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Suspended Sentences: Public opinion, compliance and recidivism

Summary

Introduction

Since the beginning of this century, the Dutch government has been particularly concerned with high recidivism rates. Reports showed that 70 per cent of all former detainees come into contact with the criminal justice system again within seven years of their release from prison. With rapidly increasing imprisonment rates since the mid-1980s, and its effectiveness in terms of high re-offending rates under heavy debate, a major policy aim of the Ministry of Security and Justice in reducing recidivism rates was to increase the effectiveness of the sanctions system. Part of this objective was to seek selectivity and differentiation in the type of sanctions offered, with a strong focus on implementing sanctions that pay attention to the nature of the offence and the criminogenic needs and risks of the offender.

Subsequently, suspended sentences, which have been part of the Dutch penal system since 1915, received renewed interest from policymakers. This renewed interest was also accompanied by an increased imposition: between 2002 and 2011, the proportion of (partially) suspended prison sentences on the total number of prison sentences imposed increased from 48 per cent to 58 per cent. A majority of the Dutch prison sentences now contain a suspended component. Suspended sentences are deferred sentences, which mean that they will only be executed if offenders do not comply with the general and special conditions attached to these sentences during their probation period. Every offender is subjected to the general condition: they must abide the law during their probation period. In some cases, special conditions are attached to suspended sentences that focus on controlling and/or treating the behaviour of the offender. This threat of punishment accompanied by general and special conditions is expected by policymakers to reduce recidivism more effectively than imprisonment does, as the probation period provides the time to work on the behaviour of offenders.

Suspended sentences have been part of the Dutch penal system for nearly one hundred years, but up to now, little empirical research has examined this specific sentence. In the context of the increasing popularity and imposition of suspended sentences, more knowledge is needed on the execution and effectiveness in terms of re-offending of these sentences.

This thesis addresses three questions related to suspended sentences, which, so far, have received little empirical attention. Firstly, while the court is imposing them more and more often, to what extent does public support exist for suspended sentences? It is important to examine public opinion on suspended sentences as the public can influence sentencing and correctional policy. Judges can be receptive to public hostility towards sentencing, especially in the area of community sanctions. They are less likely to impose community sanctions, regardless of their effectiveness, if they believe that the public holds unfavourable attitudes towards these sentences. And evidence from international research shows that the public has little confidence in suspended sentences as they feel offenders are let off. A way to increase confidence in suspended sentences is by letting the public know whether sentences are effective. However, little research has been done to determine the effectiveness of suspended sentences. The following two questions address this issue.

The second question this thesis addresses is: to what extent can compliance with the (special) conditions attached to suspended sentences be increased? Special conditions form an important part of suspended sentences. They are tailored to the individual offender to reduce the risks and criminogenic needs of each offender and include, for example, treatment and substance abuse prohibition. In order for

behavioural change to take place, it seems essential that offenders successfully comply with their conditions. At present, however, little is known about Dutch offenders' compliance with these conditions or about how compliance can be enhanced.

A third question that arises is whether suspended sentences reduce recidivism. Beside compliance, recidivism forms an important topic of (research) interest, as the effectiveness of a sentence is often determined by its recidivism. It is expected that suspended sentences are more likely to reduce recidivism rates than short-term imprisonment are. However, evidence on the effect of suspended sentences on recidivism rates mainly stems from international comparative studies. To our knowledge, only two studies have focused on recidivism rates after suspended sentences in the Netherlands. In addition, little empirical attention has been paid to comparing recidivism rates between different types of suspended sentences (i.e. fully or partly suspended sentences).

Public support for suspended sentences

In Chapter 2, using a representative sample from the Dutch population, we have examined to what extent the factors that affect public support for sentencing and correctional policies in general – punitive penal attitudes, confidence in the criminal justice system and political orientation – predict public support for a specific sanction, suspended sentences.

All three factors were related to support for suspended sentences. People with lower punitive penal attitudes towards sentencing, more confidence in the criminal justice system, and a more left-wing political orientation had a more positive attitude towards suspended sentences than people with less confidence, higher punitive penal attitudes and a more right-wing orientation had. Further analyses showed that the perceived punitiveness of suspended sentences partially mediated the relationship between confidence in the criminal justice system and general support for suspended sentences. That is, although confidence is directly related to support, confidence is also determined in part by the perceived punitiveness of suspended sentences, which in turn affects support. Perceived punitiveness of suspended sentences did fully mediate the relationship between general punitive penal attitudes towards punishment and general support for suspended sentences, suggesting that punitive penal attitudes do not affect support when perceived punitiveness is taken into account. Political orientation had only a weak effect on the relationship between perceived punitiveness of suspended sentences and general support for these sentences. Respondents who were leaning towards left-wing or right-wing political parties were more likely to support suspended sentences when the punitiveness of these sentences was stressed. However, this relationship was strongest for respondents with a more right-wing political orientation.

Overall, results showed that, beside knowledge and providing the public with more detailed information about offenders and sentencing, confidence in the criminal justice system, perceived punitiveness of suspended sentences and political orientation are important factors. These factors provide us with more insight into understanding the mechanisms behind public support for this specific sentence.

(Short-term) compliance

In Chapter 3, we have examined compliance with the special conditions of suspended sentences (short-term compliance). Specifically, we examined to what extent (1) demographics- and crime-related characteristics and (2) deterrence, a procedurally just treatment by the judge and the alliance with the probation officer, predicted probation supervision compliance. In total, 95 offenders under probation supervision filled in a questionnaire twice; at the start of their probation supervision (T1) and

approximately 7 months later (T2). At both times, probationers were given the same questionnaire to fill in. We examined two independent measures of compliance: (1) probationers' willingness to comply with the conditions of their probation supervision) and (2) registered compliance (warnings given for not complying with their probation supervision). Using regression analysis, we examined the influence of the independent variables measured at T1 on the dependent variables measured at T2.

Due to the small sample we were unable to control for the demographics and crime-related characteristics in these analyses. For this reason we used the recidivism risk based on the RISC. The assessed recidivism risk is based on the Risk Assessment Scales (RISC), which is a composite of demographics and crime-related characteristics that have been identified in international literature as predictors of recidivism. We found that recidivism risk did not predict subsequent willingness to comply and registered compliance.

We did find deterrence to be a predictor of compliance. More specifically, probationers' perceived certainty that their case would be revoked if they violated the conditions of their probation supervision was a significant predictor of probationers' willingness to comply, while the severity of the sentence was found to predict registered compliance. Probationers given partly suspended sentences were more likely to receive warnings than probationers given fully suspended prison sentences were. Procedural justice influenced only probationers' willingness to comply. In other words, the more probationers perceived their treatment by the judge during their trial to be fair (that is, whether the judge listened to their side of the story, showed respect and was friendly), the more likely these probationers were willing to comply with the conditions of their sentence. Finally, the alliance with their probation officers was related with probationers' willingness to comply and registered compliance. If probationers viewed their relationship with their probation officer as friendly and had a positive image of their probation officer, they were more willing to comply and received fewer warnings. However, as this relationship regarding the attitudes of probationers was only significant at T2, we are unable to conclude that an alliance is a predictor of probation supervision compliance.

To summarize, this study has shown that demographics and crime-related characteristics (RISC) do not predict compliance. Instead, we have found that the way probationers perceive their treatment by the judge and a positive alliance with their probation officer, in combination with the perceived threat of the sword of Damocles hanging over their heads and the severity of their suspended sentence, predict probation supervision compliance.

Recidivism

To examine recidivism after suspended sentences, we have conducted two studies. The first study, presented in Chapter 4, compared recidivism rates of fully suspended prison sentences with those of short-term imprisonment. It addressed two research questions. The first of these was: to what extent do recidivism rates after fully suspended prison sentences differ from those after short-term imprisonment? The second question was: to what extent do recidivism rates after fully suspended prison sentences and short-term imprisonment differ between first offenders and between recidivists? Using official record data (rap sheets) from all offenders given fully suspended prison sentences and short-term imprisonment in 2006 in Amsterdam and The Hague, we examined recidivism rates during a follow-up period of approximately five years. We operationalized recidivism as the first offence that resulted in a new conviction by the Public Prosecutor or judge.

To control for selection bias, propensity score matching was used to match offenders given a fully suspended prison sentence to offenders sentenced to short-term imprisonment, based on a number of demographic and crime-related characteristics associated with sentencing and recidivism (such as age, ethnicity, gender and type of offence). Using Cox proportional hazard models, results showed that, before matching, the general sample of offenders given fully suspended prison sentences was less likely to recidivate than the general sample of offenders sentenced to short-term imprisonment were (70% versus 80%). However, after matching, we found no difference in recidivism rates.

We found differences in recidivism rates between the two sentences for first offenders and recidivists. First offenders given fully suspended prison sentences had a greater risk of recidivating during the follow-up period than first offenders sentenced to short-term imprisonment. This difference remained after matching (50% of the matched first offenders given fully suspended prison sentences versus 30% of the matched first offenders sentenced to short-term imprisonment). Conversely, also after matching, recidivists given fully suspended prison sentences had a *smaller* risk of recidivating (80%) than recidivists sentenced to short-term imprisonment (85%). This difference in recidivism rates was much smaller than between first offenders. These findings are relatively robust towards hidden bias. These results showed that criminal history is an important factor to consider when comparing recidivism rates between these two sentences.

In Chapter 5, we focused on suspended sentences *per se*. Again using official record data on all offenders given suspended sentences in 2006 in Amsterdam and The Hague, we compared recidivism rates between fully and partly suspended prison sentences with and without special conditions. Two questions were central in this study. First, to what extent do recidivism rates differ between (a) fully and partly suspended prison sentences, (b) suspended prison sentences with and without special conditions, and (c) fully and partly suspended prison sentences with and without special conditions? The second question was: to what extent do recidivism rates differ between (fully and partly) suspended prison sentences without special conditions, with control-oriented special conditions and with behaviour-oriented special conditions?

Using Cox proportional hazard models, we found that offenders given partly suspended prison sentences had a greater risk of recidivating than offenders given fully suspended prison sentences. In addition, offenders given suspended prison sentences with special conditions were more at risk of recidivating than offenders given suspended prison sentences without special conditions were, after controlling for a number of individual- and crime-related characteristics associated with sentencing and recidivism. No difference in recidivism rates was found between the four types of suspended prison sentences (fully and partly suspended sentences with and without special conditions).

Special conditions include a wide variety of conditions, ranging from restraining orders to taking part in a behavioural intervention. Scholars have concluded that these conditions can have different effects on recidivism rates. For the second research question, we therefore categorized the conditions as follows: a) no special conditions, b) control-oriented special conditions, and c) a combination of control-oriented and behaviour-oriented special conditions. Results yielded no difference in the risk of recidivating between control-oriented special conditions and a combination of control- and behaviour-oriented special conditions. However, there was a difference in the risk of recidivism between control-oriented special conditions and no special conditions. Offenders given suspended prison sentences with no special conditions had a smaller risk of recidivating than offenders given suspended prison sentences with control-oriented special conditions were.

A further differentiation between fully and partly suspended prison sentences and the three types of conditions showed that, compared to offenders given partly suspended prison sentences with control-oriented special conditions, offenders given fully and partly suspended prison sentences with a combination of control- and behaviour-oriented special conditions ran a smaller risk of recidivating. Furthermore, offenders given fully suspended prison sentences without special conditions had a smaller risk of recidivating compared to offenders given partly suspended prison sentences with control-oriented special conditions.

Policy implications

Based on the findings, three policy implications were deduced.

A first policy implication concerns increasing public support for suspended sentences by keeping the public informed about the nature and aims of these sentences. Although the public is generally punitive regarding their opinions and attitudes towards sentencing, they are also willing to support suspended sentences as long as they view suspended sentences as punitive. However, the fact remains that the public continues to have little knowledge of non-custodial sanctions such as suspended sentences. As Freiberg and Moore (2009: 109) argue, ‘while judicial officers may regard suspended sentences as a significant penalty, in the public mind the offender awarded such a sentence is regarded as “getting off”, “walking free”, or as having received a “slap on the wrist”.’ Although previous studies found that the public has some knowledge of suspended sentences, to increase its support officials should continue to inform the public regarding this sanction and its different forms and degrees of punitiveness. Informing also has the advantage of increasing public confidence in the criminal justice system, which in turn increases support for suspended sentences.

A second policy implication concerns the importance of supervising compliance with the legal requirements (i.e. the general and special conditions) of suspended sentences. This thesis has found three factors that can increase compliance, and hence the effectiveness of suspended sentences, which offer useful guidelines for the criminal justice system. Firstly, a procedurally just treatment by the judge can increase probation supervision compliance. Procedural justice literature describes four elements judges need to consider in creating a fair treatment: (1) judges allow offenders to voice their case during the trial, (2) judges abide by the rules and apply these rules without bias, (3) judges treat the offenders with respect and dignity, and (4) judges are trustworthy. It is important that judges are aware of these four elements and that they are kept in mind during a trial.

Secondly, the probation officer plays an important role in increasing probation supervision compliance. A positive relationship – where the probation officer is respectful, listens and treats the probationer normally – influences compliance. In staff training, the importance of the role of probation officers in increasing short-term and longer-term compliance should be stressed, as the way in which the programme is delivered is just as crucial as the design of the programme. The Probation Service should train all (new) probation officers in the theory and practice of the R Core Correctional Practices (i.e. principles that increase the effectiveness of how correctional programmes are delivered to offenders), which focus specifically on how to develop a collaborative officer-probationer relationship.

A final factor that can enhance compliance is increasing the perceived certainty of revocation in case of non-compliance. For the probation officer, the challenge lies in developing a positive relationship (i.e. care) while also monitoring the probationer (i.e. control). One way to monitor compliance is by attaching probation supervision to the sentence. Probationers would have to meet with their probation

officers at least once a month, resulting in more surveillance. Furthermore, probation officers should constantly remind their probationers that they are monitoring their compliance and should respond consequently in case of non-compliance (for example, by giving them a warning). This will increase the probationers' perceptions of the risk they run of getting sanctioned. This firm but fair approach is expected to be an effective way of reducing recidivism among general probationers. Probation officers should be educated in how to balance this dual role of control and care.

A third and final policy implication regards the effectiveness of suspended sentences over short-term imprisonment. In general, we found no difference in recidivism rates. This finding does not suggest, however, that 'nothing works' or 'nothing matters' and judicial and political enthusiasm for suspended sentences should not be dampened. Yet, the expectation that short-term imprisonment is less effective than suspended sentences finds no support in this thesis, either. Instead, criminal history provides guidelines for the court about the sentences it should impose. Suspended sentences carry a greater recidivism benefit, especially for recidivists. Among first offenders, on the other hand, short-term imprisonment is more likely to reduce the risk of recidivating. However, recidivism is not the only consideration policymakers make. The costs of sentencing from a financial perspective are also considered and in 2009 1.1 billion euro's of the total 2.2 billion euro's was spent on prisons and incarcerating offenders. Approximately 100 million euro's of the 2.2 billion euro's went to the Dutch Probation Service and Youth Care Agency. It is worthwhile that future research includes a cost-benefit analysis of suspended sentences versus short-term imprisonment.

Concluding remarks

In line with the central aims of this thesis, we have explored different aspects of suspended sentences using various methods and samples. We first examined to what extent public support for suspended sentences can be increased. We found that such public support exists and can be increased as long as the public has confidence in the criminal justice system and the public perceives these sentences as punitive. Secondly, we examined to what extent three theoretical notions on why suspended sentences should work – deterrence, rehabilitation and socio-psychological factors – increase short-term and longer-term compliance. We found that deterrence (i.e. the threat of punishment) increased longer-term compliance, while rehabilitation (i.e. special conditions) did not reduce recidivism. Socio-psychological factors – a procedurally just treatment by the judge and a positive alliance between probation officer and probationer – predicted short-term compliance with the conditions of the probation supervision. Yet, while we have mainly examined these factors separately in this thesis (e.g. short-term or longer-term compliance, probation supervision or suspended sentences in general) the next step is to explore which combination of elements of suspended sentences is effective in increasing short-term compliance and reducing recidivism, and to determine its effectiveness compared with other sentences.