die factoren onderling samen, waardoor indirecte of intermediaire effecten op de straftoemeting kunnen bestaan? Door in te gaan op deze vragen beoogt deze studie de kennis over de rechterlijke straftoematingsbeslissingen te verbeteren. Speciale aandacht gaat uit naar de effecten van risico-gerelateerde kenmerken en sociale omstandigheden van de dader.

De resultaten van het onderzoek zijn hieronder samengevat. Daarna bespreek ik de belangrijkste bevindingen met betrekking tot *risk-based sentencing*, een kenmerk van risicojustitie. Ook bespreek ik theoretische en praktische implicaties van mijn onderzoek. Ik sluit af met enkele methodologische overwegingen en suggesties voor toekomstig onderzoek.

De effecten van daderkenmerken en de intermediaire effecten van risico-gerelateerde sociale omstandigheden van de dader

Hoofdstuk 2 gaat in op de eerste onderzoeksvraag: *in hoeverre zijn de effecten op de straftoemeting van de demografische kenmerken van de dader gemedieerd door*

zijn risico-gerelateerde sociale omstandigheden? Met de *focal concerns*-benadering (Steffensmeier & Demuth, 2000; Steffensmeier, Kramer, & Ulmer, 1995; Steffensmeier, Ulmer, & Kramer, 1998) als het belangrijkste theoretische raamwerk in straftoemetingsonderzoek worden dadertekenen geacht de straftoemeting te beïnvloeden omdat de rechter ze – bewust of onbewust – gebruikt om de verwijtbaarheid en gevaarlijkheid van de dader in te schatten.

De *focal concerns*-benadering maakt echter niet duidelijk welke factoren dan precies een rol spelen bij het bepalen van de verwijtbaarheid en gevaarlijkheid van de dader, noch hoe die factoren dan een rol spelen. Op dit punt kan een grote stap gezet worden door het *focal concerns*-benadering te koppelen aan voorspellers van daderschap. Eerder onderzoek naar daderschap toont aan welke sociale omstandigheden van de dader zijn recidiverisico verhogen. Voorbeelden zijn dakloosheid (Lee, Tyler & Wright, 2010), verstoorde familie relaties (Sampson, 1987), lage sociaal-economische status (Farrington, 2007), laag opleidingsniveau (Makarios, Steiner & Travis III, 2010), werkloosheid (Haynie, Weiss & Piquero, 2008; Van der Geest, Bijleveld & Blokland, 2011) en 'foute' vrienden (Akers, 2009; Sampson & Laub, 1993; Sutherland, 1947; Warr, 1998). Ik zet deze stap, die tot nu toe in straftoemetingsonderzoek ontbreekt, door te onderzoeken in hoeverre deze risico-gerelateerde sociale omstandigheden van de dader als belangrijke mediators functioneren in de relatie tussen demografische dadertekenen en de straftoemeting. Door de effecten van de sociale omstandigheden van de dader niet als controlevariabelen, maar als mediators in de modellen op te nemen, volg ik de aanwijzingen van Ulmer (2012) en Baumer (2013) dat onderzoek naar indirecte of mediërende effecten nodig is om de traditionele benadering van straftoemetingsonderzoek te verbeteren.

Uit mijn onderzoek blijkt dat het geslacht, de leeftijd en het geboorteland van de dader samenhangen met de opgelegde straf, in de zin dat vrouwen en jonge daders lichter gestraft worden, terwijl daders die in het buitenland wonen zwaarder gestraft worden. Als gedetailleerde sociale omstandigheden van de dader aan het model worden toegevoegd, zwakken de effecten van geslacht en geboorteland af, maar blijven verschillen tussen mannen en vrouwen wel bestaan. Leeftijdseffecten worden helemaal niet significant gemedieerd door sociale omstandigheden van de dader. Hieruit blijkt dat hoewel risico-gerelateerde sociale omstandigheden van daders belangrijke straftoemetingsfactoren zijn, zij de effecten van demografische dadertekenen niet helemaal kunnen verklaren. Dus ook al hebben rechters kennis van sociale omstandigheden van de dader die indicatoren zijn voor het recidiverisico, rechters laten zich toch beïnvloeden door stereotype attributies op grond van geslacht, leeftijd en geboorteland van de dader. Mogelijk komt dit doordat rechters weliswaar veel informatie over de dader hebben, maar dat zij nog altijd beperkt zijn in de beschikbare tijd. Tijdsdruk kan ervoor zorgen dat de beschikbare informatie over de verwijtbaarheid en gevaarlijkheid van de dader alsnog vervangen wordt door bestaande stereotypen en vooroordelen over de dader.

Effecten van gestructureerde, op risico gebaseerde voorlichtingsrapporten op de straftoemeting

Hoofdstuk 3 gaat in op de tweede onderzoeksvraag: *in hoeverre versterkt een gestructureerd, op risico gebaseerd voorlichtingsrapport risico-gerichte straftoemeting?* De nadruk ligt hier niet op de effecten van demografische kenmerken en risico-gerelateerde sociale omstandigheden van de dader, zoals in Hoofdstuk 2, maar op de effecten van het recidiverisico van de dader zoals dit aan de rechter wordt voorgelegd door middel van het voorlichtingsrapport. Door de rol van voorlichtingsrapporten te onderzoeken, snijd ik een ander onderwerp aan dat relevant is voor de straftoemeting, maar dat tot nog toe nauwelijks onderzocht is.

Volgens de benaderingswijze van de *new penology* (Feeley & Simon, 1992, 1994) wordt criminaliteit beschouwd als een risico als ieder ander, dat ge-managed kan worden. Om dat efficient te doen worden de schaarse beschikbare middelen ingezet om hoog-risico-daders onder controle te houden en – de keerzijde van de munt – om laag-risico-daders van de gevangenis weg te leiden. Het risico-instrument RISC is een schoolvoorbeeld van de opkomst van risico-inschatting in de Nederlandse strafrechtspraktijk, omdat het dient als de basis van het voorlichtingsrapport. In RISC-voorlichtingsrapporten worden de risico's van de dader op verschillende levensgebieden narratief uiteengezet. In de conclusie staat of de dader een laag, gemiddeld of hoog recidiverisico heeft. Hierdoor wordt de dader 'geframed' als een zeker risico voor de maatschappij.

Ik onderzoek of een RISC-voorlichtingsrapport actuariële straftoemeting (*risk based sentencing*) versterkt: hebben hoog-risico-daders met een RISC-voorlichtingsrapport inderdaad een grotere kans om veroordeeld te worden tot 'controleerende' straftypen (gevangenisstraf of voorwaardelijke straffen met bijzondere voorwaarden) en een kleinere kans om veroordeeld te worden tot 'afwendende' straffen (taakstraf, voorwaardelijke straffen) dan hoog-risico-daders zonder zo'n rapport? Ik verwacht voor laag-risico-daders tegenovergestelde effecten. Om de straftoemeting van daders met een RISC-voorlichtingsrapport te vergelijken met die van vergelijkbare daders zonder zo'n rapport gebruik ik uitvoerige matching-technieken (*propensity score matching* gecombineerd met een matching op negen dader- en delictkenmerken). Met deze techniek geef ik gehoor aan Baumers (2013) oproep om alternatieve methoden toe te passen om straftoemetingsfactoren te identificeren (zie ook Ulmer, 2012).

De resultaten laten zien dat een voorlichtingsrapport dat gebaseerd is op een gestructureerd, klinisch risicotaxatie-instrument – een kenmerk van het risicomangement van de *new penology* – niet leidt tot meer *risk based* straftoemeting. Er is voor hoog-risico-daders geen grotere kans om tot 'controleerende' straffen veroordeeld te worden, noch een kleinere kans om tot 'afwendende' straffen veroordeeld te worden. In plaats daarvan hangt een gestructureerd, op risico gebaseerd voorlichtingsrapport over de criminogene factoren in het

leven van de delinquent samen met minder 'controleerende' en meer 'afwendende' straffen, ongeacht het recidiverisico van de delinquent.

Wellicht beschouwen rechters de sociale omstandigheden van de dader die gestructureerd in het voorlichtingsrapport worden weergegeven niet als strafverzwarende omstandigheden, op grond waarvan de maatschappij beschermd moet worden door middel van 'controleerende' straffen, maar als strafverzachende omstandigheden, die mogelijkheden voor de resocialisatie van de dader aanduiden (see Mathiesen, 1998; Moerings, 2003). Verschillen in de straftoemeting voor delinquenten met en zonder een RISC-voorlichtingsrapport zou dan verklaard kunnen worden door een informatie-effect, in de zin dat rechters die minder zicht hebben op de sociale omstandigheden van de dader, deze ook niet mee kunnen laten wegen als strafverzachende omstandigheden. Nu risicofactoren als strafverzachende omstandigheden worden beschouwd, lijkt eerder het *penal welfarism* dan de *new penology* dominant in de Nederlandse straftoemetingspraktijk. Dit sluit aan bij Field en Nelkens (2010) bevindingen dat gedachten van het oude *penal welfarism* niet vervangen zijn door die van de *new penology*, maar dat zij er verstrengeld mee zijn geraakt, wat leidt tot een nieuw, complex en tegenstrijdig geheel (zie ook Hannah-Moffat, 2005; Wandall, 2010).

Opvattingen van rechters over het recidiverisico als straftoemetingsfactor

Hoofdstuk 4 gaat in op de derde onderzoeksvraag: *Hoe hangt het recidiverisico samen met de straftoemeting volgens rechters?* Het recidiverisico speelt bij uitstek een rol bij utilitaristische doelen ter rechtvaardiging van straf en daardoor ook bij de verenigingsleer die in Nederland dominant geacht wordt te zijn (De Keijser, 2001a; 2001b). In deze verenigingsleer vormt vergelding zowel de grondslag als de bovenmaat van de straf. De straf mag niet zwaarder zijn dan wat de ernst van het delict en de verwijtbaarheid van de dader eisen (Von Hirsch & Ashworth, 2005). Onder die bovenmaat is ruimte voor het nastreven van utilitaristische doeleinden. Om straffen die opgelegd worden met het oog op incapacitatie of resocialisatie van de dader te rechtvaardigen is zijn recidiverisico van groot belang. Desalniettemin is de rol van het recidiverisico tot nu toe nauwelijks bestudeerd in empirisch straftoemetingsonderzoek.

Anders dan in de voorgaande hoofdstukken gebruik ik in Hoofdstuk 4 kwalitatieve onderzoeksmethoden om de rol van het recidiverisico bij de straftoemeting te onderzoeken. Vijftien rechters zijn geïnterviewd. Deze onderzoeksmethode vormt een waardevolle aanvulling op de kwantitatieve methoden uit de voorgaande hoofdstukken. De interviews verschaffen inzicht in de beweegredenen van rechters om voor een bepaalde sanctie te kiezen, juist ook met betrekking tot factoren die niet goed in kwantitatief straftoemetingsonderzoek te vatten zijn, zoals de *overtuiging* van de rechter over het recidive-

risico van de dader. Bovendien kunnen met behulp van interviews *motieven* van rechters om bepaalde factoren mee te wegen aan het licht gebracht worden.

De resultaten wijzen erop dat rechters bij de straftoematingsbeslissing veel waarde hechten aan het recidiverisico van de dader, maar dat zij niet blind varen op het recidiverisico zoals dat door de reclassering in het voorlichtingsrapport genoemd wordt; zij maken hun eigen inschatting, gebaseerd op de informatie uit het voorlichtingsrapport over de criminogene omstandigheden van de dader en op informatie uit de justitiële documentatie over eerdere veroordelingen. Daarnaast geven alle rechters aan dat het recidiverisico een belangrijke factor is bij hun straftoematingsbeslissing, vooral bij de beslissing over het straftype. Daders met een hoog recidiverisico hebben niet per definitie een grotere kans op gevangenisstraf, maar wel op voorwaardelijke straffen met gedragsinterventies als bijzondere voorwaarden: aan deze daders dient immers 'gesleuteld' te worden. Dat betekent ook dat daders met een laag recidiverisico in principe geen voorwaardelijke straffen met bijzondere voorwaarden opgelegd krijgen, want ook zonder interventies blijven zij waarschijnlijk wel op het rechte pad.

De interviews tonen verder aan dat rechters hoog-risico-daders nooit op voorhand afschrijven: rechters zijn altijd op zoek naar aanknopingspunten dat de dader zijn leven gebeterd heeft of wil beteren. Overeenkomstig de bevindingen in het voorgaande hoofdstuk duidt dit op een straftoematingspraktijk die meer gekenmerkt wordt door de resocialisatiegedachte van het *penal welfarism* dan door de risicobeheersingsgedachte van de *new penology*. Echter, rechters merken op dat sommige daders kansen die zij bij eerder opgelegde sancties kregen niet gegrepen hebben. Eerdere straffen, met hun stijgende sanctielijn, spelen hier een belangrijke rol. Als rechters menen dat de dader genoeg kansen heeft gehad, die hij niet gegrepen heeft, dan is resocialisatie geen strafdoel meer, maar voeren vergelding en speciale preventie door beveiliging van de maatschappij de boventoon. Deze praktijk sluit aan bij de constatering van Hannah-Moffat (2005) dat de *new penology* de oude strafpraktijk die op *penal welfarism* was gebaseerd niet vervangen heeft, maar dat de op risico georiënteerde strategieën hybride en flexibel van aard zijn, waardoor zij verschillende strafpraktijken gelijktijdig kunnen ondersteunen.

Factoren die een rol spelen bij de bestrafing van moord en doodslag

Hoewel de voorgaande hoofdstukken het bereik van straftoematingsonderzoek vergroot hebben door niet eerder onderzochte aspecten met betrekking tot het recidiverisico van de dader te bestuderen, blijven sommige vragen over straftoematingsfactoren nog altijd onbeantwoord. Hoofdstuk 5 gaat in op sommige van deze resterende, niet eerder onderzochte onderwerpen, zoals de rol die slachtofferkenmerken, slachtoffer-dader-interacties, delictkenmerken (*locus delicti*, *modus operandi*) en de strafeis van het Openbaar Ministerie spelen

bij de straftoemeting. De Nederlandse Databank Moord- en Doodslag (N=1,911) bevat gedetailleerde informatie over deze onderwerpen en verschaft zo een unieke mogelijkheid om deze factoren en interacties die nog nauwelijks onderzocht zijn te bestuderen. Dit hoofdstuk richt zich op de vierde onderzoeksvraag: *in hoeverre hangen delict-, dader-, slachtoffer- en proceskenmerken samen met de straftoemeting van moord en doodslag?* Door het onderzoek te richten op moord en doodslag wordt nog een gat in de bestaande straftoemingsliteratuur gedicht, aangezien maar heel weinig studies zich op deze 'ultieme' delicten richtten (Auerhahn, 2007b), ook al spelen de sancties voor moord en doodslag zo'n belangrijke rol in de publieke opinie en onvrede over de straftoemeting in het algemeen.

Ik toets zeven hypothesen over de straftoemeting bij moord en doodslag (zie Tabel 5.4). De resultaten tonen aan dat de ernst van het delict samenhangt met de straf: hoe ernstiger het delict, hoe zwaarder de straf. Als ook de maatregelen van de terbeschikkingstelling (Tbs) wordt opgelegd is de duur van de gevangenisstraf korter. Ten tweede hangen eerdere veroordelingen niet samen met de opgelegde straffen, maar eerdere gevangenisstraffen hangen wel significant en sterk samen met zwaardere straffen. Ten derde, voor wat betreft de daderkenmerken, hangen geslacht, leeftijd en geboorteland samen met de straftoemeting. Vrouwen krijgen significant kortere gevangenisstraffen dan mannen en daders van buiten Europa krijgen significant langere straffen dan daders die in Nederland geboren zijn. Hele jonge en hele oude daders krijgen ook lichtere straffen. Ten vierde, met betrekking tot slachtofferkenmerken, tonen de resultaten aan dat de straffen zwaarder zijn voor moord en doodslag op slachtoffers die vrouw zijn, in Nederland zijn geboren en heel jong of heel oud zijn. Bovendien, overeenkomstig de vijfde hypothese, interacteren dader- en slachtofferkenmerken, met extra zware straffen voor mannelijke daders die vrouwen vermoorden en voor daders die in het buitenland geboren wiens slachtoffers in Nederland zijn geboren. Ten zesde, de omstandigheden van het delict, zoals de *locus delicti*, *modus operandi* en het type delict, hangen ook samen met de straftoemeting. Moord en doodslag in de publieke ruimte hangt samen met langere gevangenisstraffen dan moord en doodslag in de privé sfeer. Wapengebruik hangt samen met extra zware straffen en moord en doodslag buiten de familiesfeer worden het zwaarst bestraft, vooral als ze gepleegd zijn tijdens een overval of als er ook seksuele delicten zijn gepleegd. In het algemeen geldt dat delictomstandigheden die duiden op meer gevaar en dreiging voor de maatschappij tot langere gevangenisstraffen leiden. Ten slotte hangt de strafeis van het Openbaar Ministerie sterk samen met de opgelegde straf – ook al is de opgelegde straf wat lichter dan de strafeis.

In het algemeen wijzen mijn bevindingen erop dat factoren die nauwelijks eerder bestudeerd zijn, zoals delictomstandigheden (*locus delicti* en *modus operandi*), slachtofferkenmerken en de strafeis de verschillen in straftoemeting helpen te verklaren. Om verschillen in straftoemeting beter te verklaren dient

toekomstig onderzoek daarom deze factoren die zelden onderzocht zijn ook te omvatten.

Waarom straftoemingsonderzoek alternatieve, completere metingen van de sanctiezwaarte moet overwegen

Hoofdstuk 6 richt zich op de vijfde onderzoeksvraag: *in hoeverre moeten we onze kennis over dadenkenmerken als straftoemingsfactoren herzien als de reikwijdte van het onderzoek wordt uitgebreid naar het gehele sanctiepakket?* Straftoemingsonderzoek richt zich vaak alleen op de onvoorwaardelijke gevangenisstraf en doet daarmee onvoldoende recht aan de straftoemingspraktijk, waarin vele sanctietypen en –modaliteiten (voorwaardelijk en onvoorwaardelijk) juist ook gecombineerd worden opgelegd. Combinaties van sancties komen veelvuldig voor: in Nederland werd een dader in 2011 gemiddeld tot 1,4 sanctietypen veroordeeld, voorwaardelijke modaliteiten buiten beschouwing gelaten (Van Rosmalen, Kalidien & De Heer-de Lange, 2012). Bovendien wijst survey-onderzoek naar de gepercipieerde zwaarte van verschillende soorten en hoogten van sancties (de zogenaamde *penal metrics* of *exchange rates*) uit dat andere sanctietypen onder bepaalde voorwaarden zelfs als zwaardere straffen beschouwd worden dan de onvoorwaardelijke gevangenisstraf (e.g. Crouch, 1993; Spelman, 1995). Door niet het gehele sanctiepakket te omvatten heeft eerder kwantitatief onderzoek een incompleet beeld opgeleverd van de straftoemingspraktijk. Deze bias roept vragen op over de houdbaarheid van de bevindingen van eerder onderzoek: in hoeverre moeten we onze kennis over dadenkenmerken als straftoemingsfactoren herzien als de reikwijdte van het onderzoek wordt uitgebreid naar een completer en meer realistisch beeld van de opgelegde sancties?

Om deze vraag te beantwoorden vergelijk ik de effecten (de uitkomsten van multivariate regressieanalyses) van dadenkenmerken van een model dat – net als standaard straftoemingsonderzoek – alleen de onvoorwaardelijke gevangenisstraf omvat met de effecten van een vergelijkbaar model dat ook andere sanctietypen omvat. Mijn bevindingen tonen aan dat de effecten van dadenkenmerken verschillen voor verschillende sanctietypen. Effecten die zij voor de duur van de onvoorwaardelijke gevangenisstraf hebben, zijn bijvoorbeeld bijna spiegelbeeldig aan de effecten die zij voor de voorwaardelijke taakstraf hebben. Dit uitruileffect lijkt ook logisch, omdat een voorwaardelijke taakstraf als een veel lichtere straf wordt beschouwd dan een onvoorwaardelijke gevangenisstraf. Echter, deze verschillende effecten onderstrepen wel het belang om het bereik van straftoemingsonderzoek te vergroten door een completere maat voor de sanctiezwaarte te gebruiken. Daders kunnen immers wel eens minder punitief behandeld worden voor wat betreft het sanctietype, maar juist punitiever voor wat betreft het andere sanctietype.

Daarom vergelijk ik ook de effecten van daderkenmerken van het model dat beperkt is tot de onvoorwaardelijke gevangenisstraf met een model dat ook andere sanctietypen en -combinaties omvat in één alomvattende maat voor de sanctiezwaarte. De resultaten tonen aan dat sommige daderkenmerken vergelijkbare effecten hebben in de verschillende modellen. Vrouwen bijvoorbeeld worden in beide modellen (onvoorwaardelijke gevangenisstraf en totale sanctiepakket) lichter bestraft dan mannen. Ook problemen op het gebied van emotioneel welzijn en houding hebben in beide modellen mitigerende effecten. Vergelijkbare strafverzwarende effecten zijn gevonden voor het strafrechtelijk verleden van de dader als volwassene, problemen op het gebied van wonen of financiën, relaties met vrienden en alcoholgebruik. Voor een aantal daderkenmerken maakt het dus niet uit of ook (combinaties met) andere sanctietypen in het onderzoek worden betrokken.

Er zijn echter ook daderkenmerken waarvan de effecten wel verschillen als het gevangenisstraf-model wordt vergeleken met het model met de totale sanctiezwaarte. Strafverzachende effecten voor daders in de leeftijdscategorieën 31-40 en 41-50, of voor daders met problematische familierelaties verdwijnen wanneer ook rekening gehouden wordt met andere sanctietypen en -combinaties, net als de strafverzwarende effecten voor daders die in een niet-Westers land geboren zijn of die minstens drie keer als jeugdige veroordeeld zijn. Andersom waren voor daders die één of twee keer als jeugdige veroordeeld zijn geen significante effecten op de straftoemeting in het gevangenisstraf-model, maar in het model met de totale sanctiezwaarte worden zij zwaarder bestraft dan daders die niet als jeugdige veroordeeld zijn.

Bovendien zijn de effecten van enkele daderkenmerken in het ene model tegenovergesteld aan die in het andere model. Als het onderzoek zich niet beperkt tot onvoorwaardelijke gevangenisstraf, maar uitgebreid wordt naar (combinaties van) andere sancties, worden daders die in een niet-Westers land geboren zijn niet langer zwaarder, maar juist lichter bestraft dan daders die in Nederland geboren zijn.

Wellicht krijgen deze daders langere gevangenisstraffen omdat zij minder snel in aanmerking voor bijvoorbeeld een taakstraf of een voorwaardelijke veroordeling met bijzondere voorwaarden. Doordat zij vaak geen vaste woon- of verblijfplaats in Nederland hebben, kan de reclassering immers niet goed contact met de dader opnemen in verband met de tenuitvoerlegging van de straf. Een dergelijk tegenovergesteld effect is ook gevonden bij daders die problemen hebben op het gebied van opleiding en werk. Daders met een vast baan hebben een kleinere kans om tot een onvoorwaardelijke gevangenisstraf veroordeeld te worden, wellicht omdat rechters niet willen dat deze daders hun baan verliezen. Echter, deze 'arbeidskorting' bij de onvoorwaardelijke gevangenisstraf wordt overgecompenseerd door een punitievere behandeling bij de andere sanctietypen. Daarnaast heeft drugsmisbruik tegenovergestelde effecten, maar dan in de andere richting: waar daders met drugsproblemen lichter gestraft werden in het gevangenisstraf-model, worden zij juist zwaarder

gestraft in het model dat de hele sanctiezwaarte omvat. Dit strafverzwarende effect in het model dat de totale sanctiezwaarte omvat, kan worden toegeschreven aan de ISD-maatregel.

Op basis van deze studie kan daarom geconcludeerd worden, dat er sprake lijkt te zijn van uitruiling van straffen: een minder punitieve benadering bij de ene sanctiesoort, maar een punitievere benadering bij de andere sanctiesoort, met als nettoresultaat weinig verschillen in de totale sanctiemaat. Bevindingen uit eerder straftoemetingsonderzoek, dat zich uitsluitend op de onvoorwaardelijke gevangenisstraf richt, dienen daarom met voorzichtigheid geïnterpreteerd te worden. Uit dergelijke onderzoek kunnen immers effecten van daderkenmerken blijken, die niet houdbaar zijn als ook (combinaties met) andere sancties in het onderzoek worden betrokken: strafverzachtende of -verhogende effecten verschijnen, verdwenen of sloegen om. Toekomstig straftoemetingsonderzoek doet er daarom goed aan nieuwe methoden te ontwikkelen waarin de straftoemetingspraktijk beter tot zijn recht komt.

ALGEMENE DISCUSSIE

Rekening houden met de kenmerken en risico-gerelateerde sociale omstandigheden van de dader

Recidiverisico en straftoemeting

Ontwikkelingen in de strafrechtspraktijk met betrekking tot de opkomst van risicojustitie (Feeley & Simon, 1992, 1994) – zich onder meer uitend in de introductie van het risicotaxatie-instrument RISC als de basis van het voorlichtingsrapport – hebben mij ertoe aangezet mijn onderzoek op twee samenhangende onderwerpen te richten: de effecten van een op risico gebaseerd voorlichtingsrapport en de effecten van daderkenmerken op de straftoemeting. De introductie van het RISC-voorlichtingsrapport in de Nederlandse strafrechtspraktijk vestigde de aandacht op de vraag in hoeverre rechters rekening houden met risico-gerelateerde informatie over demografische kenmerken en sociale omstandigheden van de dader als zij hun straftoemetingsbeslissing nemen. Overeenkomstig het gedachtegoed van de *new penology* (Feeley & Simon, 1992, 1994) verwachtte ik dat de opkomst van risicojustitie de straftoemetingspraktijk zou veranderen in een praktijk van *risk-based* straftoemeting, waarin daders met kenmerken en sociale omstandigheden die duiden op een hoog recidiverisico zwaarder bestraft worden dan daders met een laag recidiverisico. Met andere woorden, een praktijk waarin hoog-risico-daders omwille van de bescherming van de maatschappij eerder tot gevangenisstraf worden veroordeeld en tot langere gevangenisstraffen.

Dit huidige onderzoek bouwt voort op eerder onderzoek dat mijn collega's en ik verrichtten (Van Wingerden, Moerings, & Van Wilsem, 2011) over de rol van de RISC-uitkomst (laag, gemiddeld of hoog recidiverisico) bij de straftoe-

meting. Onze resultaten wijzen uit, dat als er gecontroleerd wordt voor vele delict-, proces- en daderkenmerken, daders die volgens de RISC een hoog recidiverisico hebben niet zwaarder gestraft worden dan daders met een laag recidiverisico. Wij concluderen dat, anders dan in de *new penology*, de risico-categorisatie van de RISC geen belangrijke straftoemingsfactor is. Wij vonden dus geen bewijs voor risicojustitie in de Nederlandse straftoemingspraktijk. Het huidige onderzoek gaat dieper in op de rol van het recidiverisico van de dader bij de straftoemeting, waarbij het zich meer richt op de effecten van de risico-gerelateerde sociale omstandigheden van de dader en op de effecten van een voorlichtingsrapport dat op het recidiverisico gericht is.

Het belang van het bestuderen van het recidiverisico als straftoemingsfactor

Het is belangrijk om op te merken dat het risico op toekomstige delicten niet verward dient te worden met delicten die in het verleden zijn gepleegd, ook al is het strafblad een sterke voorspeller van toekomstig delictgedrag (zie bijvoorbeeld Wartna, Tollenaar & Bogaerts, 2009). Dit onderscheid is van belang in verband met de reikwijdte van straftoemingsonderzoek. Het strafrechtelijk verleden van de dader is een bekende straftoemingsfactor. Verschillende studies tonen aan dat de straf zwaarder is naarmate het strafblad langer is (bijvoorbeeld Jongman & Schilt, 1976; Kannegieter, 1994; Oomen, 1970; Timmerman & Breembroek, 1985). De effecten van het recidiverisico op de straftoemeting is echter nog nauwelijks onderzocht. Behoudens mijn eerdere studie is het onontgonnen onderzoeksterrein.

Ten tweede dienen het strafrechtelijk verleden van de dader en zijn recidiverisico binnen de morele rechtvaardigingstheorieën voor straf als grondslag voor de straf strikt van elkaar gescheiden te worden. Binnen de vergeldingsgedachte is wat plaats voor het strafrechtelijk verleden van de dader via de *recidivist premium* of de *progressive loss of mitigation* (zie Lee, 2009; Roberts, 1997), maar vanuit het vergeldingsperspectief is er geen rechtvaardiging om het risico op toekomstig delictgedrag in de straf te verdisconteren (Von Hirsch, Ashworth & Roberts, 2009). Het tegenovergestelde geldt voor de utilitaristische benadering: eerdere delicten zijn niet relevant, terwijl het recidiverisico een van de belangrijkste factor is voor het straffen met het oog op incapacitatie of resocialisatie en dit risico rechtvaardigt zwaardere straffen voor hoog-risico- dan voor laag-risico-daders (De Keijser, 2001a). Vanwege de uiteenlopende rollen die het strafrechtelijk verleden en het risico op toekomstig delictgedrag spelen in de verschillende morele rechtvaardigingstheorieën voor straf verdient de onderbelichte rol van het recidiverisico van de dader in de straftoemingspraktijk zeker onderzoeks aandacht.

De gevaren van risk-based straftoemeting

Risk-based straftoemeting, dat zich richt op de selectieve incapacitatie (Mathiesen, 1998) van daders met een hoog recidiverisico, kan weliswaar gerechtvaardigd worden vanuit utilitaristisch perspectief, maar er zijn vele valkuilen.

Strafrechtswetenschappers maken zich zorgen over hoe *risk-based* strafftoemeting het rechtskarakter van het strafrecht verandert vanwege de verschuiving van een reactief systeem naar een proactieve vorm van interventie (Moerings, 2003; Moerings & Van Wingerden, 2007; Van de Bunt & Van Swaaningen, 2004; Van der Woude, 2010). Als iemand gestraft wordt, niet voor wat hij gedaan heeft, maar voor wat hij mogelijk in de toekomst zal doen, wordt het *ultimum re-medium*-beginsel van het rechtssysteem geschonden. Erger nog, hij wordt niet gestraft voor wat *hij* mogelijk zal doen, maar voor wat statistisch verwacht kan worden dat een gemiddelde dader met dezelfde kenmerken zal doen (Blokland & Nieuwbeerta, 2006; Netter, 2007). Bovendien leidt het gebruik van risicotaxaties in het strafrecht tot ongelijkheid, waarbij vooral minderheden en armen het zwaar voor de kiezen krijgen (Tonry, 1987).

Bovenop deze ethische kwesties zijn er ook praktische bezwaren met betrekking tot de slechte betrouwbaarheid van de risicotaxatie-instrumenten (Gottfredson, 1987; Netter, 2007). Deze instrumenten lijken objectiever dan ze zijn, het is onduidelijk welke termijn ze beslaan en ze houden geen rekening met veranderingen in de omgeving van een persoon (Van Koppen, 2008). Hannah-Moffat vat deze gevaren van *risk-based* strafftoemeting samen door te waarschuwen dat de kritiekloze acceptatie van wetenschap en aanverwante risicotekniken een eerlijk proces in gevaar brengt, ongelijkheid en discriminatie bewerkstelligt, proportionaliteit en individualiteit ondermijnt en de strafzwaarte opdrijft (Hannah-Moffat, 2013).

Bevindingen met betrekking tot risk-based strafftoemeting

Vanwege de theoretische relevantie van het recidiverisico voor de rechtvaardiging van straffen en vanwege de gevaren van het gebruik van risicotaxatie-instrumenten bij de strafftoemeting, is meer kennis over de rol van het recidiverisico bij de strafftoemeting van groot belang. Deze studie presenteert verschillende bevindingen op dit terrein.

Ten eerste houden rechters bij hun strafftoemetingsbeslissing rekening met de persoon van de dader. Uit alle hoofdstukken waar kwantitatieve onderzoeksmethoden zijn gebruikt, blijkt dat daderkenmerken zoals geslacht, leeftijd en geboorteland significant samenhangen met de strafftoemeting. Uit Hoofdstuk 2 blijkt echter dat de effecten van demografische daderkenmerken niet helemaal verdwijnen wanneer risico-gerelateerde sociale omstandigheden van de dader aan het model worden toegevoegd. Rechters houden dus rekening met demografische daderkenmerken, maar om andere redenen dan risicomangement.

Ten tweede tonen mijn resultaten dat de risico-gerelateerde sociale omstandigheden van de dader een rol spelen bij de strafftoemeting. Rechters houden rekening met omstandigheden als dakloosheid, werkloosheid of middelengebruik. Risico-gerelateerde omstandigheden hangen echter niet altijd in de verwachte richting met de strafftoemeting samen. Sommige sociale omstandigheden, zoals de houding van de dader ten aanzien van crimineel gedrag,

hangen negatief samen met de straftoemeting: hoe problematischer de houding, hoe lichter de straf. Ook hier lijken rechters de sociale omstandigheden van de dader te gebruiken om maatwerk te leveren bij de straftoemeting, maar niet op een manier dat sociale omstandigheden die duiden op een hoger recidiverisico altijd tot zwaardere straffen leiden.

Verder tonen de bevindingen uit Hoofdstuk 3 aan dat daders die volgens een RISC-voorlichtingsrapport *geframed* worden als hoog-risico-dader niet tot meer 'controleerende' straffen (zoals onvoorwaardelijke gevangenisstraf of voorwaardelijke straffen met bijzondere voorwaarden) worden veroordeeld dan vergelijkbare hoog-risico-daders zonder zo'n rapport. In plaats daarvan lijkt risico-gerelateerde informatie over de dader uit het voorlichtingsrapport strafverlichtend te werken. De introductie van voorlichtingsrapporten die gebaseerd zijn op een risicotaxatie-instrument hebben er dus niet voor geleid dat rechters overgestapt zijn op *risk-based* straftoemeting.

Dit sluit aan bij de bevindingen uit Hoofdstuk 4, waar rechters zeggen dat zij daders niet zwaarder straffen naarmate hun recidiverisico hoger is, maar dat een hoog recidiverisico een indicatie is om een voorwaardelijke straf met bijzondere voorwaarden zoals gedragstherapie op te leggen, omdat zij menen dat er aan de dader 'gesleuteld' moet worden. Daders worden alleen zwaarder gestraft als zij kansen die zij kregen bij eerdere veroordelingen niet gegrepen hebben.

Rechters houden dus in zekere mate rekening met de kenmerken en risico-gerelateerde sociale omstandigheden van de dader, maar factoren die op een hoger recidiverisico duiden, hangen niet altijd samen met zwaardere straffen. Hoewel kenmerken van Garlands (2001) risicomaatschappij en Feeley en Simons (1992;1994) risicojustitie ook in de Nederlandse samenleving zichtbaar zijn (Downes & Van Swaaningen, 2007; Van Swaaningen, 1996; Van der Woude, 2010), wordt de Nederlandse straftoemetingspraktijk niet gedomineerd door risicojustitie: *penal welfarism* is nog steeds gangbaar.

Theoretische en praktische implicaties

Theoretische implicaties

Mijn onderzoek heeft verschillende theoretische implicaties. De *focal concerns*-benadering (Steffensmeier & Demuth, 2000; Steffensmeier et al., 1995, 1998) is tegenwoordig het belangrijkste theoretische raamwerk binnen het straftoemetingsonderzoek. Volgens deze benadering richten rechters zich op drie hoofdaandachtspunten als zij een straftoemetingsbeslissing nemen: 1) de mate van verwijtbaarheid van de dader; 2) de gevaarlijkheid van de dader/de bescherming van de maatschappij; en 3) de praktische gevolgen van de beslissing voor organisaties en individuen. De rechter heeft slechts beperkte informatie en tijd om de drie hoofdaandachtspunten met zekerheid vast te stellen. Daarom valt hij terug op cognitieve *short cuts* die berusten op ervaringen uit het ver-

leden, stereotypen en vooroordelen (Albonetti, 1991). In de *focal concerns*-benadering is echter niet uitgewerkt welke factoren dan precies bijdragen aan de attributies van verwijtbaarheid en gevaarlijkheid, noch in welke richting zij werken.

Mijn onderzoek naar de effecten van daderkenmerken op de straftoemeting en de intermediërende effecten van de risico-gerelateerde sociale omstandigheden van de dader (Hoofdstuk 2) wijst erop dat hier belangrijke theoretische vooruitgang geboekt kan worden door de *focal concerns*-benadering expliciet te verbinden met bevindingen uit eerder onderzoek naar voorspellers van daderschap. Aangezien het aannemelijk is dat de attributies, stereotype beelden en voorgeprogrammeerde reacties door dezelfde risicovoorspellers gedreven worden, biedt dit waardevolle aanknopingspunten voor de ontwikkeling van onderzoeksmodellen en hypothesen in straftoemetingsonderzoek. Door op deze *missing link* bij straftoemetingtheorieën in te springen ontstaan er nieuwe mogelijkheden voor straftoemetingsonderzoek om de aandacht te verleggen van het identificeren van verschillen in straftoemeting naar het verklaren en begrijpen van de verschillen (Wellford, 2007).

Mijn onderzoek toetst ook de toepasbaarheid van de hedendaagse straftoemetingstheorie doordat het zich richt op straftoemeting buiten de Verenigde Staten. Het bestuderen van straftoemeting in cross-nationale contexten kan de kennis over straftoemeting en straftoemetingsverschillen sterk vergroten (Ulmer, 2012) en de theorievorming substantieel vooruit helpen. Mijn resultaten tonen aan dat er veel overeenkomsten zijn in de straftoemetingsfactoren in de Verenigde Staten en in Nederland, wat de generaliseerbaarheid van het theoretische raamwerk naar contexten buiten de Verenigde Staten ondersteunt. Er zijn echter ook verschillen tussen de bevindingen uit mijn Nederlandse studies en die uit de Verenigde Staten. Deze verschillen vormen belangrijke aanknopingspunten voor toekomstig straftoemetingsonderzoek naar de *redenen* voor de verschillende effecten op de straftoemeting.

Implicaties voor beleid en praktijk

Naast theoretische implicaties heeft mijn onderzoek ook belangrijke implicaties voor het straftoemetingsbeleid en de straftoemetingspraktijk. De ruime discretionaire bevoegdheid van rechters is een belangrijk kenmerk van het Nederlandse strafrechtstelsel en maakt het weliswaar mogelijk om de straf af te stemmen op de persoon van de dader, maar mijn resultaten tonen aan dat dit aanzienlijke verschillen in straftoemeting met zich brengt. Uit Hoofdstuk 2 blijkt bijvoorbeeld dat daders die vrouw zijn of in Nederland geboren zijn lichter bestraft worden dan daders die man zijn of in het buitenland geboren zijn. Ik toon ook aan dat de sociale omstandigheden van de dader, zoals werkloosheid, relaties met familie en vrienden, en verslavingen deze verschillen niet helemaal kunnen verklaren: als rekening wordt gehouden met de sociale omstandigheden blijven de verschillen voor geslacht en geboorteland bestaan. Hoofdstuk 5 toont aan dat er bij de bestaande straf van moord en doodslag verge-

lijkbare verschillen zijn. Als er voor alle andere factoren gecontroleerd wordt, worden vrouwen nog altijd lichter bestraft dan mannen en zijn de straffen voor daders die buiten Europa geboren zijn zwaarder dan voor daders die in Nederland geboren zijn. Bovendien is er interactie tussen dader- en slachtofferkenmerken, waardoor er extra zware straffen zijn voor mannelijke daders die vrouwen vermoorden, net als voor daders die in het buitenland geboren zijn die daders die in Nederland geboren zijn vermoorden. In Hoofdstuk 6 laat ik zien dat vrouwen ook nog steeds lichter worden bestraft dan mannen als het onderzoek zich niet alleen op gevangenisstraf richt, maar ook op andere sanctietypen en -combinaties. Zelfs als de strafverzwarende effecten voor daders die in een niet-Westers land geboren zijn, of die problemen hebben op het gebied van opleiding en werk omslaan in strafverzachtende effecten, worden zij nog altijd *anders* gestraft dan de referentiegroepen.

Hoewel Nederlandse juristen het erover eens zijn dat kenmerken en sociale omstandigheden van de dader meegenomen moeten worden om de straf af te stemmen op de ernst van het delict *en op de persoon van de dader* (e.g. Duker, 2003; Kelk, 2001; Schuyt, 2009), staat de individualisering van straffen op gespannen voet met het gelijkheidsbeginsel, omdat het leveren van maatwerk bij de straftoemeting het risico met zich brengt dat daders ongelijk gestraft worden. Echter, als er verschillen in straftoemeting zijn, hoeft er nog geen sprake te zijn van discriminatie, omdat er legitieme redenen kunnen zijn om in verschillende zaken verschillende straffen op te leggen. Vrouwen bijvoorbeeld worden mogelijk lichter gestraft omdat zij vergeleken met mannen vaker zorgtaken voor kinderen hebben. Er is bij verschillen in straftoemeting pas sprake van discriminatie als demografische kenmerken of sociale omstandigheden van de dader die (om morele of wettelijke redenen) verwerpelijk zijn, samenhangen met de straftoemeting terwijl er voor alle andere relevante variabelen op adequate wijze gecontroleerd is (Blumstein, Cohen, Martin, & Tonry, 1983). Als daders dus zwaarder worden bestraft *alleen* vanwege hun geslacht, herkomst of arbeidsstatus, is dat niet alleen onwenselijk, maar ook onwettig. Het is strijdig aan het gelijkheidsbeginsel en aan het verbod op discriminatie uit artikel 1 van de Grondwet, artikel 14 van het Europese Verdrag voor de Rechten van de Mens, en aan de Aanbeveling (1992 (17)) van de Raad van Europa.

Het spanningsveld tussen het individualiseren van de straf en het gelijkheidsbeginsel is nog ingewikkelder, omdat er ook sprake is van discriminatie als straffen beïnvloed worden door factoren die om *morele* redenen verwerpelijk zijn. Ideeën over de moraal zijn niet universeel: zij zijn subjectief en veranderen met de tijd. Bijgevolg is het discutabel welke factoren om morele redenen als verwerpelijk moeten worden beschouwd. Bijvoorbeeld, mogen rechters een problematische jeugd wel of niet meewegen als strafverzachtende omstandigheid? En is werkloosheid bijvoorbeeld een verwerpelijke straftoemetingsfactor in tijden van recessie, als werkloosheidscijfers hoog zijn, maar niet in tijden van economische groei, als er veel werkgelegenheid is?

Het probleem van gelijkheid bij de straftoemeting wordt nog verder gecompliceerd doordat het negeren van bepaalde daderkenmerken wellicht leidt tot minder ongelijkheid in de straftoemeting, maar ook kan leiden tot vonnissen die oneerlijk worden bevonden. Is een dader die zijn baan verliest als hij tot een gevangenisstraf veroordeeld wordt niet zwaarder gestraft dan iemand die werkloos is? Is het dan niet meer dan eerlijk om waar mogelijk de dader wiens baan op het spel staat tot sancties te veroordelen die hem niet van zijn vrijheid beroven?

Wanneer juristen geconfronteerd worden met ongelijkheid in de straftoemeting zijn zij geneigd zich te beroepen op de keerzijde van het gelijkheidsbeginsel: ongelijke zaken dienen ongelijk behandeld te worden naar mate van hun ongelijkheid (Duker, 2003; Schoep, 2008; Schuyt, 2009). Dit 'ongelijkheidsbeginsel' wordt meestal kracht bij gezet door te wijzen op de uniciteit van iedere strafzaak: van een afstandje lijken sommige zaken wel vergelijkbaar, maar elke zaak heeft zijn eigen bijzonderheden, die de verschillen in straffen rechtvaardigen. En aangezien deze bijzonderheden, zoals de precieze aanleiding van het delict of de inhoud en toonzetting van het verweer dat op de zitting gevoerd wordt, niet goed in kwantitatief straftoemetingsonderzoek verrat kan worden, worden verschillen die door middel van kwantitatief onderzoek aan het licht komen vaak toegeschreven aan de uniciteit van de zaak – niet aan ongerechtvaardigde ongelijke behandeling.

Op zich is het natuurlijk heel legitiem om erop te wijzen dat verschillen in straftoemeting verklaard kunnen worden door kenmerken waar niet of niet goed voor gecontroleerd is in de modellen. Maar het probleem van verschillen in straftoemeting kan niet zo eenvoudig opzij worden gezet door dit beroep op de uniciteit van de zaak. Want welke omstandigheden maken de zaak dan zo bijzonder? Hoe en waarom spelen deze factoren dan een rol bij de straftoemeting? En mogen deze factoren wel een rol spelen?

Helaas biedt mijn onderzoek geen oplossing voor de frictie tussen het gelijkheidsbeginsel en het individualiseren van straf. Hoewel het belangrijk is om te benadrukken dat mijn onderzoek alleen maar gaat over *verbanden* tussen delict-, proces- en daderkenmerken, en niet over *causale* verbanden, roepen mijn bevindingen wel op tot bewustwording bij rechters over welke factoren zij meewegen bij de straftoemetingsbeslissing. Mijn resultaten kunnen bijdragen aan de normatieve discussie over de wenselijk om bepaalde daderkenmerken mee te laten wegen bij de straftoemeting. Rechters en strafrechtswetenschappers verwijzen dan wel vaak naar de uniciteit van de strafzaak ter verklaring van ongelijkheid in de straftoemeting, maar mijn studie moedigt ze hopelijk aan om te reflecteren op de redenen waarom bepaalde factoren een rol spelen.

Naast normatieve implicaties heeft mijn onderzoek ook praktische implicaties. Het Landelijk Overleg Vakinhoud Strafrecht (LOVS) heeft sinds 1998 voor veelvoorkomende delicten niet-bindende oriëntatiepunten voor rechters opgesteld. Deze oriëntatiepunten zijn gebaseerd op de straffen die in de praktijk

voor standaardzaken worden opgelegd en worden regelmatig bijgewerkt. De richtlijn vermeldt dat de oriëntatiepunten gelden voor standaardzaken en dat de bijzonderheden van een zaak dus nog door rechters zelf verdisconteerd dienen te worden. De richtlijn vermeldt echter niet welke bijzonderheden dit dan zijn. Voor sommige delicttypen worden in het oriëntatiepunt wel enkele 'strafverzwarende en/of verzachtende omstandigheden' genoemd, zoals de locatie bij zakkenrollen ('overzichtelijke ruimte met veel mensen zoals een tram, bus, trein, treinstation en luchthaven'), maar het is niet duidelijk welke rol deze omstandigheden zouden moeten spelen. Dient zakkenrollen in een volle trein zwaarder of lichter bestraft te worden dan zakkenrollen op een rustige straat? Wellicht kunnen resultaten van straftoematingsonderzoek meer inzicht bieden in hoe 'bijzonderheden' van een delict of een dader samenhangen met de straftoemeting. Als deze bevindingen in de richtlijnen worden verwerkt, wordt er meer richting gegeven aan oriëntatiepunten, waardoor gelijkheid in de straftoemeting bevorderd wordt. Aangezien de richtlijn stelt dat de oriëntatiepunten gebaseerd zijn op de straffen die in het algemeen voor standaardzaken worden opgelegd, kan de grondslag en de verantwoording van de oriëntatiepunten versterkt worden door bevindingen uit straftoematingsonderzoek expliciet te erkennen.

Methodologische overwegingen en suggesties voor toekomstig onderzoek

Mijn onderzoek draagt veel bij aan de kennis over straftoemeting, maar het heeft ook beperkingen. Hoewel de data zeer gedetailleerde delict- en daderkenmerken bevatten, zou idealiter nog meer gedetailleerde informatie nodig zijn voor een completer beeld van de straftoemetingspraktijk. Eerder onderzoek wijst erop dat slachtofferkenmerken een rol spelen bij de straftoemeting (Auerhahn, 2007a; Franklin & Fearn, 2008; Williams, Demuth & Holcomb, 2007), maar afgezien van de data in Hoofdstuk 5 zijn zij niet in mijn onderzoek vervat. Daarnaast ontbreekt in mijn data informatie over eerdere strafzaken van de dader, over uitkomsten bij hogere instanties, zoals in hoger beroep en ontbreekt informatie over de officier van justitie, de rechter en over wat er tijdens de zitting gebeurt. Het is daarom belangrijk dat onderzoekers completere data over straftoemetingsfactoren verzamelen (Wellford, 2007).

Hoofdstuk 2 roept interessante vragen op over de mechanismen die gebruikt worden om de verwijtbaarheid van de dader en zijn gevaarlijkheid voor de maatschappij vast te stellen. De reden dat rechters terugvallen op stereotype attributies als zij hun straftoemetingsbeslissing nemen zou wel eens niet kunnen liggen in gebrek aan informatie, maar in gebrek aan tijd. Hoewel zeer gedetailleerde informatie over risico-gerelateerde sociale omstandigheden van de dader voorhanden zijn, vallen rechters nog altijd terug op stereotype attributies die gebaseerd zijn op demografische daderkenmerken. Helaas was het niet mogelijk om de tijdsdruk bij rechters in het onderzoek te betrekken.

Toekomstig onderzoek waarin de tijdsdruk bij rechters wel betrokken wordt kan nieuwe inzichten verkrijgen over de achterliggende beslismechanismen van de *focal concerns*-benadering.

Een andere variabele die ontbreekt in mijn onderzoek betreft eerder opgelegde straffen. Hoofdstuk 5 stelt dat het niet de delictgeschiedenis, maar de sanctiegeschiedenis is die significant samenhangt met de straftoemeting. Gevangenisstraffen zijn langer naarmate het aantal jaar dat de dader eerder al in de gevangenis heeft gezeten toeneemt. Het belang van de sanctiegeschiedenis is ook benadrukt in Hoofdstuk 4. De interviews tonen aan dat de rechters veel belang hechten aan de sanctielijn als zij beslissen over of er een vrijheidsbenemende sanctie dient te worden opgelegd. Niet-vrijheidsbenemende sancties worden niet eens overwogen als de dader eerder al tot onvoorwaardelijke gevangenisstraf is veroordeeld, vooral als dit recent gebeurd is. De straf die de rechter oplegt dient een stapje omhoog te zijn op de sanctieladder. Mijn onderzoek roept op om de sanctiegeschiedenis in straftoemetingsonderzoek te betrekken, opdat rekening gehouden wordt met de sanctielijn.

Een andere beperking van het onderzoek uit Hoofdstuk 2, 3 en 5 is dat het bereik, net zoals dat van straftoemetingsonderzoek in het algemeen (bijvoorbeeld Curry 2010; Doerner & Demuth, 2010; Wermink, 2014), beperkt is tot de onvoorwaardelijke gevangenisstraf, ook al zijn er in de praktijk vele andere sanctiemogelijkheden. Verschillende sanctietypen worden vaak gecombineerd opgelegd, waarvan sommige sancties voorwaardelijk en andere onvoorwaardelijk. Straftoemeting dat beperkt is tot de onvoorwaardelijke gevangenisstraf bestrijkt dus maar een klein deel van alle oplegde straffen en kan daarom niet goed de sanctiezwaarte bestuderen, omdat andere sanctietypen en combinaties van sancties over het hoofd gezien worden. Deze gevangenisstraf-bias zorgt voor een grote discrepantie met de realiteit van de straftoemeting. Ik ga op dit probleem in in Hoofdstuk 6. Mijn resultaten tonen aan dat hoewel voor sommige daderkenmerken de effecten in het model dat beperkt is tot de gevangenisstraf vergelijkbaar zijn met die in een model dat ook andere sanctietypen en -combinaties omvat, voor andere kenmerken de effecten verschijnen, verdwijnen of van richting veranderen. Toekomstige studies zouden daarom hun bereik moeten vergroten door ook andere sancties dan gevangenisstraf, combinaties van sancties en sanctiemoдалiteiten (voorwaardelijk of onvoorwaardelijk) in het onderzoek te betrekken. Om de gevangenisstraf-bias te verhelpen moeten onderzoekers nieuwe methoden ontwikkelen die een realistischer beeld schetsen van de straftoemetingspraktijk.

Daarop aansluitend wil ik toekomstige onderzoekers ook aanmoedigen om de beschikbare data specifiek te gebruiken. Bijvoorbeeld voor wat betreft de wijze waarop de ernst van het delict wordt gemeten, beperken onderzoekers zich over het algemeen tot het gebruik van de maximale strafdreiging van het delict en het type van het ernstigste delict. Hoewel de ernst van het delict altijd een ruwe benadering zal zijn als deze gebaseerd wordt op officiële data, kan de nauwkeurigheid van het bepalen van de ernst van het delict sterk

vergroot worden door uit de vonnisgegevens de factoren te gebruiken die volgens het Wetboek van Strafrecht van invloed zijn op de maximale strafdreiging. Voor mijn onderzoek heb ik de traditionele methode verfijnd door alle wettelijke factoren mee te nemen bij het berekenen van de straf die de rechter maximaal op kan leggen: ik heb de maximale strafdreiging aangepast in het geval van recidive (art. 43a Sr), schending van een ambtsplicht (art. 44 Sr), poging (art. 45 Sr), strafbare voorbereiding (art. 46 Sr), medeplichtigheid (art. 49 Sr), meerdaadse samenloop (art. 57 Sr) en delicten gepleegd met terroristisch oogmerk (zoals art. 288a PC). Vanwege de grotere nauwkeurigheid zouden toekomstige onderzoekers hun methode voor het bepalen van de ernst van het delict ook moeten verfijnen door het hele wettelijke kader in ogenschouw te nemen.

Een laatste beperking betreft de generaliseerbaarheid van de bevindingen. Ten eerste heb ik alleen straftoemeting in Nederland onderzocht. Omdat het Nederlandse strafrecht gekenmerkt wordt door ruime discretionaire bevoegdheid van de rechters bij de straftoemeting, kunnen de resultaten niet zomaar gegeneraliseerd worden naar andere contexten waar de discretionaire bevoegdheid van rechters kleiner is. Het vergelijken van de straftoemeting in verschillende landen kan de kennis over straftoemeting echter sterk vergroten (Ulmer, 2012). Aangezien veel van mijn bevindingen overeenkomen met die uit Amerikaans straftoemetingsonderzoek, wordt de generaliseerbaarheid van het theoretische raamwerk naar contexten buiten de Verenigde Staten versterkt.

Ten tweede bevatten mijn data over de straftoemeting bij moord en doodslag (Hoofdstuk 5) weliswaar alle gevallen van moord en doodslag, maar is onduidelijk in hoeverre de bevindingen gegeneraliseerd kunnen worden naar andere delicttypen, met name omdat levensdelicten het 'ultieme' delict zijn: de extreme ernst van het delict kan tot andere overwegingen betreffende de verwijtbaarheid en gevaarlijkheid van de dader leiden dan bij andere delicten. In de andere hoofdstukken beperkt de data zich niet tot levensdelicten, maar worden alle delicttypen omvat. In deze hoofdstukken is er weliswaar geen sprake van een delicttype-bias, maar het blijft de vraag in hoeverre de resultaten generaliseerbaar zijn, aangezien de data alleen zaken bevatten waarin het recidiverisico van de verdachte is ingeschat door middel van het risicotaxatie-instrument RISC. Er zijn geen duidelijke regels over wanneer de RISC wordt ingezet, maar het wordt over het algemeen niet gebruikt bij daders die wie het afgelopen jaar al een risicotaxatie heeft plaatsgevonden, of wanneer de strafzaak binnen tien of elf weken op zitting komt. Verder wordt de RISC niet snel ingezet voor lichte delicten, die hierdoor dus ondervertegenwoordigd zijn in mijn data. De selectie van zaken die samenhangen met de inzet van RISC kunnen de generaliseerbaarheid van mijn resultaten dus beïnvloeden. Toekomstig onderzoek zou moeten proberen om deze bias te verhelpen door de straftoemeting van *alle* zaken te onderzoeken. Maar dit is lastig omdat in zaken waarin geen gebruik is gemaakt van de RISC de waardevolle informatie over de risico-gerelateerde sociale omstandigheden van de dader ontbreekt.

Omdat de RISC-data die ik gebruik afkomstig is uit de introductieperiode van de RISC (2005-2007), zou toekomstig onderzoek kunnen beginnen met het repliceren van mijn studie met recentere data. Replicatie van mijn onderzoek uit Hoofdstuk 4 is ook nuttig: door meer rechters te interviewen wordt de generaliseerbaarheid van de bevindingen groter.

Ten slotte wil ik erop wijzen dat het belangrijk is dat toekomstig straftoemingsonderzoek de traditionele aandacht voor de vraag of er sprake is van verschillen in straftoemeting verlegt naar aandacht voor de vraag waarom en wanneer het in verschillen contexten bestaat en wat de precieze onderliggende sociale en psychologische mechanismen zijn (zie ook Spohn, 2000; Ulmer, 2012; Zatz, 2000). In Hoofdstuk 2 wordt voorgesteld dat onderzoekers in de toekomst zouden moeten proberen om de drie verschillende punten van *focal concern* bij de straftoemeting te ontwarren. Twee van de hoofdaandachtspunten, de verwijtbaarheid van de dader en zijn recidiverisico, vormen binnen de retributieve en utilitaristische rechtvaardigingstheorieën voor straf fundamenteel verschillen grondslagen voor het opleggen van straffen. De verwijtbaarheid van de dader is de belangrijkste factor als er gestraft wordt met het oog op vergelding, terwijl de gevaarlijkheid van de dader de belangrijkste factor als er gestraft wordt met het utilitaristische strafdoel van de speciale preventie (Von Hirsch & Ashworth, 2005; Von Hirsch e.a., 2009). De vraag is dan: worden bijvoorbeeld vrouwen lichter gestraft dan mannen omdat rechters het delict aan vrouwen minder verwijten? Of omdat rechters ze minder gevaarlijk vinden? Of komen de verschillen in bestraffing tussen mannen en vrouwen misschien door het derde hoofdaandachtspunt: zijn er meer praktische bezwaren bij de oplegging van gevangenisstraf aan vrouwen, bijvoorbeeld vanwege hun zorgtaken voor kinderen? Door de specifieke hoofdaandachtspunten te ontwarren kan meer inzicht worden verkregen in *waarom* sommige daderkenmerken samenhangen met de straftoemeting.

Ondanks de beperkingen draagt mijn onderzoek in belangrijke mate bij aan het onderzoeksterrein van de straftoemeting. Doordat de data die ik gebruik zeer gedetailleerd is, vergroot mijn onderzoek het inzicht in onderwerpen die niet eerder voorwerp van straftoemingsonderzoek zijn geweest, zoals de effecten van de sociale omstandigheden van de dader (Hoofdstuk 2), van het recidiverisico zoals dat in RISC-voorlichtingsrapport vermeld staat (Hoofdstuk 3), van delict- en slachtofferkenmerken en dader-slachtoffer-interacties (Hoofdstuk 5). Daarnaast heb ik rechters geïnterviewd om te onderzoeken hoe zij tegen de rol van het recidiverisico bij de straftoemeting aankijken (Hoofdstuk 4). Ik laat ook zien hoe belangrijk het is dat straftoemingsonderzoek zich niet alleen beperkt tot de bestudering de oplegging van de onvoorwaardelijke gevangenisstraf, maar dat het zich zou moeten richten op de hele sanctiezwaarte door ook andere sanctietypen, -modaliteiten en -combinaties in acht te nemen (Hoofdstuk 6). Mijn onderzoek draagt ook bij aan de bestaande straftoemingsliteratuur doordat ik verscheidene kwantitatieve en kwalitatieve onderzoeksmethode gebruik om de straftoemeting te onderzoeken. Om

strafstoemingsbeslissingen te begrijpen is het gebruik van kwalitatieve onderzoeksmethoden erg waardevol, vooral met betrekking tot factoren die moeilijk in kwantitatief strafstoemingsonderzoek te vervatten zijn, zoals de percepties van rechters over het recidiverisico van de verdachte. Bovendien is meer inzicht verkregen in *motieven* van rechters om bepaalde straffen op te leggen. Daarmee is de aandacht verschoven van *waar* verschillen in strafstoeming bestaan naar *waarom* ze bestaan.

8.3 LITERATUUR

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Nawoord

Deze dissertatie bouwt voort op onderzoek dat ik eerder verrichtte samen met mijn promotor Martin Moerings en co-promotor Johan van Wilsem. Dat onderzoek, uitgevoerd in opdracht van de Raad voor de rechtspraak, resulteerde in het rapport 'Recidiverisico en straftoemeting' (Den Haag: Raad voor de rechtspraak, 2011). Voor deze dissertatie heb ik dezelfde data gebruikt. Daarom wil ik graag de Raad voor de rechtspraak en de leden van begeleidingscommissie bedanken, omdat ik nog altijd profijt heb van hun opbouwende opmerkingen. Verder ben ik ook de reclasseringsinstanties (3RO) erkentelijk voor het verstrekken van de RiSc-data, en het Wetenschappelijk Onderzoek- en Documentatie Centrum (WODC) van het Ministerie van Justitie voor het verstrekken van de OM-data. Ik ben de rechtbanken die mee hebben gewerkt aan het onderzoek ook erg dankbaar, in het bijzonder de rechters die tijd vrij hebben gemaakt voor de interviews. Sheila Gogol wil ik bedanken voor haar hulp bij het vertalen van delen van dit proefschrift naar het Engels.

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Curriculum vitae

Sigrid van Wingerden, geboren op 24 juli 1980, studeerde na het behalen van haar vwo-diploma aan de Goudse Waarden in Gouda in 1998 rechten en criminologie aan de Universiteit Leiden. In 2006 behaalde zij haar mastertitel voor de specialisatie strafrecht, en studeerde ze voor criminologie cum laude af in de richting Veiligheidsbeleid & Rechtshandhaving op een onderzoek naar de vervolging en berechting van moord en doodslag in Nederland, dat zij bij het Nederlands Studiecentrum voor Criminaliteit en Rechtshandhaving uitvoerde. Na haar afstuderen heeft zij als onderzoeker bij de afdeling Criminologie van de Universiteit Leiden in opdracht van het Ministerie van Justitie de praktijk van de schadevergoeding voor slachtoffers van misdrijven in kaart gebracht. In 2007 werd zij bij het instituut voor Strafrecht en Criminologie van de Universiteit Leiden aangesteld als PhD-fellow. Sinds april 2014 is zij daar werkzaam als Universitair Docent. Sigrid is sinds 2009 redactielid van *PROCES, Tijdschrift voor Strafrechtspleging*. Ze is getrouwd en heeft drie kinderen.

In the range of books published by the Meijers Research Institute and Graduate School of Leiden Law School, Leiden University, the following titles were published in 2013 and 2014

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