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

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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,

¹ An earlier version of this chapter has been published in: *Criminology* 2010, 48 (4), p. 981-1018 (DOI: 10.1111/j.1745-9125.2010.00210.x).

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 Rodriquez (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

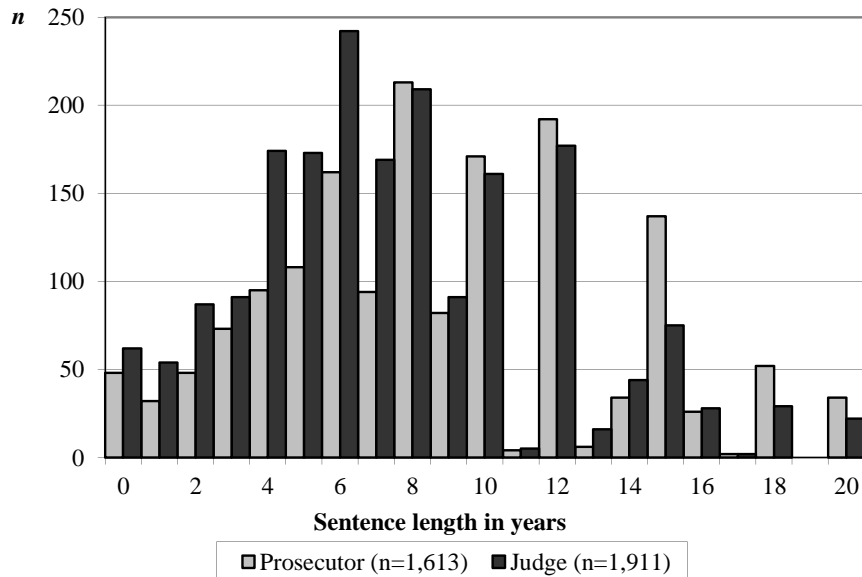


Figure 5.1. Distribution of prosecutorial recommendations and judicial sentences

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.

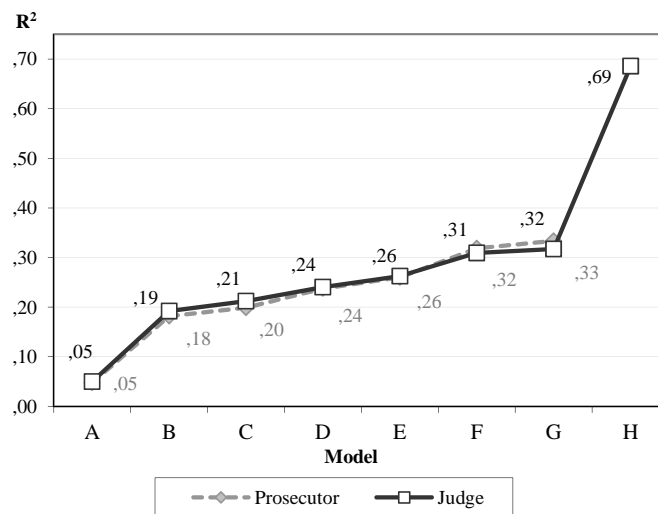


Figure 5.2. Explained variance across sentencing models in Dutch homicide data

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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