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# 10

## STUDYING ETHNIC DISPARITIES IN SENTENCING

### The Importance of Refining Ethnic Minority Measures

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An important question in sociology and criminology is whether sources of inequality occur in criminal punishment. Shared notions of equal justice and the promise of equal punishments for equal cases are underlying the majority of Western sentencing contexts. Punishments that vary systematically with individually ascribed characteristics, such as race and ethnicity raise fundamental questions about fairness and equity in the criminal justice system. In the sentencing research tradition, perhaps the most attention has been devoted to the study of racial and ethnic disparities. Traditionally, different punishment outcomes are theorized to be the result of judges relying on stereotypical attributions associated with race and ethnicity (Albonetti, 1991; Steffensmeier, Ulmer, and Kramer, 1998). Much of the literature, though, is restricted to black and white differences in the United States and, to a lesser extent, to black/white/Hispanic comparisons (Johnson and Betsinger, 2009). Other minority groups remain largely overlooked and research in other Western countries is scarce (Lee, Ulmer, and Park, 2011; Ulmer, 2012).

Similar to classic immigration countries such as the U.S., Australia, and Canada, countries in Western Europe have experienced a marked influx of immigrants over the past decades. Moreover, distinct minority groups are overrepresented in prison statistics in diverse Western countries (Haen Marshall, 1997; Tonry, 1997; Killias, 2011; Delgrande and Aebi, 2009), such as in England (Smith, 1997); France (Pager, 2008); Italy (Colombo, 2013); Germany (Mansel and Albrecht, 2003); Denmark (Holmberg and Kyvsgaard, 2003); Sweden (Martens, 1997); and Finland (Salmi, Kivivuori, and Aaltonen, 2015) as well as in the Netherlands (Blom et al., 2005; Engbersen, Leerkes, and Snel, 2014). This overrepresentation in prison populations may be the result of disproportionate involvement of some ethnic groups in (more serious) criminal offenses, but it may also be a sign of discriminatory treatment by the criminal justice system (Oberwittler and Höfer, 2005). As immigrant groups grow in Europe, constituting a

sizable incarceration population, (quantitative) research on the criminal processing of immigrant groups in Europe is timely and needed.

In this chapter, we focus on ethnic disparities among first- and second-generation immigrants. We contribute to the existing literature on racial/ethnic disparity in three ways. First, we assess the generalizability of this well-researched topic in the criminological literature, by looking at ethnic disparities in an underexplored context: the Netherlands. As noted by Ulmer (2012: 31) a “key gap in the literature is that almost all of the research on sentencing is limited to the contemporary North American—particularly the US—context.” He argued persuasively that research in more diverse sentencing contexts “would broaden knowledge of sentencing and sentencing disparity as related to larger patterns of social stratification” (Ulmer, 2012: 32). Thus, from a theoretical and empirical perspective, it is important to examine whether patterns observed earlier equally apply to the Dutch context. For instance, it could be that ethnic or racial disparity, which seems to exist in the U.S. context (Mitchell, 2005), is not present in sentencing patterns in the Netherlands to the same degree—because of supposed lower levels of racism. In contrast, high levels of discretionary freedom in the Netherlands may also allow for larger disparities in punishment.

Second, we try to make methodological contributions. Our data include information on personal circumstances and is therefore well suited for the proposed analysis. Including these characteristics is of great importance because ethnicity may be proxying other factors, such as socioeconomic status. Ideally, information about personal circumstances (and legally relevant factors) should be included to disentangle some of the racial/ethnic effects (Zatz, 2000). Studies that fail to do so may find inflated direct effects of race/ethnicity on sentence severity (Wooldredge, 2012). Unfortunately, though, studies that disentangle situational factors, such as socioeconomic factors, from effects of race/ethnicity are typically scarce in the sentencing literature (Ulmer, 2012). Although it is always difficult to control for all relevant factors that explain differences between cases (Pina-Sánchez and Linacre, 2014), our study does provide a relative strong test of possible ethnic disparities in punishment.

Third, we are the first to examine disparities in punishment decisions for first-generation immigrants and second-generation immigrants. Immigration to the U.S. and Western Europe has led to the establishment of ethnic groups who produced an adult second-generation (Alba, 2005). Currently, a sizable number of children of postwar immigrants in Europe and in the U.S. enter Western criminal justice systems, which opens a unique opportunity to study distinct immigrant generations. From a theoretical perspective, this is important because first-generation immigrants and second-generation immigrants differ in their level of social and economic integration (Junger-Tas, 2001; Algan et al., 2010), potentially leading to different punishment outcomes.

In this study, we rely on three distinct data sources that include information on the country of birth of the defendant and/or parents of the defendant and imprisonment decisions. The current study, thereby, specifically addresses the call for additional investigations incorporating more diverse minority groups in other sentencing contexts

(Sampson and Lauritsen, 1997; Ulmer, 2012). The first data source contains information on all defendants convicted in 2007. The second data source contains information on all offenders of whom a sentencing report was available prior to the punishment decision in 2005–2007. The third data source combines nationwide survey data with administrative data to examine punishment outcomes for suspects who entered pre-trial detention between October 2010 and March 2011. These three datasets complement each other on the selection of defendants and the depth of information on the characteristics of the offender. The dataset from 2007 contains all defendants, but only includes basic background information on defendants. In contrast, the other two datasets have a more specific offender population—and thus might suffer more from selection effects in prior stages of the criminal proceedings—but have extremely detailed information on offender’s personal circumstances.

## **The Netherlands as Context: Immigrants and Punishment Practices**

### ***Punishment Practices***

In the Netherlands, as well as in most other Western countries, imprisonment is taken to be the most severe form of punishment. The Netherlands, long known for its humane and liberal penal policies, witnessed a prison growth rate comparable to the U.S.: its prison population grew almost fourfold between 1975 and 2005 (Tonry and Bijleveld, 2007), after which the prison population decreased. Prison sentences in the Netherlands are typically much shorter compared to the U.S. The majority of the defendants in the Netherlands receive a sentence up to 3 months (65%), and only a few receive prison sentence longer than 3 years (4%) (Statistics Netherlands, 2013). In contrast, three quarters of the federal prisoners in the U.S. were sentenced to more than 5 years of imprisonment (United States Sentencing Commission, 2015).

Sentences in the Netherlands are exclusively imposed by professional judges who enjoy broad levels of discretionary power at sentencing: the minimum prison sentence is 1 day for all offenses and maximum sentences are broadly defined by offense type, e.g., 12 years for violent theft. During the trial, the prosecutor requests a specific punishment for the defendant, but the judge is by no means bound to it. For some offenses, the judge can consult orientation points, but these are only available for some frequently occurring offense types and are non-binding.

The relative broad discretionary powers make the Dutch criminal justice system a highly relevant context to study offender-based disparities in sentencing because sentencing practices may be more susceptible to subjective influences. Within the boundaries of the law, offender characteristics can unrestrictedly affect the sentencing decision, and effects of ethnicity are thus not constrained by guidelines. Moreover, because Dutch judges rarely belong to one of the minority groups, subjective influences based on stereotypical attributions regarding “dangerous other” ethnic groups may enter courtroom decision-making.

### ***Immigrant Groups in the Netherlands***

Unlike the U.S., the Netherlands never was a country of immigration, until the immigration waves in the late 1960s and early 1970s. In the 1960s, so-called “guest workers,” mostly from Turkey and Morocco, immigrated to the Netherlands. Although these guest workers were supposed to stay only temporarily, many of them never remigrated and instead had their families reunified in the Netherlands. Besides guest workers and their families, another prominent category consists of immigrants from the former Dutch colonies in the Caribbean. After the independence of Surinam, nearly 300,000 Surinamese, almost one-third of the Surinamese population, migrated to the Netherlands. A new wave of postcolonial migration began in the late 1980s, when residents of the Netherlands Antilles arrived. Because the Netherlands Antilles are still part of the Kingdom of the Netherlands, Antilleans are Dutch nationals (Engbersen, Leerkes, and Snel, 2014). In the 1990s asylum seekers from countries like former Yugoslavia, former Soviet Union, and Iraq, came to the Netherlands, and during recent years, the open borders of the EU brought new immigrant groups from East European countries like Poland and Bulgaria, but these groups are still quite small (Van Tubergen, 2013). Recently a new migration wave is occurring related to refugees, from Syria for example.

Over the last 25 years, the attitude towards migrant groups has changed dramatically. Although the Netherlands used to have a reputation as a tolerant and multicultural country in which migrant groups were supposed to integrate “while maintaining the migrants ‘culture,’” Dutch multiculturalism was in fact not so much a choice for “equal recognition” but a pragmatic pacification strategy instead (De Zwart, 2011). In the 1970s and 1980s, persisting inequalities between ethnic groups gave rise to new policy based on affirmative action, with preferential treatment for migrant groups to improve their level of education, employment, and social integration. From the 1990s on, however, integration policy was gradually linked to social problems of public order and crime, leading to widespread support for anti-immigrant politicians who pointed out the “multicultural drama.” That caused the policy that emphasized preservation of the cultural identity of the minority groups to be replaced by a policy emphasizing assimilation and active citizenship (Engbersen, Leerkes, and Snel, 2014). Even though the Netherlands was once seen as the most tolerant of the West European countries, there is now a harsher climate regarding migrants.

Nowadays, over 20 percent of the Dutch population is non-native. The immigrant population consists of an almost identical number of first-generation immigrants who are born abroad and second-generation immigrants who are born in the Netherlands but who have at least one parent who is born abroad (StatLine, 2013). And although they often have Dutch or dual citizenship, it is still common practice to label all generations by their country of origin, e.g., Surinamese, Antilleans, Turkish, or Moroccans (Bovenkerk and Fokkema, 2016).

These four main migrant groups differ in the extent to which they are integrated in Dutch society. The Caribbean immigrants are better integrated than the Mediterranean immigrants, perhaps because Surinamese and Antillean immigrants had been exposed to Dutch culture during the colonial period, being familiar with the Dutch

language and often Christians, like the Dutch. An important difference with the Dutch is that colonial immigrants more often have a fatherless family structure. The Mediterranean immigrants, on the other hand, differ culturally more from the Dutch: they have not yet been exposed to Dutch culture, they did not speak the Dutch language, and they are overwhelmingly Muslim. Furthermore, Turks and Moroccans originated from more disadvantaged socioeconomic backgrounds: the guest workers that were needed for low-skilled labor were recruited from the lowest socioeconomic strata in their home countries. But despite the similarities among Mediterranean immigrants, Crul and Doornik (2003) also note a difference between Turks and Moroccans: Moroccans are modern individualists, whereas Turks are old-fashioned collectivists. Hence, the social integration of second-generation Moroccans is proceeding more rapidly than that of the Turks: the Turks adhere more to the norms and values of their own ethnic community (Crul and Doornik, 2003).

The level of integration differs, not only between the four minority groups, but also between the two generations. Classic assimilation theory assumes that every next generation is integrated better in society than prior generations (Maliepaard and Alba, 2016). But Tonry (2014: 2) points out that second-generation migrants are caught between two worlds: “they have the same material aspirations as natives but lack sufficient social and personal capital to achieve them easily.” Because of a process of “segmented assimilation,” second-generation immigrants might move on a downward pathway of assimilation, with prejudice and discrimination that stimulate a reactive and defiant assertion of ethnic minority status (Maliepaard and Alba, 2016).

Despite the differences in levels of integration, all ethnic minority groups have in common that they generally have lower socioeconomic positions than the native Dutch and that they are overrepresented in crime statistics. In 2013, 1 percent of the native Dutch were officially registered as a suspect of a crime, compared to 3 percent of the Turks, 3 percent of the Surinamese, 5 percent of the Moroccans and 6 percent of the Antilleans (Statistics Netherlands, 2014). With the exception of the Antilleans, second-generation migrants have higher crime rates than the first generation. The overrepresentation of the minority groups in crime statistics can partly be explained by demographic and socioeconomic differences, but a lack of parental supervision and informal control within ethnic communities, specific cultural traits regarding respect and codes of masculinity, street culture in certain urban areas, and selectivity in law enforcement might also be at play (Engbersen, Leerkes, and Snel, 2014), just as selectivity in sentencing outcomes.

### **Prior Research**

The presence of sentencing disparities along the lines of ethnicity/race has attracted immense scholarly attention, with most attention devoted to the preferential treatment of White versus Black defendants at sentencing in the U.S. (Bridges and Steen, 1998; Britt, 2000; Pratt, 1998; Radelet, 1981; Sampson and Lauritsen, 1997; Steffensmeier et al., 1998; Thomson and Zingraff, 1981; Ulmer and Kramer, 1996). Recently, a growing literature also focuses theoretically and empirically on Hispanic defendants

in the U.S. to provide for White-Black-Hispanic comparisons (e.g., Steffensmeier and Demuth, 2001; Warren, Chiricos, and Bales, 2012). On the whole, effects of race and ethnicity tend to be small and, in certain contexts, affect judges' decisions in sentencing only indirectly or in combination with other offender characteristics, such as age, employment, and sex (Steffensmeier et al., 1998; Spohn and Holleran, 2000).<sup>1</sup> As suggested by Spohn (2009: 190) about this work,

The fact that . . . African Americans and . . . Hispanics were more likely than whites to be sentenced to prison, even after taking crime seriousness and prior criminal record into account, suggests that racial discrimination in sentencing is not a thing of the past.

Limited work on other minority groups, such as Native American offenders (e.g., Alvarez and Bachman, 1996) or Asian offenders (Johnson and Betsinger, 2009), and work in other contexts, such as Australia and Canada (Bond and Jeffries, 2011; Roberts and Doob, 1997; Snowball and Weatherburn, 2007; Williams, 1999; but see Welsh and Ogloff, 2008) reaches similar conclusions. Also in Europe, a long research tradition focuses on sentencing. In particular, scholars have focused on normative issues surrounding aggravating and mitigating factors in sentencing (e.g., Roberts, 2011; Schuyt, 2014); public opinions regarding sentencing practices (Hough and Roberts, 1999; Larrauri and Varona, 2011); and consistency and discretion within criminal justice systems (De Keijser, 2000; Kirby and Jacobson, 2014; Pina-Sánchez, 2015; Plesničar, 2013). But, in Europe, with its unique immigrant groups, quantitative multivariate research on the effects of race or ethnicity on punishment decisions is virtually non-existent.<sup>2</sup> Research is impeded by the lack of available data on offenders' ethnicity (Tonry, 2014). Although it is common knowledge that some immigrant groups are overrepresented in European prisons, it is unclear whether this is caused by differential involvement or by differential treatment.

Our review of Dutch judicial sentencing research revealed 14 studies that incorporated diverse ethnic groups. The findings of early descriptive (Berghuis, 1992; Berghuis and Mak, 2002; Bosma, 1985; Jongman and Schilt, 1976; Timmerman, Bosma, and Jongman, 1986) and early multivariate sentencing research (Van der Werff and van der Zee-Nefkens, 1978) suggest that sentencing outcomes are more severe for some ethnic minority groups than for native Dutch. Jongman and Schilt (1976) for instance showed that 42 percent of the Surinamese defendants received a prison sentence relative to 23 percent of the Dutch defendants. Recent Dutch multivariate work on juveniles (Komen and Van Schooten, 2006, 2009) and on homicide offenders (Johnson, Van Wingerden, and Nieuwbeerta, 2010; Van Wingerden and Nieuwbeerta, 2006, 2010) also found that some ethnic minority groups are sentenced more severely. Johnson and colleagues (2010), for instance, found that non-European homicide offenders received prison sentences that were approximately 1 year longer than Dutch offenders. On the whole, the existing research in Europe and the Netherlands has been limited mainly to univariate or bivariate analyses of race/ethnicity and sentencing that do not adequately account for other sentencing factors that might (legitimately) explain racial/ethnic disparities, or is focused exclusively on specific offense types and particular time periods, thereby raising questions about generalizability.

Recently, the authors of this chapter have tried to improve this situation by conducting a number of multivariate studies on the determinants of sentencing (Van Wingerden, Moerings, and Van Wilsem, 2011; Van Wingerden, Van Wilsem, and Johnson, 2016; Wermink, De Keijser and Schuyt, 2012; Wermink et al., 2015; Wermink et al., 2017). Each of these studies, however, relied on a single specific dataset, consisting of either a very large population with limited background information or a more selective population with detailed information on the defendants. Furthermore, none of these studies specifically focused on ethnic disparities in sentencing. The current study concentrates specifically on ethnic sentencing disparity and incorporates all three different datasets that were used in these prior studies to gain more insight into the role of ethnicity at sentencing. Moreover, data were extended providing the unique opportunity to distinguish between first and second immigrant generations.

### **Two Perspectives to Explain Ethnic Disparity in Sentencing**

In the literature, various theoretical frameworks have been used to provide for explanations for ethnic disparity in sentencing. In an attempt to summarize this extensive literature, we identified two approaches to explain why ethnic differences in sentencing may exist: ethnicity may either indirectly or directly influence sentencing decisions.

Sociological and criminological theories have suggested that the overrepresentation of ethnic minority offenders in prison may mirror differences in offending behavior between different ethnic or racial groups (Engen, Steen, and Bridges, 2002; Hagan, 1974; Hindelang, 1978; Spohn, 2009). From this perspective, the overrepresentation of some ethnic minorities in Dutch prison is not due to discrimination at sentencing but is rather caused by *differential involvement*. This approach is also sometimes referred to as the “no discrimination” camp (see e.g., Zatz, 1987). Scholars using this approach stress that legal factors weigh heavily in sentencing decision-making, and explain sentencing outcomes from a formal legal/consensus perspective that emphasizes that sentencing decisions are technically rational and the formal legal rules are equally applied to ethnic minority groups (Dixon, 1995; Weber, 1954). Besides differences in criminal involvement, other scholars have stressed that some ethnic groups are socially and economically disadvantaged, and ethnic minority groups may be punished more severely because of *unfavorable personal circumstances* (Spohn, 2009; Van Wingerden, Van Wilsem, and Johnson, 2016; Wooldredge, 2012). To the extent that a) certain personal circumstances are tied to race or ethnicity, and b) these personal circumstances exert independent influences over sentencing decisions ethnic biases at sentencing will be produced. As such, ethnic disparity in sentencing exist though a process of indirect differential treatment (Spohn, 2009). As argued by Zatz (1987: 70), “these disparities reflect more subtle biases, but still fall within the purview of discrimination if they favor one group over another.” Based on the arguments of differential involvement and indirect differential treatment one would expect the following:

Hypothesis 1: All ethnic minority groups will be sentenced equally after controlling for various legal characteristics and social circumstances of the offender.



Other sentencing scholars have adopted the theoretical standpoint that effects of ethnicity or race may affect sentencing outcomes even after taking into account various legal characteristics and other personal circumstances. As argued by Tonry (1998: 61), “higher minority crime rates lead to stereotypes about minority groups, . . . which leads to harsher sentences.” Criminal justice actors may rely on aggregate group characteristics at sentencing to evaluate individual personal characteristics. As such, the overrepresentation of ethnic minority groups in the prison population may be the result of *direct differential treatment*. In the literature, different underlying mechanisms are outlined to explain why ethnicity may directly influence sentencing decisions. Early scholars addressed the issue of sentencing disparity from a conflict perspective derived from classical Marxist conceptions of the significance of social classes (Chambliss and Seidman, 1971; Quinney, 1970). Here racial differentials are often discussed in the same context as social class differentials, and racial disparity is expected to be the result from the interest of the dominant class to maintain power over the powerless or subordinate segments of the population. Deviant acts by the powerless may represent a threat to the existing structure of authority. To the extent that subordinate groups grow in population size and have more socioeconomic resources, fear of competition by the dominant group will grow (Blalock, 1967).

Although, the conflict perspective has been widely used, current sentencing scholars usually refer to recent theoretical perspectives within the direct differential treatment approach. These theories posit that ethnic disparities at sentencing occur because decision-making processes are guided by ethnic based attribution processes (Albonetti, 1991; Steffensmeier et al., 1998). Because judicial decision-making is complex and limited by time and information constraints, judges—either consciously or unconsciously—handle these constraints by using uncertainty avoidance techniques for assessing the culpability and dangerousness of the offender. These techniques include decision-making shortcuts, cognitive heuristics, and stereotypical beliefs that can tie offender’s ethnicity to assessments of culpability and dangerousness. These patterned responses are based on simplification, exaggeration, and generalization. Supposed characteristics of the social group are assigned to the individual. In the Netherlands, in particular Moroccans have very negative stereotypes attached to them. These negative stereotypes are mostly grounded in public feelings of unsafety caused by the young Moroccans that hang around on the streets. Moroccans are frequently labeled as a “problem group,” not only in society, but in politics as well. When young Moroccans kicked a soccer arbiter to death in 2013, right-wing politicians called for a “debate on the integration problems of Moroccans,” also known as “the Moroccan debate.” One of these politicians also asked his supporters in 2014: “Do you want more or fewer Moroccans in the Netherlands?” When the crowd shouted, “Fewer! Fewer!” he replied: “Then we’ll take care of that.” He proposes to expel all criminal Moroccans to Morocco. Moroccans are thus often linked to very negative attributions, but other ethnic groups suffer from negative stereotypes as well, since they also have low rates of education and employment and high rates of being beneficiaries of social welfare and crime. If judges unconsciously rely on such stereotypical beliefs when an offender from a particular

ethnic minority group is punished, a direct effect of ethnicity on sentence outcomes is established. From the direct differential treatment approach, we therefore expect:

Hypothesis 2: Ethnic minority groups will be punished more severely after controlling for various legal and offender circumstances.

## **Data and Methods**

### ***Data***

We empirically examine our research question using three data sources that will be analyzed separately. The *2007-cohort* contains information on all adult suspects of whom their case was registered at the Public Prosecutor's Office in 2007, and were subsequently sentenced by a judge ( $N = 89,147$ ). This data source was made available by the Research and Documentation Centre (WODC) of the Netherlands Ministry of Justice.<sup>3</sup> The data include the full registered conviction history, age, gender, country of birth, index offense, court, pretrial detention, and sentencing information.

Additionally we make use of the *RISc-data* in which data from the Public Prosecutor's Office are combined with pre-sentencing report data from the Probation Service for the years 2005–2007 ( $N = 20,841$ ). Typically, a pre-sentencing report is completed when a defendant is detained pretrial, or when the Probation Service is involved with the execution of the expected sentence, such as community service or suspended sentence with special conditions. This results in an underrepresentation of minor offenses in these data (for more information, see Van Wingerden, Van Wilsem, and Johnson, 2016). Although this is a more selective sample, important advantages of these data are that a) first- and second-generation immigrants can be distinguished and b) detailed information on offender's personal circumstances is included.

The third data source is collected within the *Prison Project*: a nationwide study in which detailed data were gathered from suspects who entered a Dutch pretrial detention facility for a minimum of three weeks between October 2010 and March 2011, were born in the Netherlands, and were between 18 to 65 years old. These data were further extended with multiple types of administrative data including information on offense, criminal histories, and other life circumstances. Information about punishment outcomes was retrieved from data administered at the Public's Prosecution Office in September 2012 ( $N = 1,506$ ).

### ***Dependent Variables***

Using the *2007-cohort* and the *RISc-data*, we examine whether or not an offender is imprisoned (in/out) and if so, for how long. This approach is consistent with prior research.<sup>4</sup> Incarceration is measured with a dichotomous variable coded 0 for non-incarceration and 1 for incarceration, and the length of the prison sentence is a continuous measure capturing the total days of confinement ordered by the judge.<sup>5</sup> The in/out decision is not analyzed using the *Prison Project* data because the vast majority of the suspects in this sample received a prison sentence (94%) (see also Johnson et al.,

2010; Ulmer, Eisenstein, and Johnson, 2010). Instead, we examine whether or not the unsuspended length of the imposed prison sentence exceeds the time served in pretrial detention.<sup>6</sup> For the subgroup of offenders who receive “extra time,” we examine the length of this extra term of imprisonment, and for the full sample, the full length of the prison sentence is measured.

Among the total *2007-cohort*, 18 percent are incarcerated, with a mean term of imprisonment of 226 days. A prison sentence is imposed in 47 percent of the cases in the *RISc-data*, and the average prison term is 345 days. Of all offenders in the *Prison Project*, 61 percent receives a prison length at sentencing that exceeds the term of pretrial detention, with an average “extra term” of 418 days. The full prison length is approximately 370 days.

Differences in the above described results are caused by differences in population and measurement between datasets. Important differences are related to the extent through which defendants have been selected through the criminal justice system: the *2007-cohort* includes all suspects, the *RISc-data* only those with a pre-sentencing report, and the *Prison Project* includes pretrial detained offenders only. Consequently, when the results of ethnic disparities in sentencing are presented, it is especially valuable to pay attention to differences *within* datasets rather than *between*.

The dichotomous sentencing outcomes are modeled with logistic regression. For those incarcerated, sentence length outcomes are transformed logarithmically and modeled with OLS regression. The log transformation normalizes the skewed distribution and addresses the fact that additional days of incarceration may have different meaning for different sentence lengths. Also, it allows for more convenient interpretation of the sentence lengths in terms of their proportional increase associated with a unit increase in each explanatory variable. The regression coefficients are exponentiated to provide for proportional increases in the logged sentence length models.

### *Ethnicity*

Ethnicity is determined by the country of birth of the suspect and the country of birth of the parents of the offender. We distinguish between seven groups: Dutch, Moroccans, Antilleans, Surinamese, Turks, other Western, and other non-Western.<sup>7</sup> In all datasets, the Dutch serve as the reference category. This reference is strategically selected to allow comparison of each immigrant group to Dutch offenders. In the *2007-cohort*, we use the categories to examine possible differences in sentencing between first-generation immigrants and Dutch offenders, in the *Prison Project* for second-generation immigrants, and in the *RISc-data* for first- and second-generation immigrants. First-generation immigrants are foreign-born, and second-generation immigrants are born in the Netherlands who at least have one parent who is foreign-born. In the *2007-cohort*, 69 percent is Dutch-born; in the *RISc-data*, 59 percent is native; and in the *Prison Project*, 68 percent. A summary of all other variables in the analysis capturing the severity of the offense and the characteristics and local life circumstances of the offender are shown in Appendix A.

## **Results**

We are theoretically and empirically interested in the effects of ethnicity on the “in/out” decision and the sentence length decision. First, we examine bivariate relationships between ethnicity and the sentencing outcomes. Second, we examine descriptive statistics focusing on differences between distinct ethnic groups and various sentencing factors (offense, offender, and case). Third, we test whether ethnic disparities exist in the full sample net of statistical controls for other variables that might be highly associated with both ethnicity and sentence severity.

### ***Bivariate Relations Between Ethnicity and Sentencing Outcomes***

The bivariate models, presented in Table 10.1, represent the first step to assess whether ethnicity affects the likelihood of prison versus non-custodial sanctions, and whether it helps to explain variation in sentence length. The results for the in/out decision are unambiguous: in all data sources, all except one immigrant group are more likely to receive incarceration sentences. The magnitude of these differences is large: in the *2007-cohort* data, the imprisonment odds for the distinct ethnic minority groups range from 1.36 for Turks to 3.31 for Surinamese. Surinamese offenders are thus more than three times as likely to be sentenced to prison than Dutch offenders. In the *RISc-data*, the imprisonment odds for the four main ethnic minority groups range from 1.38 for first-generation Turks to 3.81 for second-generation Moroccans. With the exception of Antillean offenders, second-generation migrant groups are more likely to be incarcerated than their first-generation counterparts. In the *Prison Project* data, second-generation Antilleans have the highest likelihood to receive a prison sentence longer than the duration of their pretrial detention, but these effects do not reach statistical significance.

Table 10.1 also presents the bivariate results regarding the sentence length. They consistently show that all first-generation immigrant groups receive longer sentences than native offenders, with the notable exception of Moroccan offenders; their average sentence length is not significantly different from that of native offenders. In the *2007-cohort* data, offenders from the four main ethnic minority groups receive prison terms that are 19 to 29 percent longer than that of Dutch offenders. In the *RISc-data*, we found 19 to 37 percent longer prison terms for the first-generation immigrants. Ethnic sentencing disparities for second-generation offenders are much smaller. Only second-generation Surinamese receive significantly longer prison terms compared to natives. In the *Prison Project* data, the sentence length differs only significantly from that for native offenders for second-generation Antilleans. Their prison terms are 52 percent longer.

Our findings show that there is no clear pattern in ethnic effects for the distinct ethnic groups. Their effects differ for the in/out-decision compared to the decision on the sentence length. Moroccans for example are more likely to be incarcerated, but the length of their sentence is not significantly different from that of the Dutch.

Table 10.1 Bivariate Relationships Between and Ethnicity and the Likelihood of Imprisonment (Odds Ratios) and Between Ethnicity and the Sentence Length

	<i>The Netherlands In/Out-Decision</i>			<i>Sentence Length</i>			
	<i>2007 cohort</i>	<i>RISc</i>	<i>PP'</i>	<i>2007 cohort</i>	<i>RISc</i>	<i>PP</i>	<i>PP'</i>
	(N = 89,147)	(N = 20,841)	(N = 1,506)	(N = 15,889)	(N = 9,699)	(N = 1,506)	(N = 925)
	<i>Exp(B)</i>	<i>Exp(B)</i>	<i>Exp(B)</i>	<i>Exp(B)</i>	<i>Exp(B)</i>	<i>Exp(B)</i>	<i>Exp(B)</i>
	<i>Ref.</i>	<i>Ref.</i>	<i>Ref.</i>	<i>Ref.</i>	<i>Ref.</i>	<i>Ref.</i>	<i>Ref.</i>
<i>1st Generation</i>							
Morocco	2.84***	2.48***	–	1.05	1.01	–	–
(former) Neth.	2.58***	2.43***	–	1.23***	1.37***	–	–
Antilles							
Surinam	3.31***	1.77***	–	1.29***	1.19**	–	–
Turkey	1.36***	1.38***	–	1.19**	1.31***	–	–
Other Western	2.42***	1.32***	–	0.86***	1.24**	–	–
Other non-Western	3.79***	1.58***	–	1.30***	1.10	–	–
<i>2nd Generation</i>							
Morocco	–	3.81***	1.13	–	1.13	1.04	1.26
(former) Neth.	–	2.38***	1.58	–	1.08	1.52*	1.92
Antilles							
Surinam	–	2.55***	1.16	–	1.15*	1.22	1.57
Turkey	–	2.16***	1.34	–	0.98	1.14	1.22
Other Western	–	1.40***	1.38	–	1.05	1.11	1.05
Other non-Western	–	1.90***	0.88	–	1.06	1.01	1.41

\*  $p \leq .05$ , \*\*  $p \leq .01$ , and \*\*\*  $p \leq .001$ .

1 Likelihood of prison sentence longer than pretrial detention.

2 Number of days the prison sentence exceeds the length of the pretrial detention.

Furthermore, there are differences between datasets. First-generation Surinamese offenders for instance have the highest likelihood of incarceration in the *2007-cohort* dataset, but not in the *RISc-data*. And in the *Prison Project* data, many ethnic disparities do not reach statistical significance. Also, differences between immigrant generations are found: regarding the in/out decision, second-generation disparities are more pronounced, and regarding the sentence length decision, disparities are more pronounced for first-generation immigrants.

Even though a clear pattern in ethnic effects is absent, our findings clearly show that ethnic sentencing disparity exists in Dutch sentencing practices. These overall higher incarceration rates and longer prison sentences for immigrant groups may (in part) be a function of other sentencing factors, such as offense seriousness, prior criminal record, and other personal circumstances. We, therefore, now turn our attention to differences on other sentencing factors between immigrant groups.

***Descriptive Information on Sentencing Factors for  
Different Ethnic Suspect Groups***

In order to examine whether other sentencing factors are related to ethnicity, mean values of various domains (such as offense, offender, and case) were compared. Results demonstrate that sentencing factors are differently distributed across ethnic groups.<sup>8</sup>

The three data sources show substantial differences between ethnic groups on offense characteristics. Immigrant offenders are overrepresented in offenses that carry a higher maximum penalty (more than 6 years), while Dutch convicted offenders are overrepresented in less serious offenses that carry a maximum penalty of 1 year. Moreover, Dutch offenders are more often involved in traffic offenses, while non-Dutch immigrant groups are more often sentenced for drug offenses. Especially, Moroccan, Antillean, and Surinamese offenders are overrepresented in drug offenses. In 2007, for instance, 15 percent of the Surinamese offenders were sentenced for a drug offense compared to 1 percent of the Dutch offenders. In contrast, Turkish offenders are overrepresented in assault offenses, with no less than 40 percent of the first generation and 32 percent of the second generation sentenced for committing assault offenses.

The data further reveal pronounced differences in offender characteristics between ethnic groups. Both Moroccan and Turkish offenders are relatively less likely to be female. Moreover, relatively few non-Dutch immigrants are in the oldest age category (older than 50), and second-generation immigrants, in particular, are often relatively young (aged 18 to 30). Regarding past involvement with the criminal justice system, immigrant groups tend to have more extensive criminal histories and typically start offending at a younger age. The disadvantaged position of immigrant groups also becomes visible in comparing personal circumstances related to their conventional bonds, including income, high educational attainment, marriage, and children. Ethnic minority offenders, for instance, seem to have a lower educational attainment and are less often employed than Dutch offenders. The *RISc-data* further indicate that immigrants experience more problems on various other domains of risks for future recidivism, such as emotional wellbeing, cognition and behavior, and attitudes. In contrast, Dutch offenders experience more often problems with substance misuse.

Finally, case characteristics are also differently distributed across groups. Members of immigrant groups are more likely to be detained pretrial, and if detained pretrial, terms are relatively longer. Also, Dutch offenders are less likely to be sentenced in one of the large cities in the Netherlands: Rotterdam, Amsterdam, or the Hague. Another notable difference is that immigrants less often accept their criminal responsibility than Dutch offenders.

Taken as a whole, these comparisons suggest that offenders from ethnic minority groups tend to be convicted for more serious crimes than native offenders and that they tend to have more problematic personal and offending backgrounds. These characteristics may in turn be tied to judicial assessments of increased levels of blameworthiness or increased risks of recidivism. Because offense and offender characteristics are indeed distributed unevenly over the distinct ethnic groups, ethnicity might indirectly affect sentencing outcomes.

### Multivariate Relations Between Ethnicity and Sentencing Outcomes

To test whether ethnicity *directly* or *indirectly* affects sentencing outcomes, multivariate regression analyses were conducted in which we examine whether differences in sentencing among ethnic groups persist net of statistical controls for offense, case processing, and offender characteristics. Table 10.2 reports the findings of logistic and OLS regression models for the incarceration and sentence length decision, respectively.

Table 10.2 Logistic and OLS Regression for the In/Out and Sentence Length (ln) Decision (Full Models<sup>3</sup>)

The Netherlands	In/Out-Decision			Sentence Length			
	2007 cohort (N = 89,147)	RISc (N = 20,841)	PP <sup>1</sup> (N = 1,506)	2007 cohort (N = 15,889)	RISc (N = 9,699)	PP (N = 1,506)	PP <sup>2</sup> (N = 925)
	Exp(B)	Exp(B)	Exp(B)	Exp(B)	Exp(B)	Exp(B)	Exp(B)
	Ref.	Ref.	Ref.	Ref.	Ref.	Ref.	Ref.
<i>1st Generation</i>							
Morocco	1.65***	1.30	–	1.06*	1.00	–	–
(former)	1.29***	1.26	–	1.08**	1.08*	–	–
Neth.							
Antilles							
Surinam	1.57***	1.01	–	0.94*	1.02	–	–
Turkey	1.39***	1.04	–	1.11**	1.19***	–	–
Other	3.60***	1.11	–	1.07**	1.14**	–	–
Western							
Other non-Western	3.56***	1.24	–	1.19***	1.04	–	–
<i>2nd Generation</i>							
Morocco	–	1.35	1.50~	–	1.14**	1.16*	1.36*
(former)	–	1.62	1.35	–	1.04	1.06	1.06
Neth.							
Antilles							
Surinam	–	1.36	0.95	–	0.97	1.15	1.55*
Turkey	–	1.70**	1.58	–	1.05	1.02	0.92
Other	–	1.27	1.36	–	0.99	1.05	0.86
Western							
Other non-Western	–	0.93	0.72	–	1.05	1.06	1.54

\*  $p \leq .05$ , \*\*  $p \leq .01$ , and \*\*\*  $p \leq .001$ .

1 Likelihood of prison sentence longer than pretrial detention.

2 Number of days the prison sentence exceeds the length of the pretrial detention.

3 Controlled for severity of the offense (e.g. maximum penalty, type of offense, number of offenses); case processing characteristics (e.g. court district, pretrial detention); and offender characteristics (e.g. age, sex, prior criminal record, prior prison sentences). The *RISc-data* and *Prison Project-data* also controlled for social circumstances of the offender, like unemployment and drug and alcohol usage. Complete results of the full models can be requested from the authors.

In line with prior work, offense severity and case processing characteristics, such as pretrial detention outcomes, exert strong influences on sentencing outcomes. Characteristics of the offender, such as sex, criminal history, and certain personal circumstances also affect sentencing outcomes. The results further show that, despite the controls for offense, case processing, and offender characteristics, ethnic disparities still exist in both the incarceration models and in the sentence lengths models. However, effect sizes in the multivariate models are smaller in comparison with the bivariate models and some effects became non-significant, meaning that the initial ethnic disparities found are at least partly explained by including various offense, case, contextual, and other offender sentencing factors that were shown to be unevenly distributed among ethnic groups in the second step of the analyses.

In the full *2007-cohort* population, all immigrant groups are still more likely to be incarcerated compared to Dutch defendants. The imprisonment odds now range from 1.29 for Antilleans to 3.60 for other Western immigrants. The odds for Moroccans, Antilleans, and Surinamese are smaller compared to the bivariate model, yet the reduction is relatively small. Ethnic disparities can thus only partly be explained by case characteristics and indicators of differential involvement.

The *RISc-data* includes more detailed offender information compared to the 2007 cohort. The results of the multivariate analyses show that, when offense, case processing, and offender characteristics are controlled for, the ethnic sentencing disparities in likelihood of imprisonment are no longer statistically significant for the first-generation immigrants. Of the second-generation migrants, only the Turks have a significantly different likelihood of incarceration compared to the natives: Turks are 70 percent more likely to be sentenced to prison.

The results from the *Prison Project-data* show that there are no statistically significant disparities between ethnic minority groups and natives regarding their odds of receiving a prison term that exceeds the length of the pretrial detention. This was also the case in the bivariate model.

Regarding the sentence length decision, main effects for some ethnic groups are found net of other sentencing factors in all data sources. Of all offenders sentenced in 2007, for instance, first-generation Antilleans and first-generation Turks received sentences 8 and 11 percent longer than native offenders, respectively. The Surinamese, on the other hand, receive shorter prison sentences. Moreover, where Moroccans did not receive significantly different prison terms in the bivariate model, in the final model they are sentenced to 6 percent longer prison terms.

In the *RISc-data*, ethnic disparities in length of imprisonment are smaller compared to the bivariate model, but there are still differences between ethnic groups. First-generation Antilleans receive 8 percent longer prison sentences than Dutch defendants, Turks 19 percent, and immigrants from a Western country 14 percent. Regarding second-generation immigrants, only Moroccan defendants receive relative longer prison sentences (14 percent longer).

More punitive sentencing outcomes for Moroccan offenders are also found in the *Prison Project-data*: 16 percent longer total prison sentences and 36 percent longer terms of “extra time.” For second-generation Surinamese, this extra time is 55 percent



longer. Antilleans received longer prison terms in the bivariate model, but once controlled for offense, case processing, and offender characteristics, their sentence length is no longer significantly different from that of native offenders.

## Discussion

The purpose of this study was to explore whether the ethnicity of the offender either directly or indirectly affects sentencing outcomes. We hypothesized that sentencing disparities between ethnic groups occur because the factors that judges use to determine the sentence are unevenly distributed over distinct ethnic groups. Ethnic minority groups are differentially involved in crime (e.g. more crimes or different types of crimes) (Engen, Steen, and Bridges, 2002; Hagan, 1974; Hindelang, 1978; Spohn, 2009), and are socially and economically disadvantaged compared to the native group as well. Thus, when judges take the severity of the crime and the disadvantaged personal circumstances, such as unemployment and drug usage, into account, ethnic minority groups might receive different punishment outcomes than native offenders (Van Wingerden, Van Wilsem, and Johnson, 2016). We consider this an indirect effect: offenders do not receive harsher punishment because of their ethnicity, but because of their crimes and personal circumstances, which are more disadvantageous for ethnic minority groups.

Our findings show that ethnic sentencing disparities decrease when characteristics of the crime, case processing, and the offender are taken into account. This suggests that the observed ethnic disparities in sentencing outcomes are at least partially due to differences in case and offender characteristics and that ethnicity has an indirect influence on sentencing decisions. However, we find no clear pattern in the role of ethnicity in sentencing: where one minority group has a higher chance of imprisonment, other groups receive longer prison terms. Furthermore, a clear pattern is also absent when we compare the three datasets: there is not one ethnic minority group that is consistently punished more severely than the Dutch in all three datasets.

Even though we found support for indirect ethnicity effects on sentencing, ethnic sentencing disparities did not fully disappear when offense, case processing, and offender characteristics were controlled for. These findings thus offer only partial support for our hypothesis that ethnic sentencing disparity would disappear once offense and offender characteristics are controlled for. Because ethnic disparities in sentencing cannot fully be explained by differences in characteristics of the crime, nor by differences in characteristics or social circumstances of the offender, we also found support for our second hypothesis: ethnicity may *directly* influence sentencing decisions. Ethnic minority groups may thus receive different punishment *because of* their ethnicity. This may imply that patterns of social stratification are not limited to the U.S. context but also apply to other contexts with supposedly lower levels of discrimination. However, alternative explanations cannot be ruled out. Although we employed relatively strong controls for the severity of the offense, and for characteristics and social circumstances of the offender, other unmeasured variables that are related to ethnicity might also

account for the sentencing disparity between ethnic groups. Examples are cultural differences in the tendency to deny having committed the crime and in verbal and non-verbal communication with the judges. That said, *direct* effects of ethnicity on sentencing outcomes could not be ruled out in the current study. These may be caused by the heuristic strategies of judges: at sentencing judges may unconsciously rely on negative stereotypical attributions tied to offenders that belong to a particular ethnic minority group.

Although we found both direct and indirect ethnicity effects on sentencing outcomes, it is important to note that these are most likely underestimated. An important reason for this is the measurement of ethnicity in the datasets. For instance, ethnicity in the *2007-cohort* dataset is solely based on country of birth of the offender, meaning that second-generation migrants are considered Dutch. If these second-generation migrants were considered non-Dutch, more severe sentencing disparity would probably be found. Furthermore, the *Prison Project-data* only contains offenders who are born in the Netherlands, and thus ethnic disparities could not be examined for first-generation immigrant groups using these data.

### **Conclusion**

The current study specifically addressed the call for sentencing research that focuses on more diverse ethnic minority groups in other sentencing contexts (Sampson and Lauritsen, 1997; Ulmer, 2012). Although the Dutch sentencing context is very different from that of the U.S., similar effects of defendants' ethnicity are present. Our study shows that ethnicity both directly and indirectly affects sentence outcomes, resulting in harsher punishments for offenders from an ethnic minority group. This is consistent with prior research from the U.S.-context (Mitchell, 2005; Spohn, 2009; Zatz, 2000). Stereotypical attribution processes in punishment may not only occur in American courts but may be more universal (Johnson, Van Wingerden and Nieuwbeerta, 2010). Future research should aim to study ethnic sentencing disparities in other national contexts in order to establish this.

Our study also contributed to the existing research by incorporating very detailed offender characteristics to study effects of ethnicity on sentencing outcomes. As Zatz (2000) notes, information about personal circumstances (and legally relevant factors) should be included in sentencing research to disentangle some of the racial/ethnic effects. Although we could not control for every possible personal circumstance, the uniquely detailed offender characteristics that we used as control variables enabled us to assess ethnicity effects more accurately than in the vast majority of previous studies.

We further enriched the sentencing literature by being the first to examine differences in sentence outcomes between first- and second-generation immigrants. Our findings reveal important differences in punishments between generations. And although clear patterns for distinct ethnic groups could not be found, it seems that second-generation migrants are more likely to be sent to prison, whereas first-generation immigrants receive *longer* prison terms. Future research is needed to explore these

intergeneration differences further. Our results regarding the differences between the “in/out” and sentence length decisions also underscore the importance of examining these decisions separately.

Future research should also use more accurate measures of ethnicity. Unlike in the U.S., suspects in the Netherlands are not required to fill out a form on which they indicate their ethnic group. In our study, ethnicity is determined by the country of birth of the suspect in combination with the country of birth of his parents. This measure does not fully reflect ethnicity because cultural aspects of ethnicity are not captured. Future research may benefit from improved conceptualizations of ethnicity that account for the dynamic and changing nature of racial and ethnic identity in society (Johnson and Lee, 2013), for example by using a measure where the ethnic group is self-identified. This is especially important because third-generation immigrants are currently old enough to enter crime statistics. These offenders are now registered as native Dutch offenders, but cultural differences and differences in socioeconomic status clearly exist for this specific group. In order to further disentangle ethnic sentencing disparities, more attention should be paid to the cultural aspect of the concept of ethnicity.

Disentangling interaction effects is also a worthwhile avenue for future research. Because specific combinations of offense, case processing, and offender characteristics might in particular relate to harsher punishment for certain minority groups (Spohn and Holleran, 2000), studying interaction effects can provide insight into who is punished more severely in what circumstances. Moreover, future research should also try to gain more insight into cumulative disadvantage of ethnic minority groups throughout the different stages of the criminal justice system because disparity might be caused by differential treatment in prior stages of the criminal proceedings (Spohn, 2009; Ulmer, 2012; Wermink et al., 2016). To gain more insight into *why* ethnic sentencing disparity occurs, future research should strive to incorporate other research methods, such as the interviewing of judges.

The findings of the current study provide insight into the role of the ethnicity of the offender at sentencing but may also contribute to normative discussions on the desirability or legitimacy of ethnicity as a factor that either directly or indirectly affects sentencing outcomes. It is important that judges and other court actors join this debate because there is still much uncertainty about whether offender characteristics are legitimate sentencing determinants, especially in the Netherlands where judges have broad discretionary powers. If ethnicity of the offender is indeed considered to be an illegitimate sentencing determinant, it is of utmost importance to take measures that improve consistency in sentencing.

## Notes

- 1 Differences in the criminal justice system and racial and ethnic heritage limit the applicability of these findings to the Dutch context somewhat, so we do not review this research in detail.
- 2 There are some examples of European multivariate studies on sentencing: Kruttschnitt and Savolainen (2009) used Finnish data, and Pina-Sánchez and Linacre (2013, 2014) used data from

England and Wales. However, these studies don't include defendant's ethnicity. A European study focusing on the treatment of immigrants and their descendants by the criminal justice system was conducted in Denmark (Holmberg and Kyvsgaard, 2003). This study shows immigrant-based disparities in being arrested and being remanded to custody, but imprisonment decisions were not studied. Moreover, controls were not included simultaneously into their models.

- 3 The WODC cannot be held responsible for completeness, correctness, and the use of these data.
- 4 Several scholars argue that sentencing should be understood as a two-stage process, involving first a decision about whether to imprison and second, if incarceration is selected, a decision about the term length (Johnson, 2006; Steffensmeier et al., 1998; Wheeler et al., 1982). Bushway and Piehl (2001) have suggested that under highly structured sentencing guidelines, sentencing may be best modeled as a single decision-making process, but this does not characterize the Dutch context, where judges must first determine the type of punishment followed by the term length.
- 5 All criminal sentences involving confinement are defined as incarceration sentences. Incarceration was coded 1 if the offender was sentenced to an unsuspended prison sentence and 0 if they were sentenced to any combination of non-incarceration options (e.g. full suspended sentences, community service, or fines).
- 6 In the Netherlands, punished offenders are immediately released from prison when the imposed sentence length is shorter or equal to the length of pretrial detention.
- 7 The classification of other-Western and other non-Western offenders is made along the lines of the standard classification of Statistics Netherlands. The category "Western" consists of persons from Europe (excluding the Netherlands and Turkey), North America, Oceania, Japan, and Indonesia (including the former Dutch East Indies). The category "non-Western" includes persons with African, Asian, Turkish, and Latin American backgrounds.
- 8 These results are not presented in order to conserve table space. The results are available from the author upon request.

## References

- Alba, R. (2005). Bright vs. blurred boundaries: Second-generation assimilation and exclusion in France, Germany, and the United States. *Ethnic and Racial Studies*, 28, 20–49.
- Albonetti, C. A. (1991). An integration of theories to explain judicial discretion. *Social Forces*, 38, 247–266.
- Algan, Y., Dutmman, C., Glit, A., & Manning, A. (2010). The economic situation of first and second-generation immigrants in France, Germany, and the United Kingdom. *The Economic Journal*, 120, F4–F30.
- Alvarez, A., & Bachman, R. (1996). American Indians and sentencing disparity: An Arizona test. *Journal of Criminal Justice*, 24, 549–561.
- Berghuis, A. C. (1992). De harde en de zachte hand—een statistische analyse van verschillen in sanctiebeleid [The hard and the soft approach—a statistical analysis of differences in sentencing policy]. *Tiema*, 15, 84–93.
- Berghuis, A. C. & Mak, M. (2002). *De Straftoemeting in Nederland van 1995 tot en met 2001* [Sentencing in the Netherlands from 1995 to 2001]. Den Haag: Ministerie van Justitie.
- Blalock, H. M. (1967). *Toward a theory of minority group relations*. New York: Wiley.
- Blom, M., Oudhof, J., Bijl, R. V., & Bakker, B. F. M. (Eds.). (2005). *Verdacht van criminaliteit: Allochtonen en autochtonen nader bekeken* [Suspected of crime: Allochtones and autochtones further examined]. Den Haag: WODC/CBS.
- Bond, C., & Jeffries, S. (2011). Indigeneity and the judicial decision to imprison: A study of Western Australia's higher courts. *British Journal of Criminology*, 51(2), 256–277.
- Bosma, J. J. (1985). *Allochtonen en Straftoemeting. Straftoemeting aan allochtonen en Nederlanders voor het delict eenvoudige diefstal* [Meting out punishment to allochtones and to the Dutch for the crime of simple theft]. Doctoral thesis, Rijksuniversiteit Groningen.

- Bovenkerk, F., & Fokkema, T. (2016). Crime among young Moroccan men in the Netherlands: Does their regional origin matter? *European Journal of Criminology*, 13, 352–371.
- Bridges, G. S., & Steen, S. (1998). Racial disparities in official assessments of juvenile offenders: Attributional stereotypes as mediating mechanisms. *American Sociological Review*, 63, 554–570.
- Britt, C. L. (2000). Social context and racial disparities in punishment decisions. *Justice Quarterly*, 17, 707–732.
- Bushway, S., & Piehl, A. (2001). Judging judicial discretion: Legal factors and racial discrimination in sentencing. *Law and Society Review*, 35, 733–767.
- Chambliss, W. J., & Seidman, R. B. (1971). *Law, order, and power*. Reading, MA: Addison-Wesley.
- Colombo, A. (2013). Foreigners and immigrants in Italy's penal and administrative detention systems. *European Journal of Criminology*, 10, 746–759.
- Crul, M., & Doornik, J. (2003). The second generation in The Netherlands. Divergent trends between and polarization within the two groups. *International Migration Review*, 37(4), 1039–1064.
- De Keijser, J. W. (2000). *Punishment and purpose: From moral theory to punishment in action*. Leiden: Thela Thesis.
- De Zwart, F. (2011). Het systeem van etnische categorieën in Nederland [The system of ethnical categories in the Netherlands]. *Migrantenstudies*, 11(1), 2–21.
- Delgrande, N., & Aebi, M. F. (2009). Les détenus étrangers en Europe: Quelques considérations critiques sur les données disponibles de 1989 à 2006 [Foreign detainees in Europe: Some critical considerations on the available data (1989–2006)]. *Déviance et Société*, 33(4), 475–499.
- Dixon, J. (1995). The organizational context of criminal sentencing. *American Journal of Sociology*, 100, 1157–1198.
- Engbersen, G., Leerkes, A. S., & Snel, E. (2014). Ethnicity, crime and immigration in the Netherlands. In S. Bucerius & M. Tonry (Eds.), *The Oxford handbook of ethnicity, crime, and immigration* (pp. 766–790). New York: Oxford University Press.
- Engen, R. L., Steen, S., & Bridges, G. S. (2002). Racial disparities in the punishment of youth: A theoretical and empirical assessment of the literature. *Social Problems*, 49, 194–220.
- Haen Marshall, I. (Ed.). (1997). *Minorities, migrants, and crime: Diversity and similarity across Europe and the United States*. London: Sage Publications.
- Hagan, J. (1974). Extra-legal attributes and criminal sentencing: An assessment of a sociological viewpoint. *Law & Society*, 8, 357–383.
- Hindelang, M. (1978). Race and involvement in common law personal crimes. *American Sociological Review*, 43, 93–109.
- Holmberg, L., & Kyvsgaard, B. (2003). Are immigrants and their descendants discriminated against in the Danish criminal justice system? *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 4, 125–142.
- Hough, M., & Roberts, J. V. (1999). Sentencing trends in Britain public knowledge and public opinion. *Punishment & Society*, 1, 11–26.
- Johnson, B. D. (2006). The multilevel context of criminal sentencing: Integrating judge- and county-level influences. *Criminology*, 44, 259–298.
- Johnson, B. D., & Betsinger, S. (2009). Punishing the “modal minority”: Asian-American criminal sentencing outcomes in Federal district courts. *Criminology*, 47, 1045–1090.
- Johnson, B. D., & Lee, J. G. (2013). Racial disparity under sentencing guidelines: A survey of recent research and emerging perspectives. *Sociology Compass*, 7, 503–514.
- Johnson, B. D., Van Wingerden, S., & Nieuwbeerta, P. (2010). Sentencing homicide offenders in the Netherlands: Offender, victim, and situational influences in criminal punishment. *Criminology*, 48(4), 981–1018.
- Jongman, R., & Schilt, T. (1976). Gelet op de persoon van de verdachte. . . . [Considering the suspect's personal characteristics. . . .]. *Nederlands Tijdschrift voor Criminologie*, 6, 273–287.
- Junger-Tas, J. (2001). Ethnic minorities, social integration and crime. *European Journal on Criminal Policy and Research*, 9, 5–29.

- Killias, M. (2011). *Immigration and crime: The European experience*. Florence: European University Institute.
- Kirby, A., & Jacobson, J. (2014). Public attitudes to the sentencing of drug offences. *Criminology & Criminal Justice*, 14, 334–350.
- Komen, M., & Van Schooten, E. (2006). Allochtone jongeren gemiddeld langer vast [Allochtonous youth on average longer detained]. *Nederlands Juristenblad*, 25, 1352–1355.
- Komen, M., & Van Schooten, E. (2009). Ethnic disparities in Dutch juvenile justice. *Journal of Ethnicity in Criminal Justice*, 7, 85–106.
- Kruttschnitt, C., & Savolainen, J. (2009). Ages of chivalry, places of paternalism. *European Journal of Criminology*, 6, 225–247.
- Larrauri, E., & Varona, D. (2011). Democracy at work? Public opinion and penal reforms in Spain. In H. Kury & E. Shea (Eds.), *Punitiveness international developments* (pp. 31–52). Bochum: Brokmeyer Universitätsverlag.
- Lee, M., Ulmer, J. T., & Park, M. (2011). Drug sentencing in South Korea: The influence of case-processing and social status factors in an ethnically homogenous context. *Journal of Contemporary Criminal Justice*, 27, 378–397.
- Maliëpaard, M., & Alba, R. (2016). Cultural integration in the Muslim second generation in the Netherlands: The case of gender ideology. *International Migration Review*, 50, 70–94.
- Mansel, J., & Albrecht, G. (2003). Migration und das Kriminalpolitische handeln Staatlicher Strafverfolgungsorgane. Ausländer als polizeilich Tatverdächtige und gerichtlich Abgeurteilte [Migration and the acting of law enforcement agencies. Foreigners as police suspects and defendants in court]. *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, 55(4), 679–715.
- Martens, P. L. (1997). Immigrants, crime, and criminal justice in Sweden. *Ethnicity, Crime, and Immigration*, 21, 183–255.
- Mitchell, O. (2005). A meta-analysis of race and sentencing research: Explaining the inconsistencies. *Journal of Quantitative Criminology*, 21, 439–466.
- Oberwittler, D., & Höfer, S. (2005). Crime and justice in Germany: An analysis of recent trends and research. *European Journal of Criminology*, 2, 465–508.
- Pager, D. (2008). The Republican ideal? National minorities and the criminal justice system in contemporary France. *Punishment & Society-International Journal of Penology*, 10, 375–400.
- Pina-Sánchez, J. (2015). Defining and measuring consistency in sentencing. In J. V. Roberts (Ed.), *Exploring sentencing practice in England and Wales* (pp. 76–92). Basingstoke: Palgrave Macmillan.
- Pina-Sánchez, J., & Linacre, R. (2013). Sentence consistency in England and Wales: Evidence from the Crown Court sentencing survey. *British Journal of Criminology*, 53, 1118–1138.
- Pina-Sánchez, J., & Linacre, R. (2014). Enhancing consistency in sentencing: Exploring the effects of guidelines in England and Wales. *Journal of Quantitative Criminology*, 30, 731–748.
- Plesničar, M. M. (2013). The individualization of punishment: Sentencing in Slovenia. *European Journal of Criminology*, 10, 462–478.
- Pratt, T. C. (1998). Race and sentencing: A meta-analysis of conflicting empirical research results. *Journal of Criminal Justice*, 26, 513–523.
- Quinney, R. (1970). *The social reality of crime*. Boston, MA: Little, Brown.
- Radelet, M. L. (1981). Racial characteristics and the imposition of the death penalty. *American Sociological Review*, 46, 918–927.
- Roberts, J., & Doob, A. (1997). Race, ethnicity, and criminal justice in Canada. In M. Tonry (Ed.), *Ethnicity, crime, and immigration: Comparative and cross-national perspectives* (Vol. 21, pp. 469–522). Chicago: University of Chicago Press.
- Roberts, J. V. (2011). *Mitigation and aggravation at sentencing*. Cambridge: Cambridge University Press.
- Salmi, V., Kivivuori, J., & Aaltonen, M. (2015). Correlates of immigrant youth crime in Finland. *European Journal of Criminology*, 12, 681–699.
- Sampson, R. J., & Lauritsen, J. L. (1997). Racial and ethnic disparities in crime and criminal justice in the United States. *Crime and Justice*, 21, 311–374.

- Schuyt, P. M. (2014). Bestraffing van adolescenten: Punitief of pedagogisch? *Strafblad*, 6, 39–43.
- Smith, D. J. (1997). Ethnic origins, crime, and criminal justice in England and Wales. *Ethnicity, Crime, and Immigration*, 21, 101–182.
- Snowball, L., & Weatherburn, D. (2007). Does racial bias in sentencing contribute to Indigenous overrepresentation in prison? *Australian and New Journal of Criminology*, 40(3), 272–290.
- Spohn, C. (2009). *How do judges decide? The search for fairness and justice in punishment* (2nd ed.). Thousand Oaks, CA: Sage.
- Spohn, C., & Holleran, D. (2000). The imprisonment penalty paid by young, unemployed Black and Hispanic male offenders. *Criminology*, 38, 281–306.
- Statistics Netherlands. (2013). *Criminaliteit en Rechtshandhaving 2012* [Crime and law enforcement 2012]. Den Haag: Boom Uitgevers.
- Statistics Netherlands. (2014). *Jaarrapport Integratie 2014* [Annual report on integration 2014]. Den Haag: CBS. Retrieved at: [www.cbs.nl/-/media/imported/documents/2015/40/jaarrapport-integratie-2014-pub.pdf](http://www.cbs.nl/-/media/imported/documents/2015/40/jaarrapport-integratie-2014-pub.pdf)
- StatLine. (2013). Population; sex, age, origin and generation, 1 January. Statistics Netherlands. Retrieved from: <http://statline.cbs.nl/Statweb/publication/?VW=T&DM=SLEN&PA=37325ENG&D1=0-2&D2=0&D3=0&D4=0&D5=0-2&D6=1&HD=170704-1210&LA=EN&HDR=G2,G3,G4&STB=G1,T,G5>.
- Steffensmeier, D., & Demuth, S. (2001). Ethnicity and judges' sentencing decisions: Hispanic-Black-White comparisons. *Criminology*, 39, 145–178.
- Steffensmeier, D., Ulmer, J. T., & Kramer, J. (1998). The interaction of race, gender, and age in criminal sentencing: The punishment cost of being young, black, and male. *Criminology*, 36, 763–797.
- Thomson, R. J., & Zingraff, M. T. (1981). Detecting sentencing disparity: Some problems and evidence. *American Journal of Sociology*, 86, 869–880.
- Timmerman, H., Bosma, J., & Jongman, R. (1986). Minderheden voor de rechter [Minorities facing the judge]. *Tijdschrift voor Criminologie*, 28, 57–72.
- Tonry, M. (1997). Ethnicity, crime and immigration. In Tonry, M. (Ed.), *Ethnicity, crime, and immigration: Comparative and cross-national perspectives. Crime and justice: An annual review of research* (Vol. 21, pp. 1–29). Chicago, IL: University of Chicago Press.
- Tonry, M. (1998). A comparative perspective on minority groups, crime, and criminal justice. *European Journal of Crime and Criminal Justice*, 6(1), 60–73.
- Tonry, M. (2014). Race, ethnicity, crime and immigration. In S. Bucerius & M. Tonry (Eds.), *The Oxford handbook of ethnicity, crime, and immigration*. New York: Oxford University Press.
- Tonry, M., & Bijleveld, C. (Eds.). (2007). *Crime and justice in the Netherlands. Crime and justice: A review of research* (Vol. 35). Chicago: University of Chicago Press.
- Ulmer, J. T. (2012). Recent developments and new directions in sentencing research. *Justice Quarterly*, 29, 1–40.
- Ulmer, J. T., Eisenstein, J., & Johnson, B. D. (2010). Trial penalties in federal sentencing: Extra-guidelines factors and district variation. *Justice Quarterly*, 27(4), 560–592.
- Ulmer, J. T., & Kramer, J. H. (1996). Court communities under sentencing guidelines: Dilemmas of formal rationality and sentencing disparity? *Criminology*, 34, 383–408.
- United States Sentencing Commission. (2015, January). *Quick facts. Federal offenders in prison*. Downloaded on June 6, 2016, from [www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts\\_BOP.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick-Facts_BOP.pdf)
- Van der Werff, C., & Van der Zee-Nefkens, A. A. (1978). *Strafrechtelijke vervolging en bestraffing van Nederlanders en buitenlanders* [Prosecution and sentencing of Dutch and foreign suspects], WODC Onderzoek en Beleid 2. Den Haag: Staatsuitgeverij.
- Van Tubergen, F. (2013). Religious change of new immigrants in the Netherlands: The event of migration. *Social Science Research*, 42, 715–725.

- Van Wingerden, S.G.C., & Nieuwbeerta, P. (2006). *De vervolging en berechting van moord en doodslag in Nederland, 1993–2004* [The prosecution and sentencing of homicide and manslaughter in the Netherlands, 1993–2004]. Leiden: Nederlands Studiecentrum Criminaliteit en Rechtspraak.
- Van Wingerden, S.G.C., & Nieuwbeerta, P. (2010). Straftoemeting bij moordenaars. De invloed van dader-, slachtoffer- en delictkenmerken [Sentencing homicide offenders: The influence of offender-, victim- and offense characteristics]. *Trema*, 33, 11–21.
- Van Wingerden, S. G. C., Moerings, L. M., & Van Wilsem, J. A. (2011). *Recidiverisico en Straftoemeting* [Risk of reoffending and sentencing]. Den Haag: Raad voor de rechtspraak.
- Van Wingerden S. G. C., Van Wilsem, J. A., & Johnson, B. D. (2016). Offender's personal circumstances and punishment: Toward a more refined model for the explanation of sentencing disparities. *Justice Quarterly*, 33(1), 100–133.
- Warren, P., Chiricos, T., & Bales, W. (2012). The imprisonment penalty for young Black and Hispanic Males: A crime-specific analysis. *Journal of Research in Crime and Delinquency*, 49, 56–80.
- Weber, M. (1954). *On law in economy and society*. Cambridge, MA: Harvard University Press.
- Welsh, A., & Ogloff, J. (2008). Progressive reforms or maintaining the status quo? An empirical evaluation of the judicial consideration of Aboriginal status in sentencing decisions. *Canadian Journal of Criminology and Criminal Justice*, 50, 491–517.
- Wermink, H. T., De Keijser, J. W., & Schuyt, P. M. (2012). Verschillen in straftoemeting in soortgelijke zaken: Een kwantitatief onderzoek naar de rol van specifieke kenmerken van de dader [Sentencing disparity in comparable cases: A quantitative research on the role of specific offender characteristics]. *Nederlands Juristenblad*, 87, 726–733.
- Wermink, H. T., Johnson, B. D., De Keijser, J. W., Dirkzwager, A. J. E., Reef, J., & Nieuwbeerta, P. (2017). The influence of detailed offender characteristics on consecutive criminal processing decisions in the Netherlands. *Crime & Delinquency*, 63, 1279–1313.
- Wermink, H. T., Johnson, B. D., Nieuwbeerta, P., & De Keijser, J. W. (2015). Expanding the scope of sentencing research: Determinants of juvenile and adult punishment in the Netherlands. *European Journal of Criminology*, 12(6), 739–768.
- Wheeler, S., Weisburd, D., & Bode, N. (1982). Sentencing the white-collar offender: Rhetoric and reality. *American Sociological Review*, 47, 641–659.
- Williams, T. (1999). Sentencing black offenders in the Ontario criminal justice system. In J. Roberts & D. Cole (Eds.), *Making sense of sentencing* (pp. 200–216). Toronto: University of Toronto Press.
- Wooldredge, J. (2012). Distinguishing race effects on pre-trial release and sentencing decisions. *Justice Quarterly*, 29(1), 41–75.
- Zatz, M. S. (1987). The changing forms of racial/ethnic biases in sentencing. *Journal of Research in Crime and Delinquency*, 24, 69–92.
- Zatz, M. S. (2000). The convergence of race, ethnicity, gender, and class on court decisionmaking: Looking toward the 21st century. *Criminal Justice: The National Institute of Justice Journal*, 3, 503–552.



# Appendix A

## SUMMARY OF VARIABLES

	<i>2007-Cohort</i>	<i>RISc-data</i>	<i>Prison Project</i>
<i>Offense Characteristics</i>			
Offense severity	Statutory maximum penalty in 5 categories	Statutory maximum penalty in 6 categories <sup>1</sup>	Statutory maximum penalty (continuous)
Offense	—Type of most serious offense (20 dummy variables) —Number of charges	—Type of most serious offense (15 dummy variables) —Number of charges	—Type of most serious offense (15 dummy variables) —Number of charges —Complicity
<i>Other Offender Characteristics</i>			
Sex	Comparison males and females (0 = male; 1 = female)	Comparison males and females (0 = male; 1 = female)	Only males
Age	5 categories (18–21, 22–30, 31–40, 41–50, > 50)	5 categories (18–21, 22–30, 31–40, 41–50, > 50)	5 categories (18–21, 22–30, 31–40, 41–50, > 50)
Criminal history	—Continuous measure of convictions in the past five years (distinctions for property, violent, and other crimes) —Prior prison sentence	—Continuous measure of convictions in the past five years (distinctions for property, violent, and other crimes) —Prior prison sentence	—Continuous measure of convictions in the past 5 years (distinctions for property, violent, and other crimes) —Prior prison sentence —Age of onset
Personal circumstances	<i>n/a</i>	Measures collected in the Probation Office's RISc assessment (see also Van Wingerden et al., 2016): —Accommodation	—Educational attainment —Fulltime education —(Un)employment —Income —Ever active on labor market

<i>2007-Cohort</i>	<i>RISc-data</i>	<i>Prison Project</i>
	<ul style="list-style-type: none"> <li>—Education and employment</li> <li>—Financial management and income</li> <li>—Relationships with partner, family, and relatives</li> <li>—Relationships with friends</li> <li>—Drug misuse</li> <li>—Alcohol misuse</li> <li>—Emotional well-being</li> <li>—Thinking and behavior</li> <li>—Attitude</li> </ul>	<ul style="list-style-type: none"> <li>—Benefits</li> <li>—Homeless/driftng</li> <li>—Overall health</li> <li>—Chronic health problem</li> <li>—Serious health problem past year</li> <li>—Alcohol misuse</li> <li>—Drug misuse</li> <li>—Married/registered partner</li> <li>—Number of children</li> </ul>

*Trial Characteristics*

<i>Trial</i>	<i>2007-Cohort</i>	<i>RISc-data</i>	<i>Prison Project</i>
	Pretrial detention (y/n and length)	Pretrial detention (y/n and length)	Length of pretrial detention and pretrial release
	Single sitting judge/panel of judges/court of appeal	<i>n/a</i>	Single sitting judge/panel of judges
	Sentence imposed in combination with measure	<i>n/a</i>	<i>n/a</i>
	<i>n/a</i>	<i>n/a</i>	Private versus public attorney
	<i>n/a</i>	Acceptance of criminal responsibility	Acceptance of criminal responsibility

1 This measure takes into account statutory factors such as attempted versus completed crime, complicity, and concurrence of offenses.