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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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