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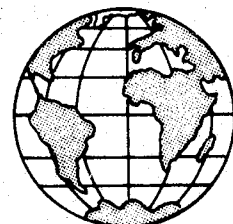
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From The Netherlands

The Dutch Experiments With Community Service

Testing of community service in The Netherlands forms the basis for recommending changes in penal law.

By Josine Junger-Tas

Introduction

This report explains the testing and evaluation of community service (CS) as a penal sanction for adults in The Netherlands. It presents background information, describes the nature of the CS experiments, and details the results of descriptive and evaluative research. It also recommends three changes in the Dutch penal law.

Background of the Dutch system

Awareness of the English system of CS generated interest in developing such a system for The Netherlands. Introduced in England in 1972 as a new sanction to be ordered by a judge, CS was received enthusiastically. Judges viewed it as a sanction in its own right, probation officers saw it as a form of rehabilitation, and the community viewed it as a form of reparation.

In The Netherlands, a committee was formed in 1974 to consider the desirability of more diverse sanctions. As a result of the committee's work, the Minister of Justice nominated a special Commission in 1980 whose task was to establish experimental CS programs in several court districts. Eight of the Nation's 19 court

districts took part in the experiments starting in 1981.

Differences between the English and Dutch systems

The CS efforts in The Netherlands differed in several respects from those in England. England changed the law first, whereas the Dutch decided to conduct and evaluate a series of experiments within the existing legal framework. The Dutch planned to use the evaluation results in recommending changes in the law. England requires a judge to impose CS, but the Dutch allowed either a judge or a prosecutor to impose it. The Commission proposed that CS be used early in the penal process; it could thus function as a form of diversion, removing offenders from the justice system and avoiding a criminal record. The Dutch proposed use of CS in five different cases: unconditional dismissal by the prosecutor, suspension of the decision to prosecute, conditional dismissal, suspended sentence, and special condition in the case of a noncustodial sentence.

The objectives of CS represented another contrast between the English and Dutch systems. England established CS as an alternative to imprisonment but never clearly stated this goal or agreed on eligible cases. As a result, CS replaced a prison sentence in only half the cases. To avoid

this problem, the Dutch clearly stated that CS's main goal was to replace prison sentences of up to 6 months. The Commission and the Minister of Justice outlined three further goals: that CS be adequately completed within specified time limits, that CS constitute a positive experience for both the offender and the agency in which the offender worked, and that conviction rates of CS workers not compare unfavorably with those of similar groups of offenders.

In addition, the maximum number of hours of CS that can be imposed in England is 240; in The Netherlands, it is 150, to be completed within 6 months.

Issues

From the start, the experiments generated concerns among the judiciary, the probation service, and lawyers. Many judges and prosecutors considered CS to be too lenient, doubted that enough offenders would be eligible for it, and feared that the probation service would not accept the necessary control and monitoring functions. Other groups feared that CS would be allowed only for a highly selective group of offenders and thus not be used for offenders most in need of rehabilitation, and that CS would be misused to replace more lenient punishments, like fines and probation, rather than short prison terms. A third concern was that appropriate placements would be lacking

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because the country has no network of volunteer organizations. Finally, the public was expected to oppose the use of offenders in human service work.

Community service in practice: study results

Data on the actual operation of CS came from records gathered between February 1981 and May 1982. A total of 453 cases was analyzed. In addition, interviews were conducted with prosecutors, judges, probation workers, staff of community agencies, and offenders assigned to CS to determine attitudes toward CS and its success in attaining its objectives. The following paragraphs describe the result of the evaluation.

Offender characteristics

Over 95 percent of the offenders were men. Their age distribution was similar to the total population of offenders, with almost half aged 18 to 24 and just over a third aged 25 to 39. More CS workers than other offenders were in the 18 to 20 age group, however. The offenders had low educational and skill levels. Two-thirds were not working, and most lived on social security payments.

While a pre-experiment poll favored the application of CS to violent, traffic, and property offenders, in that order, in actuality it was used mainly for property offenders, then traffic offenders, and then a combination of property and violent offenders. There was reluctance to grant CS to drug, sexual, or violent offenders. Property offenses included burglary, fraud, forgery, and theft; aggressive offenses were primarily violence against the person; and the primary traffic offense was drunk driving. A total of 55 percent of the offenders had previous criminal records, usually for a property or traffic offense, and nearly half of the CS group had spent some time in pretrial detention, usually 1 to 2 weeks.

Decisionmaking process

Offenders rarely refused CS, even though no law required it. They regarded other sanctions, especially prison, as worse options. Because the measure cannot be imposed, in theory the initiative and planning for CS come from the offender. In practice, probation workers presented half the proposals for CS, lawyers 25 percent, and prosecutors 3 percent. Offenders took the

initiative in only 5.5 percent of the cases and did so in conjunction with their probation officers in 4 percent.

The Commission regarded CS as an alternative to sanctions, and its guidelines for three experiments stressed the role of the prosecutor. The prosecutor was to "contract" with the offender for the type of work, number of hours, and time limits of the service. Some disliked the idea of contracting with offenders; others did not mind. Strictly speaking, at the prosecutor's level the "offenders" were actually only suspects. Thus, only confessing suspects were eligible for CS.

The Commission proposed three CS applications at the prosecutor's level: unconditional dismissal, independent of successful CS work completion; suspension of the decision to prosecute; and dismissal conditioned on successful CS work completion. Prosecutors applied CS both in ways proposed by the Commission and in other creative ways, including conditional dismissal with probation; agreement not to seek a prison sentence in court if the CS was successfully completed; recommendation for pardon after successful completion; and agreement to waive a fine after successful CS. Dismissal conditional on successful CS was used in 30 percent of 143 cases studied, conditional dismissal with probation in 24 percent, suspension of the decision to prosecute in 17 percent, and unconditional dismissal in 14 percent. The prosecutor did not demand a prison sentence in 12.5 percent and used conditional recommendation for a pardon in 2 percent.

With no law in effect, there was no obligation for judges or prosecutors to follow the Commission's guidelines. Three districts therefore rejected the prosecutor model because of prosecutors' heavy use of dismissal. These districts felt that the only way to ensure a custodial sentence was to have CS ordered by a judge, because court handling ensured imposition of a short sentence and documented the decisions to replace a prison term with CS. However, judges issued suspended sentences in 80 percent of 304 cases studied, although both suspended sentences and probation with CS were options. The prosecutor model was popular in the other five districts. However, a shift away from the diversion model occurred; by 1983, the judicial model accounted for 80 percent of the CS assignments. Offenders receiving CS from prosecutors tended to be prop-

erty offenders and to be younger than those assigned CS by judges. Only 25 percent of the cases before judges were first offenders, while 50 percent of the prosecutors' cases were first offenders.

Work placements and hours

Three-fifths of the placements were in neighborhood centers, clubhouses, hospitals, and homes for the elderly. Over two-fifths of the tasks consisted of repairs, maintenance, and painting. Other tasks often assigned were odd jobs, domestic work, and work in parks and the woods. Only 5 percent of the jobs involved nursing or youth work. The individual placements were unrelated to the offenses.

The Commission guideline specifying lower and upper limits of 30 and 150 hours was not followed in 15 percent of the cases. In half of these, judges assigned more than 150 hours, and in half fewer than 30. CS was a full-time job in about 40 percent of the cases and a leisure-time job in 17 percent of the cases. Unemployed offenders were generally assigned more hours.

The Commission believed that each CS plan should match the needs and best interests of the offender. Increasingly, however, CS hours were related to the potential prison sentence, reflecting the view of CS as a real sanction. However, many prosecutors and judges felt that 150 hours was not equivalent to a 6-month prison term, which in Holland is considered a long sentence. More than 60 percent of the judges considered 150 hours to correspond to 3 months of imprisonment. When the intended prison sentences were 3 months or more, the number of hours imposed increased to about 300 hours or more.

Control and feedback to judicial authorities

Although probation officers were willing to initiate proceedings and guide and support offenders, they didn't want to be extensions of judicial authorities and act as controlling agents. Criticisms of the probation service as ineffective and probation workers' opposition to imprisonment were further complicating factors. Probation officers gave guidance and support in 57 percent of 446 cases, but gave progress reports to the judiciary in only 46 percent of the cases. More recently, however, probation workers' attitudes have changed, and acceptance of the probation service's role in CS is now widespread.

The offender's motivation has been the key factor in getting a CS plan submitted and accepted. Other factors were the presence of a well-worked-out proposal and the view that community service was better for the offender than imprisonment. Finding appropriate placements has not been a problem, despite fears that this would be difficult. Some districts have a placement pool for this purpose.

Outcomes of community service

In 89 percent of the cases, the CS was completed on time and to the agency's satisfaction. Unsuccessful outcomes were related to the offender's youth and to assignment of more than 150 hours of service, but offense and employment status were unrelated to outcome. Half of the failures resulted from offenders' irregularity or absenteeism; the other half, from illness, accident, or family circumstances. While the success rate was higher when authorities predicted success, in general, pessimistic expectations were unwarranted.

Offenders whose cases had not been dismissed and who completed CS successfully had to reappear in court; they usually received a symbolic probation term of about a week. One third had to pay fines, and 15 percent lost their driver's license. Surprisingly, 14 offenders received unconditional prison sentences, most to equal their pretrial detention period, but 2 had to serve 3 to 4 months. Ten of the 44 CS failures were not prosecuted; about half were convicted and received custodial sentences averaging 2 months.

Organization of community service

Court districts used a variety of organizational approaches. All formed an advisory committee made up of the CS organizer and representatives of the judiciary, probation, and the bar that decided on general policy issues. CS organizers administered placement banks, sought new placements, and acted as liaisons between offenders and placements. In two districts the organizer also controlled the operation of the CS agreements and reported to the judiciary. Six districts used a strict tariff system relating CS hours to the potential prison sentence. In most cases, the CS proposal went first to the prosecutor. Probation officers often wrote final brief reports to the judiciary. Once CS is introduced by law, both control and reporting will probably be the responsibility of the probation service.

The place of community service among other sanctions

Three research approaches were used to determine whether or not CS increased the number of people drawn into the criminal justice system and whether or not it increased the severity of sanctions. CS workers were compared with those whose proposals were refused, with all offenders sentenced to 6 months or less, and with offenders who were fined.

Selection of offenders

Analysis of the 178 proposals that were refused during the research period showed that these offenders did not differ from the accepted group in age, life situation, education, or employment situation. However, 71 percent of the refused offenders had committed property offenses versus 47 percent of the accepted ones. Only 7 percent had committed traffic offenses, compared to 23.5 percent of the accepted ones. Refused offenders had more often committed offenses with damage, had been remanded in custody, and had longer periods of detention. Their offenses were also generally more serious than those of the CS group, and seriousness as well as high risk of recidivism were mentioned by more than 55 percent of the judges as the reason for refusing the proposal. However, 29 percent of the judges refused because the cases were not serious enough to justify an unconditional prison sentence, and therefore not serious enough for CS. One hundred convictions for the 178 refused offenders could be traced, and 74 of those received prison sentences.

Short prison sentences and community service

A total of 11.5 percent of the 10,000 eligible offenders were assigned CS in the study districts in 1981 to 1982. Usage of CS ranged from 6.5 percent to 20 percent of those eligible. CS is expected eventually to replace 20 to 30 percent of prison sentences in eligible cases.

The CS group was younger and more likely to live with parents than the prison group. The two groups were similar in employment status. Three-fourths of the CS group committed property offenses versus two-fifths of the prison group, and CS offenders caused more damage or injury than the prison group. While CS offenders were more often detained, their detention peri-

ods were generally shorter than those of the prison group. About three-eighths of the CS group and one-eighth of the prison group were first offenders. Findings showed that CS is preferentially imposed on first offenders who have committed property or traffic offenses of medium seriousness.

Fines and community service

The CS group, the group fined, and the prison group were similar in age and sex. However, fine payers caused damage or injury less often and were more likely to be employed, unattached, and living on their own than CS workers. Twice as many fine payers as CS workers were involved in traffic offenses; one-third as many committed property offenses. Only 5.5 percent of the fine payers were detained, compared to 50 percent of the CS group. Thus, CS did not displace fines. CS offenders were also distinct from those imprisoned. Results suggest that, at least during the experimental period, CS has been applied as intended—to replace custody.

The acceptance of community service by Dutch society

To determine the overall acceptance of CS, it was decided to interview staff and supervisors of agencies in which offenders were placed, as well as offenders who had done CS. All the participants were interviewed at the end of the experimental period.

Opinions of placement providers and supervisors

A quarter of the organization staff interviewed had learned about CS from the newspapers, one-third were informed by the probation service, and others learned from radio, television, lawyers, or the CS organizers. These providers decided to participate in the program because they felt sympathetic toward the experiments, were concerned about resocialization and related issues, or needed the free labor to help in the agency's work.

Two-thirds of the respondents had personally supervised CS workers. Almost all (85.5 percent) had positive to very positive feelings about their experiences. While agency personnel and other volunteers raised some objections, clients and patients never did.

The experiments did not change staff attitudes toward offenders, indicating that

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these organizations represented a positive group within Dutch society. Two-thirds said they would collaborate again; one-third expressed conditions, such as availability of work or the offender's personality. Informing other staff about the CS workers occurred 85 percent of the time and did not lead to tensions. Two-thirds of the supervisors did not change their level of supervision, while one-fifth supervised CS workers more closely than regular workers. Not keeping to the agreement and lack of supervision by the probation officer were problems mentioned by 14 percent of the supervisors. In almost one-fourth of the cases, the CS workers stayed on as volunteers or paid employees after finishing the CS. The supervisors had generally positive feelings about CS, but they regarded supervision to be crucial to successful outcome.

Opinions of offenders doing community service

The researchers were able to reach only half of the offenders who did CS; thus, this sample may not be representative. Half learned about CS from the probation service, 25 percent from their lawyer. Almost half wanted to do CS to avoid prison, 25 percent mentioned family circumstances, and about 10 percent were afraid that going to prison would cost them their jobs. More than half had a choice of placements, basing their choices on their training and experience, whether the job seemed interesting, the location, and working conditions. In the majority of cases, the offender or others with the offender's consent informed coworkers about the CS. Almost 90 percent of offenders generally felt accepted by colleagues.

Over 90 percent judged their experiences positively. Three-fifths felt that the number of hours corresponded to the offense's seriousness. All preferred CS to a term in prison. Two-thirds considered CS to be a real sanction. However, the others saw it as ordinary work, reparation to society, or a combination of a sanction with other elements.

Evaluation of the experiments

Judges, prosecutors, the bar, and the probation service were surveyed by mail after the experiments ended. Two-thirds considered CS to be a real punishment, 16 percent viewed it as a form of resocialization, and others considered it an alternative to sanction or reparation to the community.

Judges and probation officers were more likely than prosecutors and members of the bar to consider CS a form of sanction.

In response to questions about which type of CS application they preferred, prosecutors said they favored unconditional or conditional dismissal, as well as the suspended sentences. Judges, the bar, and probation officers preferred suspended sentences or sentences with CS as a condition. Probation officers and the bar also favored CS as a replacement for pretrial detention. All types of respondents considered CS appropriate for property offenses, aggression against property, and traffic offenses. Prosecutors were far more likely than others to favor CS for first offenders. Proportions favoring CS as a substitute for either prison or large fines were similar (41 and 45 percent). Although almost half thought that CS could replace a prison sentence up to 6 months, three-quarters of the judges and half the prosecutors felt that the maximum replaceable sentence should be 3 months.

Over half the respondents favored a system specifying how many CS hours equated to certain amounts of time in prison. The others disliked the system, but felt it to be unavoidable. The majority considered 150 hours to correspond to 3 to 4 months of prison. Preferred placements were environmental projects, forestry, homes for the elderly or handicapped, hospitals and clinics, youth clubs, and neighborhood houses. Nine-tenths of the respondents considered CS to be a reasonable to great success. Prosecutors and judges unanimously favored the experiments; however, 14 percent of the lawyers expressed some doubts.

Conclusions

Success of community service

Community service succeeded with respect to three of its goals. First, it did displace custody. Those assigned CS were more serious offenders than fine payers; their offenses were less serious than those refused CS or given short-term sentences. Personality factors and class bias did not appear to influence decisions to assign CS. Because most sentencers did not regard 150 hours of service as equivalent to a 6-month prison sentence, CS did not displace these sentences. As a result of the research, the Commission has recommended maintaining the requirement that CS displace cus-

tody. It has also recommended raising the maximum number of service hours to 240.

Second, CS generally was completed successfully. The roles of the organizers, supervisors, and coworkers were all important to the offenders.

Third, CS was usually a positive experience for the participating agency and the offender. The continuing contact between many offenders and the agencies indicated this response to be the best.

For the fourth goal, which deals with reconviction rates of CS workers, a followup study is planned comparing CS workers' rates to those of offenders receiving short prison terms. Expectations are for similar reconviction rates.

Character of community service

Almost all participants in CS regard it as a real sanction. Many prosecutors consider it to be a form of diversion. To keep diversion as a possibility, the Commission recommended three changes to the penal law: CS should be either a transaction arranged by a prosecutor, with dismissal of the case after successful completion; a main sanction ordered by the judge, with mention in the verdict of the prison sentence; or a form of pardon, with remission of the original sanction after the CS is completed.

The Commission also specified that work placements provide work that is in the public interest. Public and State-financed private nonprofit organizations should be the preferred placements, and the work should not compete with the regular labor market. The organization of CS is the responsibility of the probation service, which regards it as an important penal sanction and is willing to find meaningful alternatives to imprisonment. The probation service will appoint CS organizers at the district level to handle organization and management.

As the Minister of Justice noted, CS represents one of the main penal system innovations in the last decade. It offers one of the best hopes for future penal reform in The Netherlands.

END