

Public opinion on lay participation in the criminal justice system of the Netherlands

Some tentative findings from a panel survey

Albert Klijn & Marnix Croes*

1. Introduction

In their introduction to the book *Disaffected Democracies* the editors Pharr and Putnam¹ pose the premise that public confidence in the performance of representative institutions has declined in most trilateral democracies. In that sense these democracies are troubled. In summarising the explanations that a number of social researchers give for this development, they point to three factors. Firstly the upward change in accuracy and comprehensiveness of publicly available information about the institutional performances; secondly the upward change in the criteria used by the public for evaluation of the institutional performances; and thirdly: the decrease in the performance of the institutions.² Although they consider the last factor to be the most important one, they have to admit that there is little agreement among researchers regarding the question how to measure the ‘performance’ of which public institution.

Regarding these public institutions, one should think of the Parliament, the legal system, the police, the civil service as well as the army. This article focuses on the legal system. Since the mid-1990s the Justice Issue Monitor has measured Dutch public confidence in the judiciary by reference to the proposition: ‘Judges in the Netherlands do their job well’.³ Over a period of more than ten years the percentage of respondents agreeing with this statement varied between 56% and 59%.⁴ Consequently, it would appear that public confidence is rather stable over time. This is corroborated by a recent compilation of international, as well as national research⁵ on public confidence in the legal system.⁶ According to this study, the level of confidence reached

* Dr. Albert Klijn (a.klijn@rechtspraak.nl) is advisor for the socio-legal research program of the Netherlands Council for the Judiciary. Dr. Marnix Croes (m.croes@rechtspraak.nl) is researcher at the WODC, the Research and Documentation Centre of the Dutch Ministry of Justice. Currently he is part-time employed as senior-researcher by the Netherlands Council for the Judiciary.

1 S.J. Pharr & R.D. Putnam, *Disaffected Democracies: What's Troubling the Trilateral Countries?*, 2000.

2 Cf. K. Newton & P. Norris, ‘Confidence in Public Institutions: Faith, Culture, or Performance?’, in S.J. Pharr & R.D. Putnam (eds.), *Disaffected Democracies: What's Troubling the Trilateral Countries?*, 2000, pp. 52-73.

3 From other research we know that people who answer this question predominantly think of criminal judges, being the most visible type of judges within the judiciary.

4 P. Dekker, C. Maas-de Waal & T. van der Meer, *Vertrouwen in de rechtspraak: theoretische en empirische verkenningen voor een monitor*, 2004.

5 P. Dekker & T. van der Meer, *Vertrouwen in de rechtspraak nader onderzocht*, 2007.

6 Various editions of the Eurobarometer – a long-running survey that gathers information on social developments in a large number of European countries – shows that public confidence in the legal system fluctuated between 56% and 64% in the period 1997-2002. Successive editions of the Dutch National Voter Survey for the years 1998, 2002 and 2003 reveal that around 71% of the respondents had a lot or quite a lot of confidence in the judiciary. See Dekker *et al.* 2004, *supra* note 4. While they noted fairly cautiously that this confidence was declining, Dekker & Van der Meer 2007, *supra* note 5, show that the confidence in the administration of justice remains reasonably stable.

61% in 2005, bringing the Netherlands (*ex aequo* with Luxembourg) into fourth position, after Denmark (81%), Finland (76%) and Austria (74%).

For the legitimacy of the judiciary one may argue that, besides the tendency in the level of confidence, the degree of confidence is important too. In that sense the question is not just whether the rate of confidence has altered (and, if so, to what extent), but if the actual level of confidence is high enough. This question plays an important role in the current debate concerning the desirability of the participation of laymen in our criminal justice system. In the Netherlands, laymen play no meaningful role in the criminal justice system. Unlike most other countries, the Netherlands does not practice trial by jury and does it not employ lay judges. Every now and then, this situation results in parliamentary debates as to whether the Netherlands' criminal justice system should copy the foreign systems with respect to lay participation. Politicians who advocate the participation of laymen in the criminal justice system talk of restoring confidence in the judiciary, reducing the workload and – sometimes rather circumspectly to avoid allegations of populism – introducing severer sentences in keeping with the long-held wishes of the general public. Legal academics who favour such participation argue that it would improve the quality of the decision-making process, enhance the democratic legitimacy of the decisions and make the administration of criminal justice more understandable to the general public. Opponents or sceptics regard these promised benefits as illusory and point to the unduly high costs of what they regard as a fundamental break with the principles of the Dutch criminal justice system. However, some refer to their (mostly implicit) anxiety for the general public's wish for severer sentences.⁷

Assuming the expected results of such a systemic change, as favoured by the proponents of lay participation, would be welcomed by those who are discontent with the actual performances of the judiciary, one would expect that such a change would also be favoured by the general public. This article aims to empirically test that expectation. Does the Dutch public favour the introduction of laymen into the judiciary? If so why, and if not, why not?

2. The actual evaluation of the judiciary by the public

When people talk about the public's annoyance with the criminal judges, they usually refer to two aspects: *responsiveness* and *punitiveness*. Responsiveness is used to denote both the extent to which criminal judges are aware of what is going on in society and the extent to which this is reflected in their judgments.⁸ Punitiveness refers to the severity of the sentence that is considered appropriate by the judges and by the public as a response to a particular crime.⁹ With regards the first, the public is said to think that judges are out of touch and have what is called a 'responsiveness deficit'. Regarding sentencing, it is alleged that there is a gap that separates judges and the public. The public would like to see stricter sentences imposed than the judges are willing to hand down. This shows there is a 'punitiveness deficit' as well. Is it true that these two deficits would therefore motivate individuals to favour the participation of laymen in the criminal judicial system? To answer this question it is first necessary to examine the existing research regarding the two supposed deficits.

7 C. Kelk, 'Enkele strafrechtelijke ontwikkelingen en de volkswil', 2007 *Justitiële Verkenningen*, no. 2, pp. 44-56; A. Knigge, 'De stem van het volk', 2006 *Rechtsgeleerd Magazijn THEMIS*, no. 6, pp. 235-236.

8 H. Elffers & J.W. de Keijser, 'Het geloof in de kloof. Wederzijdse beelden van rechters en publiek', in J.W. de Keijser & H. Elffers (eds.), *Het maatschappelijk oordeel van de strafrechter*, 2004, pp. 53-84.

9 J.W. de Keijser, P.J. van Koppen & H. Elffers, 'Bridging the gap between judges and the public? A multi-method study', 2007 *Journal of Experimental Criminology*, pp. 3-13. (This article is based on their earlier published Dutch study: J.W. de Keijser, P.J. van Koppen & H. Elffers, *Op de stoel van de rechter. Oordeelt het publiek net zo als de strafrechter?*, 2006.)

Firstly, the supposed responsiveness deficit. The abovementioned reference to the research of Elffers and De Keijser¹⁰ was deliberate, since they attempted to measure this deficit in their 2003 survey for the Dutch Institute for the Study of Crime and Law Enforcement (*Nederlands Studiecentrum Criminaliteit en Rechtshandhaving, NSCR*). They presented four propositions concerning the public's perception of the present attitudes of criminal judges to a representative sample of the population. The more the respondents agreed with the propositions the less responsive they considered the criminal judges to be (see Box 1).

Box 1: Propositions (NSCR) on responsiveness of the judiciary

Propositions concerning the position currently taken by judges

1. Judges too often make decisions that the man in the street cannot accept
2. Judges do not explain their decisions sufficiently to the man in the street
3. Judges are out of touch with what is going on in society
4. Judges live in an ivory tower

Propositions concerning the desired position to be taken by judges

1. To guard their independence judges must shut themselves off from the public
2. Judges must focus solely on the case itself and not on what the public think
3. Judges should not be swayed by public indignation about a crime they are trying
4. It is more important for a decision to be legally correct than for it to be accepted
5. *There's nothing a judge can do to prevent some decisions being met with incomprehension by the public*

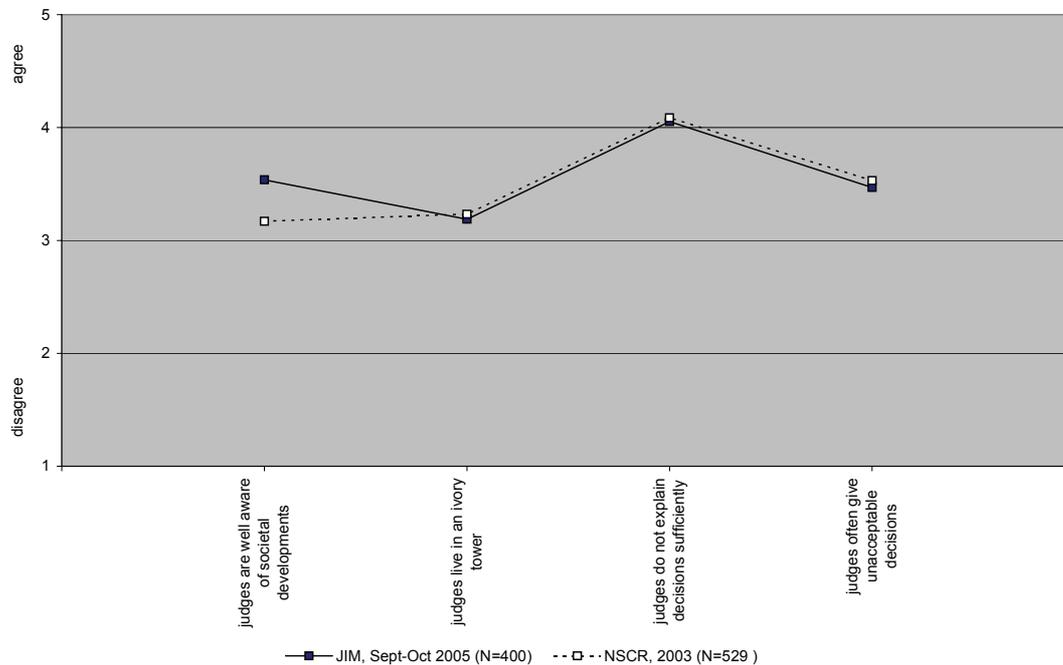
NB: Proposition 5 of the second series was omitted in the repeat measurement by Informart owing to lack of space.

Although the respondents agreed with the propositions (particularly proposition 2 regarding the lack of clarity of the decisions), they did so only to a relatively limited extent. According to the researchers, the judges are perceived by the public as 'being not very responsive, but not to the extent that (...) this is really a serious problem'. In 2005 the views of the public were assessed again in much the same way.¹¹ Figure 1 shows the result in combination with the 2003 NSCR-survey figures. Public perceptions have remained virtually unchanged. At first sight, there does not appear to be much public dissatisfaction; it is simply felt that judges should explain their decisions better. However, as respondents tend to shy away from the extreme answer categories in surveys, there may well be more hidden behind their answers. This will, therefore, be dealt with this in more detail below.

10 Elffers & De Keijser 2004, *supra* note 8.

11 In the autumn of 2003 the then Netherlands Institute for Public Opinion and Market Research (*Nederlands Instituut voor de Publieke Opinie en het Marktonderzoek, NIPO*) submitted a series of nine questions to their CAPI at-home panel on behalf of the NSCR. The members of the panel were a cross-section of the Dutch population aged 18 and over. At the request of the Council, the same questions were submitted in the autumn of 2005 to a sample of the population through the JIM survey carried out by Intomart. The technical aspects of the survey are disregarded here.

Figure 1: Opinions of the Dutch public on the actual position taken by criminal judges, 2003 and 2005



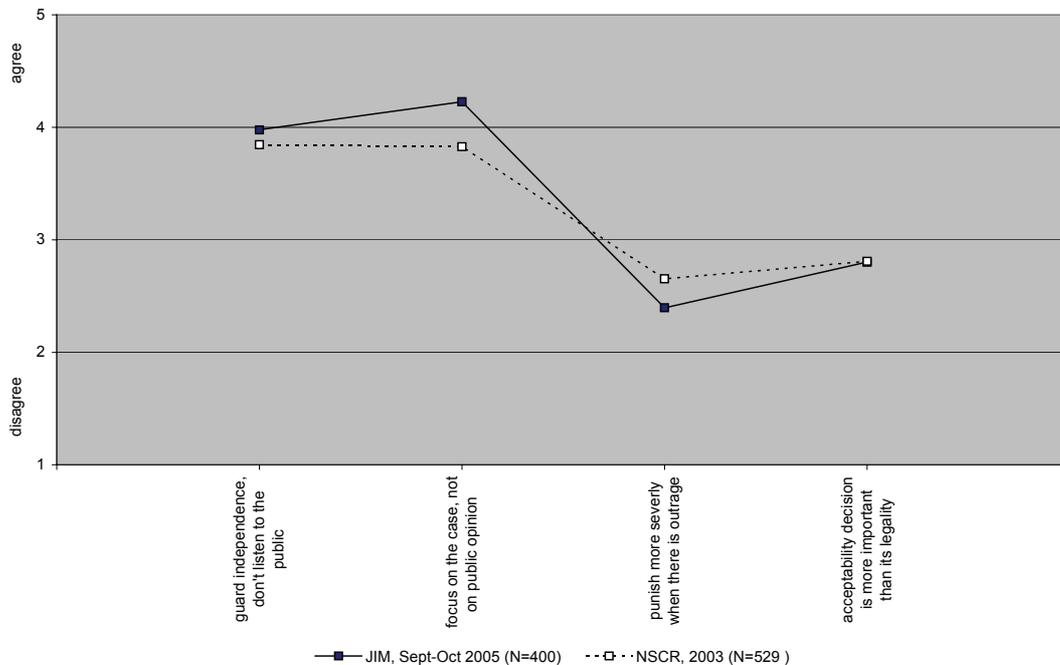
What about the ‘punitiveness deficit’? From the outset the Justice Issue Monitor also contained the statement that ‘criminals are sentenced too leniently in the Netherlands’. Over the years the results show a strong degree of agreement with this statement: between 80% and 90% of the public consider the sentences too lenient. Furthermore, it would be wrong to think that there is a major gap between people’s words and deeds. An experimental study in sentencing carried out on behalf of the Council for the Judiciary (*Raad voor de rechtspraak*) in 2004 by researchers of the NSCR¹² showed that judges and lay people impose substantially different sentences when handed the same files. Whereas the criminal judges imposed on average a sentence of 29.7 months’ imprisonment for a case of aggravated assault, the citizens sentenced the offender to 60.9 months for the same offence. Moreover, whereas the criminal judges imposed a sentence of 2.5 months’ for a common assault, the citizens considered 12.1 months to be appropriate. Depending on the circumstances of each case, on average 84% to 96% of the respondents did impose severer sentences than the criminal judges did. Although the public thus imposes severer sentences than the criminal judges, the public does not wish to punish excessively; without being told the current upper limits for the respective crimes the respondents’ sentences did not exceed these limits.

Should the criminal judges follow the views of the public? This question was part of a NSCR survey on public perceptions in 2003, and replicated two years later (see Box 1). The results are shown in Figure 2. The public has a clear view on the desired position of the criminal judges and they also consider – not unimportantly – that the criminal judges should reach an independent decision. It should, however, be noted that both surveys concentrated on the

12 De Keijser *et al.* 2007, *supra* note 9.

responsiveness of the criminal judges and (with the exception of incidents causing extra indignation) not on their punitiveness.

Figure 2: Opinions of the Dutch public on the preferred positions to be taken by criminal judges, 2003 and 2005



3. What about the public opinion on lay participation?

Assuming that the last presented findings also refers to the punitiveness deficit, one might infer that the public would not seize the opportunity to participate in the criminal justice system. But why not ask them instead? Accordingly, this was done in autumn 2006 by the Council for the Judiciary and the Research and Documentation Centre (*Wetenschappelijk Onderzoek en Documentatiecentrum, WODC*) of the Dutch Ministry of Justice.

The questionnaire, sent to a representative sample of the Dutch population aged 18 years and over, centred on two sequences of questions.¹³ The first sequence was intended to assess the nature and extent of support among the population for seven kinds of lay participation in the criminal justice system. These kinds of participation were listed in (ascending) order of involvement from no individual contribution or responsibility whatsoever (visiting courts on so called 'open days') at one extreme, to deciding on questions of culpability and punishment at the other extreme (the descriptions presented to the respondents are presented in Box 2).

13 The survey was conducted by TNS NIPO using the CASI (Computer Assisted Self Interviewing) method. The respondents consisted of 1,056 members of the TNS NIPObase panel. The data were weighted to the Dutch population aged 18 and over (M. Koomen, *Lekenparticipatie in het strafrecht. Het beeld van de Nederlandse bevolking*, 2006).

Box 2: Forms of lay participation in the administration of (criminal) justice

Various forms of lay participation in the administration of criminal justice are conceivable. Some of these forms are listed below in ascending order of lay involvement. Please indicate to what extent you are on the whole for or against the following forms of lay participation.

1. There should *no lay participation in the administration of justice*.

Informative participation

2. *Open days* should be organized at courts so that the public are aware of how the courts, judges and other officers of the court function.
3. Ordinary members of the public should be actively invited to meetings at which they have the opportunity to *discuss* relevant social issues (e.g. tackling crime), for example with judges, public prosecutors and police officers.
4. Lay panels should be organized to enable members of the public to give their *views on guilt and sentencing retrospectively* by reference to an actual case, so that judges are better informed of what the public thinks about the administration of justice.

Advisory & Decision making participation

5. Lay panels should be organized in criminal cases: members of the public should *attend court cases and make a recommendation to the judge(s) on the issue of guilt and sentencing*.
6. Ordinary members of the public should *sit on the bench* in criminal cases and *help to decide on the issue of guilt*, but not on sentencing (which is a matter for the judge(s)).
7. Ordinary members of the public should *sit on the bench* in criminal cases and *help to decide on both the issue of guilt and on sentencing*.
8. Lay people should *take over the duties of professional judges* in simple cases.

Each kind of lay participation was successively presented to the participants. In each case they were asked to give reasons for choosing or rejecting the concerning alternative.

The second sequence of questions consisted of the presentation of four criminal cases, followed by a question about which form of participation was considered most appropriate in which case. This concerned the following four cases:

Case 1: Theft

A laptop computer has been stolen from a Media Markt outlet by a young man aged 23, who has had six previous convictions for theft in the past five years. He can be sentenced to imprisonment in an institution for persistent offenders (term of imprisonment plus treatment programme). The victim is a chain store and the financial damage is € 1,099. The defendant has *never* used violence. He has pleaded guilty to theft. The maximum sentence in this case is a term of imprisonment of four years or a fine of up to € 16,750.

Case 2: Complicated fraud

A 56-year-old entrepreneur from Haarlem is suspected of having committed fraud by means of an arrangement involving off-the-shelf private companies (*i.e.* private companies not registered in his name) and of thereby earning € 825,000. The victims are the Tax and Customs Administration and five suppliers who have never been paid for goods delivered to the defendant. The entrepreneur has *not* confessed and the evidential material is very complex owing to the jumble of legal structures. The entrepreneur has never previously been convicted by a court. The maximum sentence if the case is proved is four years' imprisonment or a fine of € 67,000 (separate from the assets that are claimed).

Case 3: Serious accident

Three young men were driving home in a car from a party at around midnight. The driver failed to see a woman cyclist and collided with her. The woman (43) was seriously injured and taken to hospital. The police established at the scene of the accident that the car had been travelling approximately 50 kph too fast. The victim will probably never be able to walk properly again and will therefore have to give up her job (as a hairdresser). The driver is aged 28, is the principal breadwinner of a family with two young children and has never been previously convicted of a serious motoring offence. The maximum sentence in this case is a term of imprisonment of 18 months or a fine of € 16,750.

Case 4: Gangland killing

A 35-year-old Dutchman has been found dead in a nature reserve. Detailed investigative work has revealed that this was a gangland killing (murder) committed because the victim had not paid for a consignment of drugs. The person suspected of the murder has been arrested and interviewed. He is part of a large Dutch network of drug traffickers with a reputation for violence. The defendant has not confessed to the murder, but there is convincing proof of his guilt. The maximum sentence in this case is life imprisonment *or* a determinate sentence not exceeding 30 years.

Given the framework of the survey, the choice of the kind of participation remained limited to the four panels with direct involvement (see Box 2, alternatives 5 to 8). When the respondent opted for one of the panels he was asked whether he himself would be willing to take part in such a panel and, if so, why. This will be dealt with in Section 4.2 below.

4. Participation in various forms and to various degrees

4.1. General preferences and considerations

The results of the first sequence are summarised below. In reply to the general question regarding their stance on lay participation in criminal cases almost four out of ten respondents (37%) stated that they were (wholly or partially) in favour. About the same proportion (39%) opposed participation and the rest (23%) were neutral. As the proportion of those entirely against lay participation (20%) significantly exceeded the proportion of those entirely in favour (8%), the results are more negative than it would appear at first sight. The rejection of laymen participation appears to be based on the assumption that the administration of justice is a matter for judges (mentioned by 57% of the opponents), that the independence of judges should not be compromised (mentioned by 60% of the opponents), that judges are much better at determining judgment (mentioned by 42% of the opponents) and that members of the public should not interfere in the

administration of justice (mentioned by 36% of the opponents). Related to this, 24% of the opponents expected that defendants would more often be wrongly convicted when lay participation would be introduced. This could be due to the assumption that lay people would be more likely to make mistakes, but it is also conceivable that this reflects the fear that the punitive nature of the *vox populi* would make itself felt. Such a fear is at any rate a cause to reject lay participation for the 7% of the opponents who state that offenders will receive severer sentences if lay people participate in criminal trials.

The answers to the various specific forms of participation listed reveal a clear pattern: the greater the degree of effort required by participation and the greater the responsibility it entails, the smaller is the degree of support. There are large majorities for the first three options: attending open days (83%), participating in discussion meetings regarding judicial issues (71%) and participating in panels to advise judges on the public's views with regards guilt and the appropriate sanctions after the conclusion of the cases involved (60%). As only 3% are in favour of giving laymen the role of the judge in simple cases (the other extreme), this is clearly recognised as an unrealistic option. This leaves the intermediate options of (mixed) panels responsible for such duties as *advising* on guilt and the appropriate sanctions during the trial (37%), *participate* in deciding on guilt (28%) or *participate* in deciding on both guilt and the appropriate sanctions (18%). In summary, the public are significantly more in favour of participation of an *informative* nature, than participation in an *advisory* or *decision-making* capacity.

Out of all the respondents who answered the question on the specific forms of lay participation, 71% were in favour of an informative kind of participation (*i.e.* the types 2, 3 and 4 in Box 2); only 6% rejected these modes of participation. Those who were in favour were asked to choose between several reasons for their choice based on considerations of responsiveness.¹⁴ A 'greater degree of public involvement' was the most frequent mentioned reason, followed by the consideration that 'court judgments would become more understandable'. The third consideration was that 'judges will be better informed (about what goes on in society)'.

On average 22% of all the respondents opted for an *advisory or decision-making role during the trial* (types 5 to 8 in Box 2) while an average of 51% opposed these kinds of involvement in the judicial system and 28% were neutral. To substantiate their choice in favour of the advisory or decision-making role during the trial, the respondents could this time not only refer to responsiveness considerations, but also to five considerations that concerned punitiveness. The results show that punitiveness played a considerable role in their considerations, but not a dominating one. Only in the case of the 189 respondents (18% out of the total of 1,056 respondents) that were in favour of laymen taking part in deciding on the culpability and punishment of the suspect, a majority (60%) chose 'severer sentencing' as one of their considerations to choose this option. From this we conclude that, in general, being tough on crime appears to be an underlying consideration for being in favour of lay participation in the criminal justice system. It should be stressed, however, that this is only the case to a limited extent.

4.2. Participation choices in specific cases

As stated above, people were questioned regarding their preferences with respect to participation in the administration of criminal justice in the context of specific cases. In so doing, an attempt was made to identify the 'hidden' goals people may have had in mind by opting for the participation of lay people. The following four cases were presented (see Section 3 above). If the respon-

¹⁴ Punitiveness was not an option in these cases because we assumed that the informative kinds of participation could or would not make sentencing more severe.

dent opted for a form of *advisory or decision-making* participation, he was subsequently asked whether he himself would wish to take part in such a panel and, if so, why.

The attempt to gain more insight into the motivations that underlie acceptance or rejection of lay participation in the administration of justice in criminal cases reveals a dichotomy. 50% to 53% of the respondents favour a kind of lay participation in the cases of the *gangland killing* (case 4) and the *complex fraud* (case 2) respectively. Of the respondents that favour participation, 16% to 11% respectively chose the alternative in which lay people participate in determining the guilt of the suspect and the appropriate sanctions. By contrast, 60% to 63% favour lay participation in the case of the *serious accident* (case 3) and the *theft* (case 1). Here 18% and 14% respectively choose the alternative in which lay people participate in deciding on the guilt of the suspect and the appropriate sanctions. A cautious inference from these results, could be that moral indignation tends to increase the desire for lay participation, whereas legal complexity reduces this desire.

5. Whether lay participation?

The previous sections have been limited to a description of the results of the survey and have disregarded so far the views of the respondents on confidence in the administration of justice that can explain their opinions regarding the desirability of ways of lay participation. Nonetheless, since the extent to which members of the public have confidence in the administration of justice has broader implications,¹⁵ the influence of their confidence should be researched.

5.1. Confidence in judges explained

In the following sections, the explanations for the degree of confidence in the judges will be explored in more detail. This is because the potential influence of lay people on the administration of justice will be channelled through the interaction between lay people and the judiciary. It is the behaviour of the judge which lay people are said to wish to influence. It is obvious (and it is also confirmed by research) that people immediately associate the term criminal court judge with crime fighting. In this area the judge, together with the Public Prosecutor, the police and even the Parliament play a role that is apparent to the public. The correlation between the confidence in the judges and the confidence in the aforementioned public institutions could be interpreted as the extent to which the public at large considers that their security is (or is not) in good hands with the institutions whose job is to protect the domain of the citizens' daily life.

The first finding from our analyses reads that the background characteristics of the respondent, such as gender, age, education and the respondent's own assessment of his or her knowledge of the administration of justice hardly can explain the variation in the degree of confidence in the judiciary (R^2 Nagelkerke = 0.08).¹⁶ The idea put forward by some authors¹⁷ that the confidence of people in their institutions is primarily explained by their private wellbeing, which is supposedly correlated to their background characteristics, is not corroborated in our research. The analysis reveals a much closer relationship between the confidence in the institu-

15 M.T. Croes & M. van Gammeren-Zoetewij, 'Vertrouwen in de geschilbeslechtingdelta', 2007 *Mens & Maatschappij*, no. 1, pp. 51-71.

16 In order to increase readability of our analysis we only indicate here by means of a statistical measure in parenthesis to what extent the characteristics considerations of respondents explain the confidence in the judiciary (the R^2 Nagelkerke) or, as the case may be, the degree of desired lay participation (R^2). Both statistical measures have a minimum of 0 and a maximum of 1. The higher the coefficient, the greater the explanatory power of the variable(s) taken into account.

17 M. Elchardus & W. Smits, *Anatomie en oorzaken van het wantrouwen*, 2002.

tions of the criminal justice system (*i.e.* the legal system, the courts, the police, the House of Representatives and the civil service) on the one hand, and the confidence in the judiciary, on the other (R^2 Nagelkerke increases to 0.66). Since the judiciary is just one of the last segments in the criminal justice chain, and arguably not the most important part, it follows that the degree of confidence that the public has in the other elements of the criminal justice system largely explains the degree of confidence in the judiciary. The degree of confidence in the judiciary can, therefore, be interpreted as the extent to which the public thinks that its security is (or is not) in good hands with the institutions whose job is to protect the public and their way of life.

The next step in the analysis is to examine to what extent any dissatisfaction of the respondents with the functioning of the judiciary influences their confidence in the judiciary, independently of their background characteristics and their confidence in the institutions of the criminal justice system. To this end the respondents were asked to score themselves on a number of propositions derived from previous surveys. These propositions focus on their opinions regarding:

1. The general functioning of the judiciary ('judges do their work well', 'judges are out of touch, they don't know what is going on in society');
2. The functioning of the administration of justice ('proceedings are slow', 'proceedings are expensive');
3. How judges deal with crime ('sentences are too lenient');
4. Opinions on external factors that constrain the actions of the judiciary ('the law hinders the judges');
5. The functioning of the legal system ('the courts make too many mistakes'); and
6. The criminal justice chain ('the action taken by the government authorities in combating crime is too weak').

The degree to which respondents agreed with these propositions is an indication of the degree to which they are dissatisfied with the present situation. Across the board the dissatisfaction appears unrelated to the degree of confidence the respondents have in the judiciary. Only when the view of the public regarding the general functioning of the judiciary was added (referred to at proposition 1) to the model, does it play a relevant role in the degree of confidence in the judiciary (R^2 Nagelkerke increases to 0.73). If a respondent believes that the judges do their work well, he or she is inclined to place more confidence in them. If he or she thinks that the judiciary is out of touch, he or she has less confidence in them.

When all the relevant characteristics and views are taken together in a single analysis in order to assess how each characteristic and each opinion separately affects the degree of confidence in the judiciary (controlled for the effects of other variables), the following picture is obtained. Although there is a correlation between the background characteristics of gender and age, on the one hand, and the degree of confidence in the judiciary, on the other, these characteristics are of only limited importance. The same is true of the respondents' own assessment of their knowledge of how the legal system operates. Educational level plays no role whatsoever. A factor of major importance is the confidence in the principal players in the criminal justice system, *i.e.* the police and the legislature. The greater the confidence in these parts of the criminal justice chain, the higher the confidence in the judiciary. Our analysis reveals no significant connection between confidence in the civil service and the House of Representatives on the one hand and (lack of) confidence in the judiciary on the other.

It is important to note that the two above mentioned motives – responsiveness and punitiveness – both play a role. The former, which is reflected in proposition 1, strengthens confidence. The latter – referring to the opinion that action taken by the governmental authorities against crime is too weak – undermines this confidence. It is interesting to note that the respondents do not appear to hold the judiciary responsible for, in their eyes, the unduly lenient punishment of crimes; there is no correlation between the proposition that crime is punished too leniently and the degree of confidence in the judiciary. Although the judges form part of the authorities that are perceived as acting too weakly, they therefore appear to have a special position in the eyes of the public.

5.2. Lay participation in the justice system: improvement or heavier sentencing?

The second and last question examined here concerns the extent to which background characteristics and opinions of members of the public influence their views with regards the extent to which lay people should be able to participate in the criminal justice. To this end, the desired degree of participation was determined by quantifying and aggregating the answers of the respondents to the question of what specific kinds of lay participation (see Box 2) in ascending order they favored or opposed.

Background characteristics (gender, age, education and knowledge of how the legal system operates) have only a very tenuous link with the desirable degree of lay participation ($R^2=0.02$). Quite apart from these background characteristics, confidence or lack of confidence in the judiciary plays a significant role; the lower the confidence a person has in the judiciary, the greater the influence he or she considers that lay people should have in the administration of criminal justice. However, the increase in explanatory power is still very limited ($R^2=0.05$). If the influence of confidence in the institutions of the criminal justice system (the legal system, the police, the House of Representatives and the civil service) is taken into account the explanatory power hardly increases and remains very low ($R^2=0.06$). This is also the case when the influence of the extent of agreement with the above mentioned propositions 1 and 6 is taken into account ($R^2=0.09$). Altogether, all these factors shed little light on the explanation of the position of the public in the debate on lay participation.

This picture changes if one examines the expectations of the respondents. Here, specific reference was made to the aims that the respondents believe could be achieved through lay participation. These expectations can be inferred from the answers to a number of propositions. These propositions are as follows:

1. The number of *errors* made will *fall*;
2. More *offenders* will be *convicted*;
3. The *sentences* will in general be *more severe*;
4. The *proceedings* will be *shorter*;
5. The *costs* of the proceedings will be *lower*;
6. The *sentences* and the reasons given for them will be *understandable* to more people; and
7. My *confidence* in the judges will *increase*.

It is evident from the analysis of the correlations between the answers prompted by the above propositions that there is an underlying pattern characterised by two dimensions – two underlying concepts which make the reactions to the propositions understandable. On the one hand, there is the ‘*enhancement of the legal system*’ concept (based on the correlation between propositions (1), (4), (5), (6) and (7)), and, on the other, the concept of ‘*more punishment*’ (based on the

correlation between propositions (2) and (3)). In the authors' opinion, both dimensions closely resemble the two motives previously mentioned, *i.e.* responsiveness and punitiveness. If the dimensions are interpreted as the 'basic attitude' of respondents, examination of the extent of the correlation between these basic attitudes and the choice of the extent of lay participation reveals the following. Adding the basic attitude that lay participation would 'enhance the legal system' to the analysis, the explanatory power of the model increases substantially ($R^2=0.34$). If account is also taken of the basic attitude that lay participation would result in 'more punishment', the explanatory power increases only slightly ($R^2=0.37$).¹⁸ It can, therefore, be inferred that support for greater lay participation largely depends on the public desire to enhance the legal system and only to a very limited extent on a desire for heavier sentences.

6. What do the findings signify for the debate?

The debate on lay involvement in the administration of criminal justice has been initiated by politicians who maintain that they have heard and understood the voice of the people. The response of the judiciary and legal academics has been fairly defensive; they have pointed in particular to the dangers of the punitive character of the *vox populi*. As a result, it has quickly become a white vs. black debate. The findings in this article indicate that both these positions are to a relatively large degree unrepresentative of the wishes and views of the public. This is not unique; it quite often the case that dangers are identified or solutions advocated for problems which are shown to be poorly or even incorrectly defined. The importance of this article lies in the timely recognition of this fact.

It is undoubtedly clear the public have complaints regarding the judiciary and the criminal justice system. The complaints concerning the functioning and results of the judiciary and the justice system are of a kind that nowadays affects all kinds of organisations, not only in the public sector but also in the private sector. As regards the administration of criminal justice the public wish to see various changes: severer sentences and improvements in the functioning of the justice system as a whole. To a certain extent the public regard lay participation in the administration of criminal justice as a way of achieving these improvements as a whole, but in general they do not think lay participation is a suitable instrument to raise the sentences to the desired level.

In the opinion of the authors, the most desirable reaction from the judiciary would be to convert the complaints of the public into strategies to improve their own functioning and, no less importantly, to successfully communicate with the public about what they are doing and why. More explicit and clearer verdicts are important in this regard, but the organising of open days, discussion meetings between laymen and the judiciary about judicial issues such as sentencing and, perhaps, the participation of laymen in panels which are present during the trial and which will discuss with judges their views on culpability and the appropriate sanctions *after* the conclusion of the case, could also be ways to do this.

The survey on which these findings are based does not provide the final word. More detailed research is needed to obtain a better and more precise corroboration of the claims. However, the present research provides an adequate framework for channelling initiatives of the judiciary in reaction to the preferences of the public and their underlying considerations.

¹⁸ Without the basic attitude that lay participation would 'enhance the legal system' the explanatory power of the model involving 'more punishment' is small ($R^2=0.07$), so there is little overlap between both basic attitudes.