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ARTICLE

Community courts as legal transplants: a socio-legal case study from the Netherlands

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Abstract

Aiming to ensure a responsive and socially relevant approach to court cases, judiciaries have initiated innovative projects, such as problem-solving community courts, over the last three decades. In this socio-legal case study, I analyse the legal transplantation of a community court from the US to the Netherlands. Drawing on eighteen months of ethnographic field work (interviews, observations and file research), the study shows that, during the transplantation process, the goal of serving the neighbourhood receded into the background, while the goal of solving the problems of defendants gained even more prominence than it already had at the inception of the court. The conditions that have played a role in the path that the court has carved out to legitimise its activities differ from its American counterparts. The adjustments signify important internal legal cultural differences and illustrates how the implementation process is formed by opinions about the proper role of judges.

Keywords: sociology of law; court innovation; problem-solving justice; community court; legal transplants

1 Introduction

Since the 1990s, community courts have gradually gained ground in the US and other countries around the world. Community courts are so-called problem-solving courts that seek to address crime and 'quality of life problems' in large city neighbourhoods. Unlike other problem-solving courts, such as drug, veteran or opioid courts, community courts do not specialise in one particular problem. Rather, they handle multiple problems and aim to address the 'root causes' of crime (Lee *et al.*, 2013). Until the mid-2010s, their appearance could still be seen as a marginal phenomenon and a reaction against the mainstream criminal law system, which, according to community courts' proponents, failed to offer proper solutions in the face of everyday crimes affecting the living conditions in large city neighbourhoods. Crowded jails and an overloaded court system were symptomatic of a 'broken' criminal law system (Malkin, 2003, pp. 1573–74; Lanni, 2005, pp. 360–361). The 'revolving door' was used as a metaphor for the unsuccessful process of cycling people in and out of the justice system without really changing anything (Malkin, 2003, p. 1574). One of the first community courts in the US, the Red Hook Community Court in Brooklyn, New York, opened its doors in April 2000. This community court was seen as a successful attempt to break the cycle of the revolving door and improve the quality of life in the affected neighbourhoods (Lee *et al.*, 2013). Recently, a 'second generation' of community courts (Gal and Dancig-Rosenberg, 2020) has emerged; their numbers have risen ever since (see Collins 2021, p. 1574).[1] The concept of community courts has spread around the world and sparked many

[1]The number of problem-solving courts has expanded to more than 4,000 specialised courts throughout the United States. How many of those can be considered as community courts, is not known.

initiatives, in both common-law and civil-law nations, to begin pilot programs dispensing this new form of community justice (see Connor, 2020).[2] These initiatives are predominantly inspired by the first-generation community courts in the US. Community courts can now be found in Canada, the UK, Israel, South Africa, the Netherlands and many other countries (see, e.g. Karafin, 2008; Nolan, 2009; Gal and Dancig-Rosenberg, 2020).

Community courts can be regarded as 'legal transplants' (Nolan, 2009), a term coined by Watson (1974) to describe the phenomenon of one country adopting, in whole or in part, another country's established law, legal procedure, legal institution or legal system. Legal transplants have been used to (1) impose law on another country, e.g. the export of western legal orders to the former colonies; (2) establish innovations by following a prestigious model or (3) make reforms for the purpose of increasing economic performance (Lawrence, 2020, pp. 105–106). The transplantation of the concept of community courts can be regarded as an attempt of the second type.

Drawing on eighteen months of ethnographic field work (interviews, observations and file research), the research question that will be answered in this article is as follows: 'How is the reception, implementation and transformation of a community court formed by its context, more specifically the court practices, rules and internal legal culture with regard to the role of judges?' I will argue that the implementation of new, innovative ideas is influenced by the reception of those ideas in national academic debates. Also, I will contend that the underlying ideas of community courts are so multi-faceted that, during the transplantation process, these courts can adapt to very different forms, some of which have little resemblance with the original. This has much to do with the idea that community courts are depicted as 'a solution' but that the problems to which these courts refer differ from one country to another. As a result, community courts come in different forms, as a supposed solution to different problems. Whereas the concept of a legal transplant presupposes a clear, consistent view of the original idea that is to be transferred, the case of the community court shows that this may not be the case.

Section 2 comprises the theoretical aspects and an overview of the academic debate. Section 2.1 offers a further elaboration on the metaphor of a legal transplant; Section 2.2 describes the introduction and development of community courts in the US (Section 2.2). And in Section 2.3 I analyse the Dutch reception of and debate on problem-solving justice and community courts in comparison with that in the US.

Section 3 consists of the methodology (Section 3.1) and findings concerning the introduction (Section 3.2), implementation (Section 3.3) and first results of the community court in Eindhoven (Section 3.4) and is followed by the conclusion (Section 4).

2 Theoretical aspects and academic debate

2.1 The metaphor of a legal transplant

Studying the cross-jurisdictional spreading of ideas and legal norms and institutions is fascinating to law-and-society scholars because it gives them a great opportunity to empirically study the acts, practices and behaviours involved, including the political dimensions and the role of people in law reform and legal change (Goldbach, 2019, pp. 594–595). Examples are a study of the spreading of plea-bargaining practices (Langer, 2004) and jury trials (Hans, 2017).

Traditionally, the concept was used by comparative-law scholars who primarily focused on the more technical and legal aspects of the import and export of laws or legal systems. Watson (1974) underlined the essentially insular and autonomous character of law, which according to him facilitates the cross-jurisdictional spreading of law. He used the metaphor of a legal transplant to stress the positive aspects of the borrowing and moving of law between jurisdictions for the sake of

[2]Connor states that statistics of the National Institute of Justice in 2018 showed that there were fifty-seven community courts around the world by that time. Their numbers are rising.

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a legal change. The resemblance to an organ transplant was deliberately chosen to underline the fact that the law is a living entity, one capable of adjusting to new situations (Goldbach, 2019, p. 584). However, comparative research soon made clear that his borrowing and exchange of law or legal institutions can also be problematic. Scholars such as Kahn-Freud and Legrand have shown concerns about the complications and hazards of the transnational movement of law (Goldberg, 2019, p. 585). According to Ajani (2019, p. 1282), 'a frequent and often justified criticism is that imported laws are not suited to a certain local context'. The context and its culture matter (Goldbach, 2019, p. 593). The question is how, when and why they do.

In 2009, Nolan published extensive ethnographic research on the legal transplantation of the problem-solving court movement from the US in six commonwealth jurisdictions (England, Wales, Ireland, Scotland, Australia and Canada). Nolan found that, despite the worldwide resentment toward American cultural imperialism, the problem-solving court movement has been warmly embraced by practitioners. Across judiciaries, some members have become zealously devoted to the idea of problem-solving justice. In translating the characteristics of the American model and adjusting them to local contexts, each of the approximately fifty courts visited by Nolan were ultimately revealed to be unique. They all made deliberate choices regarding which elements of the American model were adhered to and which elements were altered to fit the local environments. His book once again confirms the general finding within the legal transplantation debate that law and legal institutions cannot simply be transmitted, unchanged, from one jurisdiction to another.

Two differences between the American model and those used in the other English-speaking common law countries stand out. First, the practitioners in the countries Nolan (2009) included in his research were reticent toward elements of intimacy, informality and expressiveness, which he considered uniquely American features, such as the hugging of offenders in emotional graduation ceremonies. Second, the degree to which the common law countries embrace the idea of therapeutic justice varies across countries: judges in Canada and Australia are more inclined to adopt aspects of therapeutic justice as compared to judges in Ireland, Scotland and England. Nolan attributes these modifications to cultural differences between the countries.

In his review of Nolan's book, Singh (2010, p. 362) criticizes Nolan's 'reliance on a grand conception of culture as an explanatory device', explaining virtually every element of the court process. Such a deterministic view raises causality questions and is, in Singh's view, not very convincing when anomalies with respect to cultural expectations are considered. In his experience (Singh, 2010, p. 362), '. . . it is usually the more micro processes, rather than broad cultural forces, that dictate how the courts function'. This critique touches upon the more generally heard criticism that broad definitions of legal culture leave nothing to explain and can be tautological in character (Nelken, 2016, pp. 50–51). A solution can be, according to Nelken, that rather than using legal culture as an explanatory mechanism for differences between countries, it can be used for 'thick description' to detect elements that are typical for a certain legal culture (Nelken, 2016, p. 52). I suggest that this approach is particularly relevant for studying legal transplants. When an innovation from abroad is introduced, some elements of the host country model will be copied, others will not, and for reason. These adaptations or omissions signify important cultural distinctions (Nolan, 2009, p. 40). In this article, I therefore adopt a descriptive approach instead of an explanatory approach.

Comparisons of legal transplantations between English-speaking common-law countries are more common than comparisons between common-law and civil-law countries, which is the focus of this article, in which I analyse the transplantation process of the concept of a community court from the US, a typical common-law context, to the Netherlands, a typical civil-law context. This comparison can help shed new light on both the concept of community court and the process of legal transplantation because the role of the judge is fundamentally different in different legal systems. It is generally acknowledged that, traditionally, the criminal law system in the US is adversarial in nature, whereas the Dutch criminal law system is characterised as moderately

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inquisitorial, although the trial phase is nowadays considered to be of a more accusatorial nature (Van Kempen, Krabbe and Brinkhoff, 2019, p. 120). Not only the role of the judge itself is different. The same is true of ideas about what the proper role of the judge is and should be. These are significant aspects of internal legal culture, a concept that refers to the ideas and practices of legal professionals, as opposed to external legal culture, that refers to the opinions, interests and pressures of the wider public (Nelken, 2016, p. 47 with reference to Friedman). It is important to note that legal culture is not necessarily uniform across countries or branches of the law (Nelken, 2016, p. 48). To avoid a deterministic, everything-explaining use of legal culture, I confine myself, in this article, to the opinions of legal academics and practitioners regarding the proper role of the judge. The concept of a problem-solving community court very much challenges traditional ideas about what judges are for. As can be expected, in the Netherlands, the concept is both welcomed and criticised, but as we will see, this occurs for very different reasons than in the US.

2.2 The development of community courts in the US

Community courts were developed in response to the legitimacy concerns facing contemporary legal institutions: an overloaded court system and crowded jails (Magaldi, 2001, p. 1). More and more criminological studies revealed that the recidivism rates of offenders released from prison remained unalterably high and incarceration increased rather than decreased criminogenic effects (see, e.g. Vieraitis, Kovandzic and Marvell, 2007). Breaking the cycle of the revolving door and providing a new and positive prospective to defendants were set as ambitious goals for community courts. These courts were to provide a holistic and individualised approach to defendants who cope with underlying problems, such as substance abuse, trauma or housing problems (Gal and Dancig-Rosenberg, 2020).

Community courts are an amorphous group, consisting of a wide variety of operational models (Malkin, 2003, p. 1574). Like most problem-solving courts, community courts are modeled after drug courts. Outside the US, community courts also have their own local variations, but they all share certain features (Gal and Dancig-Rosenberg, 2020, p. 381).

First, community courts are intended to dispense justice for the community (Thompson, 2002, p. 65; Lanni, 2005, pp. 367, 373). These courts focus on minor offenses that affect the quality of life in neighbourhoods and have previously gone largely unprosecuted, such as public drunkenness, shoplifting and harassment. Community courts were initially developed using Wilson and Kelling's (1982) 'broken windows theory' (Thompson, 2002, p. 83; Magaldi, 2001, p. 2; Lanni, 2005, p. 366; Zozula, 2019, pp. 22–23). Chief Judge Judith Kaye even regarded the New York Midtown Community Court as a 'working laboratory' for broken windows theory (Kaye, 1997, pp. 858). In this theory, it is assumed that people's behaviour is related to environmental conditions. Visible signs of disorder in a neighbourhood, such as graffiti, may lead to increased crime rates. Small offences, if not responded to, may lead to more serious crimes (Wilson and Kelling, 1982). Consequentially, community courts address the needs of the community by targeting low-level offenses (Malkin, 2003, p. 1574). Although the empirical basis of the broken windows theory is highly contested, the underlying ideas continue to provide a strong narrative, one used by the proponents of community justice (Zozula, 2019, pp. 29–33). The community is served in different ways. In many of the projects, neighbourhood advisory boards have been created to obtain residents' opinions about problems in their neighbourhoods. According to Magaldi, the fundamental premise of all community courts is the belief that neighbourhoods and communities are the real victims of 'quality of life' crimes (Magaldi, 2001, p. 2). The perpetrators should, therefore, compensate those communities for the damage, for example, by visibly participating in work projects for the benefit of the community (Magaldi, 2001, p. 3). They may be obligated, for instance, to remove graffiti or beautify a specific park (Lanni, 2005, p. 374). These ideas are mainly based on theories of restorative justice: an approach to justice that focuses on healing and the reintegration of offenders into their communities, instead of punishing or

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deterring the offender, originated from indigenous justice systems in Australia, Canada and Africa (Braithwaite, 2002; Menkel-Meadow, 2007, p. 162).

A second characteristic of problem-solving community courts is a person-centred, as opposed to a case-centred, approach. This includes a direct and empathetic dialogue with defendants, resulting in a rehabilitative program (Gal and Dancig-Rosenberg, 2020, p. 383). This treatment plan is meant for defendants who plead guilty and show responsibility in terms of taking action. Depending upon the progress the defendant makes, he or she may be openly praised or reprimanded by the judge (Gal and Dancig-Rosenberg, 2020, p. 383). Therapeutic justice is the theoretical underpinning of this approach: an approach that aims to reform the law so as to positively affect the psychological well-being of the offender (Chesser, 2018). The programme is therapeutic in that it is designed to raise awareness and change the actions, attitudes and behaviours of offenders.

To achieve these therapeutic goals, community courts work within a multidisciplinary teamwork model (the third characteristic). Collaborative networks typically consist of probation officers, social workers and mental health experts. The rehabilitative programme that is offered to the defendant is custom tailored and subject to judicial monitoring (Gal and Dancig-Rosenberg, 2020, p. 383).

Lastly, the setting of problem-solving courts is less adversarial than in ordinary courts, leaving much room for participants to express themselves, as well as procedural and practical flexibility (Gal and Dancig-Rosenberg, 2020, p. 383). The judge, prosecutor, public defender and social services personnel work as a team to arrange for treatment and social services for the offender (Lanni, 2005, p. 374).

2.2.1 Evaluations of community courts

As an alternative to mainstream criminal justice, community courts are lauded for reducing recidivism (Kilmer and Sussel, 2014; Lee *et al.*, 2013), as well as their cost-effectiveness and efficiency (Berman and Rempel, 2011). The main cost-saving aspect, on a societal level, is that community courts prevent people from serving jailtime. According to Berman and Rempel (2011, p. 6) the judge is an important actor ('the secret ingredient') in problem-solving courts because the respectful way defendants are treated within these courts increases their perceived procedural justice and acceptance of court decisions. Also, community engagement and the treatment methods used are evaluated positively (Connor, 2020).

There are also authors who offer a nuanced picture of how the goals of community courts are realised in practice. For instance, Zozula points to the ambivalent character of community courts. On the one hand, these courts can be seen as a reaction against overly punitive trends because they use rehabilitative and crime-reducing sanctions in order to reduce recidivism and prevent crime. On the other hand, they are 'complicit in the punitive turn' because they 'ensnare low-level offenders, whose crimes may have previously gone unpunished, in a rigorous process of court supervision' (Zozula, 2019, p. 7). Abel already warned in the 1980s that, paradoxically, informal justice may actually increase state control (Abel, 1982). There is a risk of 'net widening': the expansion of criminal justice control over people in vulnerable situations, such as homeless or addicted people (Thompson, 2002; Zozula, 2019, p. 32). This process may not only bring more behaviours and people under criminal justice control but also extend the purview of criminal justice supervision' (Zozula, 2019, p. 32). Zozula points to the fact that community courts embrace multiple and sometimes conflicting logics, both punitive and therapeutic goals. This dual framework of punishment and treatment allows them to depict themselves as unique, effective and responsive organisations and thus create and maintain legitimacy in the eyes of a variety of audiences (Zozula, 2019, p. 33).

According to other critical authors, abandoning the adversarial process raises ethical and due process concerns. The traditional court process is transformed from 'lawyer-driven' to 'judge-driven'

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(Thompson, 2002, p. 77). Judges may lose their impartial and neutral role and become paternalistic. They also may become personally invested in the success of a defendant's efforts (Thompson, 2002, p. 79). The role of the public defender is also fundamentally different in the community court context. The public defender may feel committed to the team effort to place the defendant in the right programme, which may lead the public defender to encourage clients to plead guilty without fully investigating the merits of the case (Lanni, 2005, p. 385).

According to Collins, proponents of problem-solving courts point to 'evidence-based' practices that can address the root causes of crime, reducing recidivism and saving money, as the primary reason why the reform has become so popular (Collins, 2021, p. 1567). In fact, the empirical evidence for the efficacy of community courts is not conclusive. For instance, statistics on recidivism show mixed results (Collins, 2021, p. 1578) and are often based on less reliable research methods because a randomised control group is often not at hand (also Gal and Dancig-Rosenberg, 2020; Zozula, 2019). Collins (2021) notes that 'courts spread quickly, before there is meaningful reflection let alone rigorous empirical scrutiny, as to whether they achieve their aims' (p. 1586). She therefore proposes another explanation for the success narrative of community courts: *judges* like them (p. 1579). Working in a community court increases judicial job satisfaction because 'solving problems' has a positive emotional effect and, furthermore, community courts are largely unregulated institutions, with individual judges wielding considerable power (p. 1580).

Finally, racial issues have been raised in connection to community courts. For instance, Connor suggests that the racial makeup of the staff and judges plays a role in building rapport with non-white participants. A shared racial identity does influence relationships between staff and participants (Connor, 2020, p. 16). Racial issues may also arise in connection with local community participation. For instance, community advisory boards may be dominated by a small group of local activists who do not necessarily represent the views of the entire community (Lanni, 2005, p. 381).

In sum, the American debate on community courts shows that, on the one hand, legal professionals working according to the principles of problem-solving justice are overwhelmingly enthusiastic about the community court movement, whereas legal academics, on the other hand, are much more hesitant and raise issues concerning ambivalence, ethical and due process concerns, 'net widening', inconclusive empirical evidence on the efficacy of community courts and racial issues. If we turn to the situation in the Netherlands, we will see the same pattern (enthusiastic practitioners and critical academics), but interestingly, both the implementation of the community court concept and the concerns raised in the public debate were very different from those in the US.

2.3 Reception of and public debate over the concept of problem-solving justice in the Netherlands

In the Netherlands, the concept of problem-solving justice was welcomed by individual judges, the Council for the Judiciary, government representatives and local mayors. In contrast to, for instance, in Israel, where, in 2016, the Israeli government decided to establish community courts in each judicial district in the country (Gal and Dancig-Rosenberg, 2020, pp. 387–388), the community court in Eindhoven was a grassroots initiative on the part of individual judges who took study trips to New York and were inspired by the local initiative of the Red Hook Community Court and the work of the Center for Court Innovation. In addition to Eindhoven, pilot community courts are now running in the cities of Rotterdam and Amsterdam. These pilots were preceded by a number of other pilot problem-solving courts handling small civil claims. In fact, pilots for court innovation have become so ubiquitous in the Netherlands in the past five years that a senior judge and professor in court administration joked that problem-solving courts 'spring up out of the ground like mushrooms' (Hartendorp, 2020).

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The initiatives fell on fertile ground because the judiciary in the Netherlands, with the support of the Dutch government, had recently begun a programme to reinforce the societal impact of the judiciary called *Maatschappelijk Effectieve Rechtspraak* (MER), which can be roughly translated as an endeavour aimed at more effective and responsive judging (Verberk, 2020). This programme aims at strengthening access to justice for law-seeking citizens with common legal problems, such as divorce, debts or a combination of problems.

In the Dutch academic debate most authors almost exclusively focus on the role of the judge. Given the central and active role of criminal judges in the Dutch moderately inquisitorial law system, this makes sense but it also reveals a difference in perspective as compared to the American context, in which the debate is much more centred on criticism on the criminal law system as a whole. In a nutshell, the Dutch authors first suggest that solving problems is not compatible with the judge's primary role in a democratic constitutional state, e.g. to apply the law in concrete situations, in which the judge protects individual rights against state power (see, e.g. Dijkstra, 2014; De Bock, 2015; Vranken and Snel, 2019). The judge does so in an autonomous, impartial and independent role and with a sharp eye for rights and principles in legislation, treaties and case law, such as a fair trial, legal certainty and equal treatment. Critics argue that the 'new style judge' (Dijkstra, 2014, p. 842) has too much freedom to develop creative solutions, including solutions that would strongly deviate from the outcomes of regular legal procedures. It is argued that too much judicial discretion can lead to disparities in outcomes and, therefore, be at odds with legal principles such as equality and legal certainty.

Other concerns include the possibility that a judge, given his or her legal education and training, may not be equipped to solve underlying problems and must be careful not to raise incorrect expectations on the part of litigants. A judge 'is not a psychologist, social worker or social therapist' and should not act like one (Vranken and Snel, 2019, p. 5). Furthermore, the involvement of a judge is limited in time and scope. The judge has no insight into the history of the dispute, nor into compliance with the judgment. The judge knows too little, has too short an intervention period and, moreover, is not in the right position to initiate interventions, according to De Bock (2015).

In response to critical remarks such as those above, other authors have suggested that the appropriate style of judging in the everyday handling of cases should not be as black and white as some authors suggest. In practice, criminal judges are confronted with very different types of cases. Modern criminal justice requires the judge to determine, for each type of case and litigant, what kind of a judge is needed: a decision maker, a problem solver or a process counsellor. Above all, this requires a flexible attitude on the part of the judge (Grootelaar and Van den Bos, 2016, pp. 291–292).

In comparison with the academic debate in the United States, the Dutch debate very much reflects the legality-driven character of a civil-law country as a *rechtsstaat* (a Rule-of-Law-abiding country), whereas the debate on community courts in the US seem to show a more pragmatic view of law and discretion (see, for an exception, Thompson, 2002). The problems that, according to many American scholars, point to a 'crisis' in the criminal law system and have boosted the community court movement (a repressive climate, crowded jails, an overloaded criminal court system, and decayed urban areas) are only vaguely recognisable in the Dutch context. In the Netherlands, the idea of problem-solving justice was first developed for uncomplicated civil-law cases in an attempt to reconnect the judiciary with ordinary citizens who were having ordinary legal issues. In the past decades, half of local courthouses had to close their doors because of an efficiency-driven reorganisation initiated by the government and the Council for the Judiciary (Eshuis, 2019). As a result, many judges felt that they had lost contact with their local communities. The contemporary aspiration to establish courthouses within local neighbourhoods can therefore, first of all, be understood as a reaction against this process of scaling up (Eshuis, 2019, p. 10). Secondly, the problem-solving judge has been introduced to handle criminal law cases involving offenders with complex underlying problems.

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As mentioned above, both the judiciary and the Dutch government were enthusiastic regarding the concept of problem-solving justice, but this was true for different reasons (Van der Kraats, 2019). According to the government, the problems for which the problem-solving judge is seen as a solution are the fact that, in civil cases, too many people go to court, the judiciary is too reactive in processing these cases, problems are juridified beyond recognition and there are too many procedural hurdles placed before law-seeking citizens to allow them to obtain access to justice (Van der Kraats, 2019). The judiciary, however, identifies other problems that are expected to be tackled by introducing a problem-solving approach, such as high court fees in civil law cases, long durations for procedures, the bureaucratic 'written character' of legal procedures, diminished accessibility for court locations, late involvement on the part of the judge and the judge being restricted to deciding the legal matter at hand instead of the underlying conflict (Van der Kraats, 2019, p. 89).

It seems that very different problems in the two countries are touched upon to legitimise the introduction of problem-solving justice and community courts and that the narratives of these problems even differ within the countries depending on the stakeholders involved. A solid empirical problem analysis preceding the introduction of problem-solving community courts is lacking.

3 A case study: the transplantation of a community court concept to the Netherlands

The remainder of this article will focus on the transplantation process of a specific pilot into the Netherlands: de 'wijkrechtbank Eindhoven'.

3.1 Methods

The data for this article are derived from an evaluation study of a community court in the medium-sized Dutch city of Eindhoven. It was commissioned by the Dutch Council for the Judiciary and the District Court of Brabant-Oost, the jurisdiction in which Eindhoven is situated (Doornbos and Hanoeman, 2021). The research period lasted from December 2019 until June 2021, covering eighteen months of ethnographic fieldwork. Ethical clearance was granted by the Ethical Committee of the University of Amsterdam. The evaluation study was assisted and co-authored by a junior researcher, Romy Hanoeman.

The study can be characterised as an ethnographic, qualitative socio-legal study based on mixed methods. Besides literature study and desk research, the researchers conducted file research, participant observation and interviews. The researchers had full access to court hearings and court files and other documents. However, from March to June 2020, due to COVID-19 restrictions, access to court hearings took place via Skype. Only the main participants were allowed to be physically present in the courtroom.

File research was conducted regarding all forty-nine criminal cases that the Eindhoven Community Court dealt with from the start of the pilot period, on 18 March 2019, until the end of the research period, on 1 June 2021. During this period, the community court also processed five civil cases.

Participant observation was used to obtain an appropriate view of how cases were handled in practice. In total, forty-one court sessions regarding twenty-seven cases were observed. Informed consent to attend the court hearing was obtained from all participants before the start of the court session. To avoid any suggestion that the researcher was involved in the decision-making process, she did not sit at the same oval table as those involved in court but, rather, on a chair in the corner of the room. The researcher recorded field notes in every meeting, using a structured observation scheme. As regards the online observations, it should be noted that not all of those physically present could be observed and heard clearly via Skype. The defendant, his/her counsel, the judge and the public prosecutor were generally easy to understand. Other participants, such as victims or

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social workers, were not always good to see and hear. However, the minutes describing what had been discussed and additional factual information could also be retrieved from the files. Overall, the researchers do not believe that the fact that observations had to be conducted online affected the research findings. In addition to the hearings, the researchers also attended evaluation meetings held by the court staff with partners from probation, social service and health organisations.

Furthermore, the researchers conducted in-depth interviews and follow-up interviews with almost all the professionals who were involved in the community court pilot in the city of Eindhoven. In total, interviews were conducted with twenty-seven professionals (judges, public prosecutors, lawyers, probation and parole officers, municipal employees and a social worker). Most of them were involved in daily community court practices; however, we deliberately chose to include two judges and a prosecutor outside of the pilot in order to understand a more critical, outsider's view. Due to COVID-19 restrictions, approximately half of the interviews were conducted via video-conferencing platforms. The interviews with professionals took 90–120 minutes and were recorded and transcribed into a brief, anonymous and confidential interview report.

In addition, four defendants whose cases were heard the Eindhoven community court have been interviewed. The interviews were semi-structured, leaving much room for respondents to freely speak about the issues we mentioned and those that they themselves brought forward. We had hoped to reach more defendants by using our contacts with lawyers and probation and parole officers; however, unsurprisingly, the target group of people, with multiple problems in various areas of life, proved to be very difficult to approach. To avoid reluctance and mistrust, we decided not to record the interviews but, rather, made quick notes instead. The interviews with defendants took 30–45 minutes and were conducted by telephone.

In this article, the words 'defendants' and 'participants' are used interchangeably because this is common practice in community courts. The community court in Eindhoven, like its American counterparts (Connor, 2020, p. 6), prefer to use the word 'participants' to prevent stigmatisation and subsequent identification with a criminal label.

3.2 First stage of the transplantation process: introduction of the community court

The installation of a community court in Eindhoven was set up as a three-year experimental pilot, for which a grant was obtained from the Ministry of Justice and Security. Due to COVID-19 restrictions, the pilot period was prolonged for six months, until June 2022.

3.2.1 Goals

In March 2019, the community court in the city of Eindhoven opened its doors as the first community court handling criminal law cases on Dutch ground, modelled after the Red Hook Community Court in New York. Like its American counterpart, the Eindhoven community court focuses on special prevention, restoration of disturbed legal order and restorative justice. Four objectives have been derived from the policy documents regarding the establishment of Wijkrechtbank Eindhoven, which have been taken as a starting point for this study (Doornbos and Hanoeman, 2021, p. 68–70).

First, the community court aims to provide integrated and sustainable problem-solving so as to avoid further disturbance for the defendant himself and his surroundings (family, relatives or neighbourhood). By offering tailor-made solutions and professional guidance, the court seeks to encourage participants to work on underlying problems and prevent these participants further legal trouble. The court specialises in handling a combination of multiple life problems concerning housing, work, family, mental and physical health and finances. The community court engages

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with external expertise on the part of (mental) healthcare organisations, debt assistance programs and probation offices.

Secondly, the pilot is aimed at improving co-operation between the court, the municipality and organisations within and outside the judicial chain so as to reduce bureaucratic obstacles for defendants dealing with several organisations. Led by a municipal case manager, a case meeting with social and healthcare workers is planned in each case prior to the court hearing, in which solution directions are explored. These health and service providers are also present at the court hearing. The expectation is that, through the intense co-operation between the providers and the intervention of the judge, as a representative of the authoritative institution of the judiciary, solutions can be reached that would be less easily derivable in a regular court procedure.

Thirdly, the district court wants to contribute to a reduction of disorder in the neighbourhood by considering various interests: those of the defendant and those of persons from his or her social environment, including potential victims and neighbourhood residents.

Lastly, a more general fourth objective is strengthening the bond between the judiciary and the community in the long term. The municipality of Eindhoven has designated a specific part of the city, the Oud-Woensel district, for this purpose. This is a district that is regularly subject to media attention because of drug problems, traffic problems and high crime figures. Strengthening the contact with the neighbourhood, it is believed, can contribute to restoring confidence in judicial organisations on the part of defendants, victims and neighbourhood residents.

3.2.2 Comparison with goals of American community courts

In comparison with American community courts, based on literature study, we see corresponding aspects, such as the person-centred approach, interdisciplinary teamwork on a treatment plan aimed at crime prevention and the ambition to restore orderliness to a part of the city that has fallen prey to criminals. The goal of improving co-operation between healthcare, social work and other organisations seems to be more typical of the Dutch situation. The Netherlands is a country with an elaborate social security, social service and healthcare service network. However, due to privacy and bureaucratic restrictions, the services these organisations provide are often not well attuned to one and other. As a result, it may be difficult for people, for instance, to apply for social assistance if they have no official address, while at the same time, they are not eligible for housing programs, because they do not have an income. These are very different 'revolving door problems' than the ones mentioned in the American debate. Here, the government organisations themselves are part of the 'multi-problems' that citizens encounter. In the community court pilot, professionals closely work together to overcome bureaucratic hurdles.

It is important to note that the criminal justice system in the Netherlands is quite different from that of the US not only because of the more inquisitorial nature of the procedure and the more active role of the judge but also because the penalty climate is relatively mild in the Netherlands and the prison conditions are perceived to be rather humane in comparison with those in the US (see, on the Dutch situation, Van Kempen, Krabbe and Brinkhof, 2019). After a period of a more repressive criminal law policy, resulting in an increasing prison population (1990–2005), the statistics on detainees show a downward trend (Van Kempen, Krabbe and Brinkhof, 2019, pp. 39–40). The statistics of the World Prison Brief show that the imprisonment rate worldwide is highest in the US, with 629 prisoners per 100,000 inhabitants, as compared to sixty in the Netherlands.

The differences between the regular criminal procedure and the community court procedure seem to be smaller in the Dutch situation than in the United States. Whereas literature study shows that defendants in the US plead guilty to small offenses and agree to participate in a community court procedure, knowing that, otherwise, in many cases they would likely face incarceration (Zozula, 2019, pp. 60–61), in regular Dutch criminal cases, it is more common that, in an outside-court procedure, defendants make a transaction to pay. Alternatively, in court, they may be sentenced to a fine, a social service sanction or electronic monitoring instead of being

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given a prison sentence (commonly monitored by the Probation and Parole Service). For juveniles who commit minor offences, a special programme called 'Halt' (Dutch for 'Stop') is available, which is an extra-judicial settlement programme aimed at prevention and restorative justice.

3.2.3 First reactions

The fact that there is, in the Netherlands, less of a discrepancy between regular criminal court cases and the community court approach makes it, in a way, less evident that a community court is needed in order to reform the criminal-law system. This ambivalence is clear from the first responses on the part of professional organisations to the decision to install a community court in Eindhoven. On the one hand, the initiative was welcomed by several judges and court personnel as an opportunity to ('finally!') do things differently and have more positive impact on the lives of offenders and their families. There was no lack of volunteers to participate in the pilot, even though, for many participants, this meant that they had to go the extra mile. Most of the court participants strongly believed in the concept of problem-solving justice and were eager to turn the pilot into a success.

On the other hand, a few judges within the District Court did not support the installation of a community court because it seemed, to them, to be an expensive procedure intended for a small number of participants, whereas the court organisation in general is constantly pressured to work as efficiently as possible. The objection that the community court procedure is an expensive and time-consuming solution that can be applied to only a small proportion of cases represents an interesting contrast with the perception of the community courts in the US as money-saving and efficient ways of processing criminal cases (Collins, 2021, p. 1567). The money-saving qualities of the community courts in the US must be viewed against the background of the alternative, e.g. sending people to prison. As we have seen, this is less of an alternative in the Dutch context. Instead, the more critical judges in the Netherlands made the comparison between spending, on average, twenty minutes of hearing time in regular cases and the 1.5 to 2 hours spent by the community court, in addition to the extra time for co-ordination with health and service providers.

The fact that the distinction between the regular criminal system and the community court practices is less clear in the Netherlands has led to discussions regarding what, exactly, the added value of the community court procedure is. For instance, within the Prosecution Service, some of the prosecutors and other staff believed that, in regular criminal court cases, they already paid sufficient attention to the personal circumstances of offenders and that they – in co-operation with the Probation and Parole Service – already offered sufficient treatment path options. In their view, there was no need for more separate procedures. This reluctance to install the community court faded away during the transplantation process, at least for those directly involved. The prosecutor who participated in the pilot told the researchers that, while she initially had her doubts, these hesitations disappeared during the pilot period because she experienced that the co-ordinated community court approach could really mean something for very vulnerable people.

3.3 The implementation of the Dutch community court

At the start of the pilot with the community court, the court staff, together with participants from the Prosecution Service, the Municipality and – in a later stage – lawyers and probation and parole officers, worked on the design of the community court procedure. In this process, almost all aspects of the criminal court procedure were re-thought. The guiding principle was that the community court procedure was to be kept as accessible and informal as possible for the defendants (vulnerable people from the city of Eindhoven with problems in multiple life areas). The district court rented a community building in Oud-Woensel as a session location, which was also used by residents for social and cultural events. To create a non-adversarial atmosphere, the

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judges and prosecutor, unlike in Red Hook, decided not to wear robes during the court session. Also, they held these court sessions with the defendant and all representatives of social service and health service organisations sitting at a large oval or rectangular table. The setting was stripped of rituals and formalities. Because the court officials felt it was important to make it clear to the defendant who were present which organisations they represented, an introductory session is held at the start of every court meeting. While the atmosphere is informal and sufficient time is available to discuss the personal circumstances of each case, the judge takes the lead, leaving much room for the defendant and professional attendees to shed light on the case and ask questions. In contrast to American community courts, cases are held one by one; each defendant is heard apart from the others.

It was not always possible to informalise the criminal law procedure to suit the new community court practice. The principle of the legality of criminal procedure, as laid out in Article 1 of the Dutch Code of Criminal Procedure (CCP), is a key element of the Rule of Law, stating that criminal proceedings are to be conducted in accordance with the law. Therefore, some formal issues had to be considered, even though the professional participants felt that these issues were less applicable in a community court context. For instance, even though the defendants, in a preliminary stage, had pled guilty and consented to the community court procedure, the judge is required to inform the defendant that he is not obliged to answer any questions (Article 271 CCP). Even though the defendant had had the opportunity to say anything he wanted to, he must still be offered the opportunity to make a final statement (Article 311(4) CCP). The indictment, which normally plays a central role in criminal procedure, is only briefly investigated and discussed within the community court setting; the discussion is more focused on *why* the defendant broke the law rather than *what* happened. As the focus is on prevention and restorative justice, truth finding plays less a roll; the session is forward-looking instead of backward-looking.

Because deviating from the criminal-law acts is not allowed, even in a pilot situation, cases could only be handled by the community court under the condition that the defendant confessed and consented to follow the community court procedure as an alternative to a regular criminal law procedure in a district court. After a pre-selection by the public prosecutor, the defendant has a first consultation with a lawyer, who identifies the major problems of the client and informs the client about his/her rights and the procedure before the community court. The defendant must provide informed consent to the community court procedure, as well as to organisations involved in exchanging information regarding his or her personal situation. A fixed pool of seven lawyers has been formed to participate in the pilot. If permission has been provided by the client, the case is formally submitted to the community court.

In the US, according to Zozula (2019, p. 33) it is common practice in community courts that, in return for a guilty plea and participation in the community court treatment programme, the initial indictments are dismissed and eliminated from the defendant's record (the case is 'nolled'). In the first year of the pilot, adjournments in contemplation of dismissal were also typical outcomes in the Eindhoven community court. For some judges, however, these conditional discharges were confusing because the discretionary power to prosecute or dismiss cases exclusively resides with the prosecution service, whereas it is the judge who presides over the hearing. When the researchers asked the various professionals, 'Who represents the community court?', some answered 'the judge'; others would say 'the judge, the judicial assistant and the prosecutor' and a few answered 'we all together'. To the defendants, this did not seem to be a bother, nor did it lead to any practical problems. However, the researchers noted that, to the involved professionals, the answers to these questions were not evident. This ambivalence came an end for reasons that had nothing to do with the pilot in Eindhoven. In a general adjustment of the grounds for non-prosecution, the Board of the Attorney General determined that prosecutors were no longer allowed to grant a suspended dismissal under specific conditions (Directive on dismissals). From that time on, community court cases could only lead to a partly suspended sentence on the part of a judge. Typical outcomes would be a suspended sentence given that the defendant follows a

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certain treatment program, for example, aggression-prevention training, and remain under the guidance of a social worker or the supervision of a probation officer for about a year. The defendant is expected to co-operate actively; if not, the prosecutor will bring the case before the ordinary criminal court. Typically, one or two follow-up hearings are planned to monitor the participant's progress in the rehabilitation program.

Just like some American studies show (see, e.g. Meekins, 2007, pp. 91–92), behind the scenes, an entire deliberation structure precedes the actual community court session. In this pre-hearing meeting between the municipal court co-ordinator and service providers, information is exchanged and potential routes toward solutions are discussed in the absence of the defendant. The probation officer writes out their advice, considering all the criminogenic factors. Interestingly and in contrast to the situation in the US, judges and judicial assistants do not take part in this informal deliberation. They prudently choose not to attend these meetings in order to safeguard the independent role of the judge. This attitude was partly formed as a response to the aforementioned criticism, in the Dutch debate, suggesting that a problem-solving judge runs the risk of becoming a social worker. After some initial experiences in which a judge, according to some of our respondents, stepped too fully into the shoes of a social worker (she picked up the phone herself to arrange things that were without legal relevance for the defendant), it was jointly recognised that judges would remain at the background, leaving the practical aspects of the treatment plans to 'the experts'. The same reticence was felt concerning the graduation ceremonies and hugging and applauding for defendants. Whereas, in the Dutch context, defendants are openly praised or reprimanded for their achievements, judges avoid physical contact and rituals that seem, to them, a bit overdone. Although judges are willing to be pragmatic and approachable, they draw a line concerning what they consider as key aspects of judicial ethics: neutrality and independency.

A final difference between the Dutch approach and American approaches as pointed out in the literature, concerns the way in which the court reached out to 'the community' (the neighbourhood in which the community court is situated). Following the Red Hook example (Malkin, 2003, pp. 1582–1583), representatives from the appointed neighbourhood were invited to the opening festivities, and a community advisory board was formed. The idea was that the advisory board would advise the community court about the problems in the neighbourhood and bring forward ideas about bridging the perceived gap between the judiciary and the residents. Unfortunately, the COVID-19 pandemic caused trouble in many ways. In March 2020, all courthouses in the Netherlands had to close their doors because of COVID-19 restrictions. A few months later, the community court returned to hearings; however, the local courthouse in Oud-Woensel appeared not to be COVIF-proof, because it was too small for all attendees to maintain the required 1.5-meter distance. The small size of the courthouse, in combination with the COVID-nineteen restrictions, also made it difficult for the community court to open the hearings to the wider public. The community court had to move to the city courthouse of Eindhoven, and the meetings with the community advisory board were moved to online platforms and became less frequent.

In our interviews with professionals, both those working within the pilot and those working outside of the pilot at its start, the researchers sensed enthusiasm regarding the person-centred approach and the problem-solving character of the teamwork. All professionals involved were very positive about the new 'short lines' between the organizations and the co-operation aimed at prevention. At the same time, as from the start of the pilot, there was some reluctance toward the idea of *community* justice. As enthusiastic as most professional participants were regarding problem-solving justice, as hesitant as they were in describing the community court goals regarding the community (the 'komjoenitie', as one of the judges ridiculed, using the phonetic description to express doubts as to the desirability of allegiance to American ideas). Even one of the initiators of the pilot doubted that the community court would truly be able to make a difference in the designated neighbourhood. Most professionals acknowledged that the scale of that neighbourhood could not be compared with a neighbourhood in a city as large as New York. Although one could argue that it would be easier to make a difference in a smaller area, the

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professional participants did not have much faith that the community court would catch the attention of the residents and increase their confidence in the justice system.

3.4 Preliminary results

In the period between the hearing of the first case, on 18 March 2019, and the end of the research period, on 1 June 1 2021, the community court in Eindhoven processed fifty-four cases: forty-nine criminal cases and five civil cases. In our research we focused on the criminal cases, in which fourteen women and thirty-five men were involved of different ages (four < twenty-five years, thirty-five between twenty-five and fifty years and ten above fifty years). Only a few had a migrant background. Most people had multiple problems: psychological problems (twenty-eight defendants), debts (twenty-eight), addiction to alcohol or drugs (twenty-one), homelessness or other problems with housing (fifteen), family and relation issues (nine), child custody problems (six), and physical problems (six). The defendants were charged for petty theft (sixteen), assault (twenve), intimidation (eleven), vandalism (seven), trespassing (four) and other small offenses (eleven).

The number of processed cases (fifty-four) was slightly less than the thirty criminal cases per year that the initiators of the pilot had counted on. Although the neighbourhood of Oud-Woensel had been designated as the location for the community court, at the beginning of the pilot, the jurisdiction of the court was broadened to the entire city of Eindhoven. At first, this was done because the community court feared there might not be enough cases to properly develop routine experience with the new procedure. Then, the number of cases remained at a low level, and the expansion of the jurisdiction to the entire city became permanent. The reasons for this lagging influx of cases were mainly that a significant number of those who could potentially be involved did not meet the criteria (confessed suspects with multiple problems who had committed minor criminal offences, had no significant antecedents and lived in Eindhoven), did not want to co-operate or could not be reached, for instance, because they were homeless. When developing the pilot, the main focus was on young 'first offenders', but these young people often did not meet the criteria or were already following the special extra-criminal procedure for young people, the Halt programme. More than one-third of the pre-selected defendants were lost to the project.

One of the problems for the community court staff is that the influx of cases largely depends on the pre-selection made by the Prosecution Service. During the pilot, the staff attempted to find other ways to collect cases involving people with underlying problems in multiple life areas, for instance, through healthcare insurance companies or housing corporations. The focus was no longer solely on criminal court cases but, more generally, on problem-solving justice for people with multiple problems and legal issues, mostly debts. With the best intentions on the part of the people involved, in an attempt to turn the pilot into a success, the court staff pro-actively searched for ways to enlarge and legitimise the community court approach. These attempts reminded us of the criticisms of 'net widening' and 'paternalism' that were brought forward in the academic debate in the US. In practice, it proved very difficult to bend regular legal procedures toward the community court and find cases, other than criminal law cases, suitable for handling within the community court.

Although the research period was too short and the number of cases too low to perform a full evaluation of the pilot results, some preliminary findings regarding the processing and outcomes of cases can be shared. Remember, the main goal of the community court was integrated and sustainable problem solving aimed at crime prevention. In almost all cases, the defendants were granted the dismissal of their case or a suspended sentence, given that they followed a supervision or treatment programme. These involved psychological of psychiatric treatment (sixteen defendants), assistant housing (fifteen), supervision from a probation officer (fourteen) or social worker (thirteen), admission to a drug rehabilitation centre or psychiatric hospital (eleven), debt counselling (eleven) or other programmes (eleven). Furthermore, we analysed whether the defendants in the forty-nine criminal cases had been re-arrested or re-convicted before the end of the research date, on 1 June 2021, and found only three re-rearrests and two new convictions.

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These recidivism figures are much lower than the average two-year recidivism prevalence[3] for adults in the Netherlands, which fluctuated, between 2006 and 2015, between 26 and 28 percent (Weijters, Verwey, Tollenaar and Hill, 2019, p. 7). Although these first results appear promising, they must be interpreted very carefully because some of the cases had only recently been closed. Also, bear in mind that the defendants before the community court had consented to participate in a treatment program.

Our qualitative findings support the idea that the willingness of the defendant is a crucial factor in the success of the community court approach. Based on our observations and interviews, we found that most of the defendants were willing and even thankful for the help that was offered. In a minority of cases, the defendant proved unwilling and evasive, and sometimes, the defendant even disappeared. To illustrate the importance of the co-operation of the defendant, I will discuss two contrasting cases.

Case #1: A short-tempered nature

Benno,[4] father of three, has a short temper. Given that he is tall and has a deep voice, he can quickly come across as intimidating. The criminal offence that gave rise to treatment by the community court was the assault of his ex-partner. Two years earlier, he had been convicted of domestic violence. He was then given a forty-hour community-service sentence and an obligation to report to the probation service for a year. He is now separated from his (drug addict) partner; the children live with him. However, the house where he lives is still in the name of his ex-partner, and she alone has custody of the children. Benno's finances are supervised by an administrator, but he has no debts. He also suffers from physical and psychological health problems, as a result of which he has been declared partially incapacitated in terms of work.

After a brief introduction, the district judge first asks the defendant some questions about the circumstances. Benno confesses to the facts, except that he is said to have hit his ex-partner. When the judge continues to question this and indicates that witnesses have stated that he has indeed beaten her, he says, 'I am a large man and often make arm gestures. It often seems that way. Pushing and kicking went (however] like you described, I will never deny that', he says in a Southern Dutch dialect. The judge adopts the same southern Dutch accent: 'That's not nothing either, isn't it?' 'Indeed', Benno admits. Then, the public prosecutor and the other partners have their say. The public prosecutor speaks a few words of admonition but also compliments the fact that he was in control in a later situation because he followed the advice of the municipal social worker not to get in touch with his ex. 'Very good to hear how you dealt with it afterwards.'

On the advice of the probation service and the other partners, the case was agreed to be conditionally dismissed, provided that Benno remains under the supervision of the probation service and municipal social worker for a year. The practice nurse of a general practitioner will also guide Benno regarding his physical and psychological complaints. At the follow-up hearing, three-and-a-half months later, all those present were very satisfied with all the progress that had been made in this case: Benno says he is very happy with all the help he is being offered and that he is making full use of it. For example, he receives support from a social worker in the education of his children, household help has been arranged and the legal issues surrounding the ownership of the house and the custody of the children are now being settled. Contact with his ex-partner is almost phased out. He also follows a sports programme with the practice nurse, which means that he has lost a great deal of weight and feels better about himself. In all areas, according to Benno, he feels "Great!" Benno received compliments from all the partners and the judge. 'Chapeau!' says the case manager. The prosecutor concludes, 'You are the perfect example of how we like it here.'

[3]Re-convicted within two years after the previous conviction.

[4]The real names of the defendants discussed in the examples in this paper have been changed for privacy purposes.

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The above case (#1) shows a very informal approach on the part of the judge and other involved actors to the case at the round table. Benno has a criminal record, and the underlying problems seem to be having a catalytic effect on his violations. At the round table, the judge immediately begins talking with the defendant about his personal circumstances. As is shown in the example above, the judge adopts a flexible role by also speaking in the same accent as the defendant, in an informal way. This flexible speaking adaptation benefited the general atmosphere in the room and the extent to which the defendant co-operated in the conversation and with the decisions being made. It also shows that handling a court case requires an on-the-spot assessment of the situation and immediate subsequent adaptability on the part of the judge. At the same time, the defendant was still respectful to the judge, and he also seemed to find the entire treatment credible and promising.

In another case, however, this informal approach proved to be not so successful regarding the level of co-operation and the respect shown toward the judge. The below example shows a case in which the defendant did not seem to agree with many of the decisions being made.

Case #2: Man with dog

Alex is a young man who is already known to the Public Prosecution Service. His criminal record, with antecedents including theft, possession of weapons, aggravated assault and threats, can be seen as a relatively thick file. In the summer, Alex threatened his neighbour with an axe when an argument that had been going on for some time escalated. The situation did not come to physical violence. Alex has multiple problems. He is addicted to narcotics, has trouble keeping his home clean and has mental health problems. In addition, he was married in 2020 but became a widower after a few months. The Housing Corporation has threatened to evict Alex from his home because of the nuisance he causes. Threatening his neighbour prompted the public prosecutor to sue Alex for a community court hearing.

The probation officer, the case manager, Alex's lawyer and his social worker propose having Alex follow a detox programme and apply for an assisted living programme. At first, Alex agrees; however, he has one problem: his dog. The dog is his best friend. Alex does not want to be separated from his four-legged friend, which may be a requirement when he enters the assisted living programme or must stay in a clinic for the detox programme. He says he does not know anyone who can temporarily look after his dog. After long deliberations between the professional partners and Alex, the judge came to the conclusion that, '. . . we have reached an "impasse"'. 'Maybe I can brainstorm about this [in the coming weeks] with my social worker?', Alex finally suggests. 'You can, but we have to come up with a solution', replies Alex's lawyer. After almost two hours of deliberation, the judge proposes continuing this case at another time.

A few weeks later, Alex does not show up for the continuation of the hearing. The session continues with the other attendees. The judge finally decides that Alex will receive a two-month prob sentence with a two-year probation period for threatening his neighbour with an axe and violating Article 13 of the [Dutch] Weapons and Ammunition Act. The special conditions are that he must participate in an aggression-control programme, with a clinical hospitalisation. In addition, he will embark on an assisted living programme. According to Alex's social worker, the dog can stay with an acquaintance of Alex for at least seven weeks.

Based on the observation of Alex's case, the judge ended the first meeting without a solution. The defendant did not want to make any concessions regarding his dog. In addition to the 'dog problem', Alex was not very talkative, and when he was, he did not seem to co-operate with the suggested solutions. In fact, he seemed to take over the decision-making role of the judge by offering a suggestion himself (doing nothing for a while). This is where 'the line' was being drawn, and the judge eventually made a decision at the second court meeting, without the presence of Alex.

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These observations illustrate that an informal setting works very well for co-operating defendants. In this setting, judges succeed in gaining confidence, addressing the involved person in a good way, in simple language and in a simple setting, without gowns and ceremonies, while still radiating the dignity of a judge. In cases in which the client does not co-operate fully, sets conditions himself or constantly raises difficulties, this informal context, however, works against the dignity of the judge. It also raises the question about what is – and should be – the alternative for a failed community court approach. In the US, the thread of incarceration is never far away. In the case of Alex, the alternative is still very much in line with the community court approach. Again, we see that community court outcomes do not seem to differ that significantly from those of regular criminal cases.

The observations also demonstrate that the community court setting is very much concentrated around the defendant. In both cases, the victims were not present. Nor were neighbourhood citizens or other interested parties (besides the researcher). The ambition of the community court to involve victims and neighbourhood citizens in the court process was hampered, amongst others because of privacy reasons. In the Netherlands, victims have the right to speak at a court hearing, and criminal law hearings are open to the public. However, at the beginning of the pilot, the cases concerned dismissals (formally a decision of the Prosecution Service), for which exists no legal obligation for the court to open its doors to the public. The cases were processed behind closed doors, also because so many personal details concerning the 'underlying' problems of the defendant were discussed. Later during the pilot period, the community court started to process criminal summons cases. From that time on, the court invited victims to speak in court and attend the first part of the hearing, in which the indictment is discussed, and the last part, in which the verdict is read. Only in three cases victims attended the court hearing. The part of the hearing in which the personal problems and the treatment program are discussed were still closed to the public because of privacy reasons (conform Article 269(1) CCP).

In sum, the research data show that the community court in Eindhoven is successful, albeit in a small number of cases, in offering integrated and personalised treatment that is aimed at crime prevention, particularly if defendants show a willingness to co-operate. The multidisciplinary teamwork benefits from the fact that privacy restrictions on exchanging personal information are lifted with the permission of the defendants. The pilot goals regarding victims and the community – to reduce disorder and restore confidence in the justice system – have not been met in the first years of the pilot, however we have to bear in mind that these are long-term goals, whereas the evaluation period was short and affected by the covid pandemic.

4 Concluding remarks

As is generally the case with legal transplants, the initiative to introduce a community court modelled after its forerunners in the US underwent a process of translation and transformation to make the practice fit the contours of its new surroundings. Our research findings show that, during the transplantation process, the goal of serving the neighbourhood receded into the background, while the goal of solving the problems of defendants has gained even more prominence than it already had at the introduction of the court. In contrast to some of their American role models, judges in the Dutch community court in Eindhoven delegated the problem-solving itself to the experts from social and health services because they found themselves dedicated to the ideal of the impartiality of the judge and were reluctant to enter fields beyond their expertise and comfort zone. These adjustments signify important internal legal cultural differences and illustrates how the implementation process is formed by opinions about the proper role of judges.

The process of the legal transplantation of the concept of community court reveals that, if a concept is as broad and multifaceted as community court, it is likely that only those elements that

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are considered to be applicable in the new context will be chosen for transplantation. In the Dutch example, the focus of the community court is very much centred on the defendant and not so much on the community. Other authors, for instance in Israel, report that in their country the community is well-served; however, victims hardly play a role in the localised design of the community court (Gal and Dancig-Rosenberg, 2020, pp. 408–409). It seems very difficult to encompass all aspects of the original concept. The idea of a legal transplant presupposes a clear, consistent view of the original concept that must be transferred, but the concept of a community court is ambiguous in itself (Zozula, 2019).

Finally, this case study shows that the 'transplanted' institution must be considered in connection with its alternative, in this case the regular criminal court procedure. The findings suggest that, in the Netherlands, community court outcomes do not differ that substantially from the outcomes in regular court proceedings. Overall, the penalty climate is milder in the Netherlands than the US; therefore, community court cases offer less of a contrast with the regular handling of criminal law cases. These findings illustrate the need for solid *ex ante* empirical research preceding importing innovative ideas to other countries.

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Regulation

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