

Summary in English

Title:

Judged by the general population: A study of sentencing preferences in the Netherlands

Research questions

Given the opportunity, how would the Dutch public sentence perpetrators of different types of crime? To what extent are these verdicts related to characteristics of the crime event (e.g., offender characteristics, type of crime, victim characteristics)? Does the verdict depend on characteristics of the citizen who issues a sentence (e.g., young/old, male/female)? And does information about sentencing options (i.e. the costs involved and rates of recidivism) affect verdicts decided by members of the general population? These questions have been central in the current research project on sentencing preferences of the Dutch population.

Politicians and media alike often state that Dutch judges are more lenient than the general public would like them to be, and that judges prefer different types of sanctions (choose different sentencing options) than the general public would. There is, however, no consensus among scientific researchers as to what extent a punitiveness gap between the general population and judges exists, and whether or not broad social support for actual sentencing practices is lacking. It was therefore also investigated if preferred sentences of the general population deviate from verdicts of Dutch courts.

Methods

We adopted a factorial survey design to answer our research questions. We presented 1071 respondents, constituting a random sample from the Dutch population, 12 short scenarios (or vignettes) describing a hypothetical situation in which an offender committed a crime. The 12 different scenarios referred to the following types of crime: (1) shoplifting, (2) burglary, (3) assault, (4) car theft, (5) fraud, (6) environmental crime, (7) traffic offence, (8) sexual assault, (9) drug crime, (10) domestic violence, (11) illegal

possession of weapons, and (12) verbal threat of violence. The rationale for choosing these types of crime is that they are all relatively common, and therefore suitable to assess the general attitudes on punitiveness of the Dutch population, as well as to compare (for some types of crime) verdicts of the general population with actual court decisions.

Each respondent was told that the offender was found guilty of committing the crime, and was then asked to sentence the offender as though he/she were the judge. More precisely, following each scenario, respondents were asked to respond to four questions: 'If you had to sentence the offender to prison, how long would this sentence be?'; 'If you had to sentence the offender to community service, how long would this sentence be?'; 'If you had to sentence the offender to a fine, how high would this fine be?'. As a fourth question, respondents had to rate five different sentencing options according to relative desirability. The five sentencing options were: imprisonment, suspended imprisonment, community service, paying a fine, and compensation to the victim. Respondents were asked to distribute 10 points between these sentencing options according to their individual preferences. The more points a specific sentencing option received, the more this option was considered to be appropriate for the offender described in the scenario.

While each respondent was given one scenario on each of the 12 types of crime, within each type of crime, scenario conditions were varied experimentally across respondents. Within the scenario, offender characteristics were varied (sex, age, first-time offender versus repeat offender) as were victim characteristics (sex, age, and whether or not the victim was a police officer or paramedic) and the relationship between the offender and the victim (known/unknown to each other). We assessed to what extent these scenario characteristics affected the sentencing preferences of the general Dutch population.

We collected our data through a self-administered questionnaire.¹ Along with the verdicts on the 12 scenarios, we collected information on respondents' penal attitudes, victimization experiences, political affiliation and socio-demographic characteristics. We investigated the extent to which respondents who differed in these characteristics differed in sentencing preferences.

Moreover, we divided our sample randomly into four sub-samples (split ballot design). These sub-samples were provided with more or less information about both the costs involved with prison and community service sentences, as well as the general rates of recidivism after fulfilling a prison or community service sentence. Here, the hypothesis was that respondents getting more information would judge more often that a community service sentence is appropriate, because, compared to prison sentences, community service sentences are cheaper and meet more favorable recidivism rates.

Results

1. Preferred punitiveness varies considerably

Among the general Dutch population there exists a strong variation in what is considered to be an appropriate sentence – a sentence neither too lenient, nor too punitive. The range for preferred length of a prison or community service sentence, as well as for the height of a fine, is large; some punish relatively leniently, others relatively severely. As a consequence of this lack of consensus among the general Dutch population, actual court decisions are likely to be considered too lenient by some, and too punitive by others.

2. Support for all five sentencing options

Not only does the Dutch public differ with respect to punitive attitudes, there is also great variation present with respect to which sentencing option is preferred. There are,

¹ The data were collected by Intomart GfK. Respondents could either fill in a Computer Assisted Web Interview on their own by following the link given in the invitation letter, or, if preferred, in the presence of an interviewer. Statistics Netherlands provided the random sample of non-institutionalized Dutch citizens varying in age between 18 and 80. The net response rate was 49.5 percent.

however, several patterns. For each of the hypothetical scenarios given to the respondents, we observed considerable support for prison sentences, for community service sentences and for fines. In cases where a victim received (severe) physical injuries or suffered (severe) economic damage or loss, the general population also often likes to order the defendant to compensate the victim's losses. Furthermore, the general population often likes to combine sentencing options: in 91 percent of the cases, the general population is of the opinion that more than one sentencing option is appropriate, and in one out of seven cases, every sentencing option is considered to be at least in part appropriate.

3. No public consent on sentencing

Among the general population, different ideas exist on what constitutes an appropriate sentence. Clearly there is lack of public consent regarding the appropriate level of punitivity – or type of punishment an offender should receive – for a given type of crime. The large variation in punitive attitudes among the general population demonstrates that the search for a broad social basis for specific sentences is somewhat naïve. Regardless of which sentencing option a judge chooses, for both lenient and punitive punishments, some members of the general population will, and others will not, agree with the court decision. Specific court decisions are unlikely to be embraced by the entire Dutch population.

4. Public support for community service sentences

It is untrue that the general Dutch population would categorically reject community service as a viable sentencing option. On the contrary, the acceptance of community service sentences is large. For relatively less severe types of crime, community service is often the preferred sentencing option. For more severe types of crime, imprisonment gains support, but even here, community service sentences still have support among a large part of the Dutch population.

There is currently an amendment to the penal code proposed that would make it impossible for judges to sentence offenders of sexual assaults and serious violent crimes solely to community service. In these instances, a community service sentence would need to be combined with some form of confinement. Given our results we conclude that – at least in the case of unsolicited sexual touching, which is also a form of sexual assault – for a considerable part of the Dutch population such a penal amendment would not be necessary.

5. Most and least punitive sentences

If the general Dutch population were in the position to sentence perpetrators of each of the 12 types of crime investigated here, it would sentence offenders found guilty of causing a fatal traffic offence to the longest prison and community service sentences. The highest fine is given in instances of fraud, where offenders used deceit to obtain large sums of money from many victims. The most lenient punishments were given for verbal threats of violence.

6. Harsher punishments for repeat offenders than for first-time offenders

According to the Dutch public, a person deserves a harsher punishment for his/her second offence than first. Hardened criminals, committing repeated crimes on more than one occasion, should be sentenced even harsher. For the Dutch population, it also matters whether repeat offenders committed similar crimes or different types of crime. The former should face more severe consequences.

7. Minors more often sentenced to community service

The age of a perpetrator has a clear effect on which sentencing option the general population prefers. Community service is considered to be more appropriate for minors than for adults. We see the reverse picture with respect to imprisonment. However, if perpetrators of the same crime are to be sentenced to prison or community service, the age of the offender does not have an impact on sentence length. Furthermore, a

perpetrator's age does not influence the appropriateness of using the sentencing options of suspended prison sentence, fine or compensation for the victim.

8. Intoxication sometimes considered a mitigating circumstance and sometimes an aggravating circumstance

Intoxicated (drunk) offenders of assaults are punished more leniently by the general Dutch population than sober offenders of the same crime. In contrast, drunk driving causing a traffic offence is considered a more severe crime than committing the same traffic offence while sober.

9. Public support for more punitive punishments in cases where police officers and paramedics are victims of assault

Assault of police officers – and especially of paramedics – deserves harsher sentences than assault directed to 'mere' civilians. The Dutch population supports the public prosecutors' recently adopted practice of demanding harsher punishments in these instances.

10. Goals and functions of punishment backed by social support

Following the work of De Keijser, Van der Leeden and Jackson (2002) and based on Retributive, Utilitarian, and Restorative Justice theories, we identified five goals of criminal punishment: retribution (desert), (individual and general) deterrence, incapacitation, rehabilitation, and restoration (compensation). There is support for all five goals of punishment among the general Dutch population. Acceptance of the goals retribution, deterrence and incapacitation is related to a preference for relatively punitive sentences; acceptance of rehabilitation and restoration a preference for more lenient sentences. Those members of the general population who believe strongly in the incapacitation of criminals are relatively often in favor of the sentencing option imprisonment and relatively less often of community service. In contrast, those who attach importance to rehabilitation relatively often feel that a community service

sentence is appropriate. But all in all, there are only a few clear relationships between penal attitudes and preferred sentencing options among the general Dutch population.

11. Different social strata sentence rather similarly

Sociodemographic characteristics of the general Dutch population such as sex, age, marital status and educational attainment do not affect sentencing preferences in a clear and systematic manner.

12. Political party identification related to sentencing preferences

Compared to other voters, those members of the general population who identify with political parties on the right (the Liberal party [VVD] and the Freedom party [PVV]) would, if a choice had to be made between the five main sentencing options, relatively often decide to sentence offenders to prison. Fines are relatively often seen as a possible appropriate sentence among supporters of the confessional parties (Christian Democratic Appeal [CDA], Christian Union [CU] and the Political Reformed party [SGP]) and the VVD. Community service sentences have their strongest support base among those who identify with the Greens (GroenLinks) and have their least support among PVV-voters.

The relationships between party identification and sentencing preferences can to a large degree be explained by the differences that exist among these different political support groups with respect to their concerns about crime, penal attitudes and trust in institutions. Those who feel that crime is an important problem in contemporary society, who distrust the police, politicians and the court and who strongly adhere to retribution, deterrence and incapacitation as important goals of punishment have on the one hand a preference for relatively punitive punishments and relatively often feel that a prison sentence would be appropriate, and on the other hand vote for political parties on the right, like the VVD and PVV.

13. Sentence costs should not be a decisive factor

The general Dutch population does not have an accurate picture of the costs involved with prison sentences and community service sentences. Most make a cost estimate that is too high. The majority of the Dutch population is of the opinion that the costs involved with punishment should not influence decisions concerning sentencing options.

14. Information on recidivism rates increases support for community service

The general Dutch population has little awareness of the limited effectiveness of both imprisonment and community service sentences with respect to individual deterrence. The general population estimates recidivism rates too low. Were the general population to be informed that recidivism rates are lower after community service sentences than after imprisonment – which they are – public support for community service sentences would increase.

15. Comparing sentencing preferences of the general population and actual court decisions is problematic

It is difficult to compare the verdicts of our respondents to actual court decisions for different reasons. Court decisions are based on more information than the verdicts of our respondents, who were only given short hypothetical scenarios. In a real criminal case more information is present with respect to facts and background of the case. This makes it difficult to match hypothetical scenarios to real cases. The court hearing itself, plea of the attorney and demands of the prosecutor are likely to affect court decisions as well. A real case is simply different than a hypothetical scenario. Real judges have more sentencing options available to them than our respondents, while conversely, judges are bound by constraints – for example, maximum sentence lengths – as specified in criminal law. Potential differences between the preferred sentences of the general population and actual court decisions could hence be caused by a variety of reasons, but they could also reflect a punitiveness gap between the general population and judges. That said, for seven of the twelve types of crime, we compared verdicts of the general population with actual court decisions on more or less similar cases made by

judges in 2009. Foremost, we made this comparison to show the variation in sentencing practices both within the general population and among judges.

16. Substantial variation in court decisions just as with verdicts of the general public

There is substantial variation in court decisions with respect to chosen sentencing options and when it comes to the punitive character of the sentence. Some court decisions are relatively lenient, others relatively punitive. The variation in sentencing preferences among the general population is, however, considerably larger. Among the general public we also observed outliers – members of the public who would punish far more punitively than the vast majority.

17. Comparable leniency, different punitiveness

The 25 percent most lenient court decisions involving imprisonment are just as lenient as, or even more punitive than, the 25 percent most lenient prison sentences of the general population. In contrast, the 25 percent most punitive punishments of the general population are mostly (a lot) harsher than the 25 percent most punitive verdicts of judges.

18. The general public more often sentences offenders to prison and sentences to higher fines

Notwithstanding the provisos outlined in point 15 above, we conclude that the general population more often prefers imprisonment compared to real judges, and less often community service sentences and fines. There are, however, exceptions to this general conclusion: for burglary and drug crime (XTC-lab), judges more often sentence offenders to prison than the general population would.

The general population would like to see, in many instances, higher fines than actual judges sentence offenders to. Especially when the perpetrator had substantial financial gains by the crime, or when victims suffered considerable damage, perpetrators should face (very) high fines according to the general population.

19. Partial agreement between the general population and judges, partial disagreement
There are many members of the general Dutch population who would sentence rather similarly to actual judges in real cases. This holds true especially for instances of relatively less serious types of crime. Concurrently, a different part – also of substantial size – of the Dutch population would like to see (far) more punitive sentences than those given by actual judges. We cannot conclude that, in general, the Dutch population is in favor of harsher punishments: some people are and some are not.

Recommendations for future research

Our research was inevitably limited in scope and had some weaknesses. We therefore suggest some new avenues for future research.

- We investigated sentencing preferences among the general Dutch population in relation to 12 relatively minor crimes that are quite common in actual court rooms. Respondents were not asked to state their sentencing preferences for more serious crimes like murder and rape. We advise to consider replicating the present research and to include these more serious types of crime.
- Future research could focus on the stance of the general population towards suspended sentences. Under which specific conditions does the general population support suspended sentences, and what consequences should perpetrators face if they do not meet the terms of their conditional release? This would fit the current interest of the Public Prosecution Service in tailor-made suspended sentences.
- To compare sentencing preferences of the general population measured through a factorial survey design with verdicts of actual judges on real life cases is suboptimal. We are in dire need for research in which verdicts of both the general population and actual judges are based on the same material and face the same constraints. One could ask judges to sentence fictitious offenders described in the short scenarios as given to the respondents of the present research, or ask civilians to act

as lay judges in real court cases. However, neither approach is very feasible in practice. We suggest constructing less numerous, but more detailed, crime scenarios; scenarios which, when given to both actual judges and members of the general population, will illicit verdicts that can be directly compared.

- In the present research, sentencing preferences of the general population and court decisions were investigated. Sentence severity as required by the Public Prosecution Service remained outside the scope of this study. Ideally, one should investigate and directly compare, for different types of crimes, preferred sentences of the general population, sentences required by public prosecutors and actual sentences of judges all simultaneously.