

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published six times a year by the Research and Documentation Centre of the Dutch Ministry of Justice and Security in cooperation with Boom juridisch. Each issue focuses on a central theme related to judicial policy. The section Summaries contains abstracts of the internationally most relevant articles of each issue. The central theme of this issue (no. 2, 2021) is *Franke's 'Twee eeuwen gevangen': thirty years after*.

### **Introduction: Franke's *Twee eeuwen gevangen* thirty years after**

*Jolande uit Beijerse, Miranda Boone and Marit Scheepmaker*

In 1990 Herman Franke's masterly dissertation *Twee eeuwen gevangen. Misdaad en straf in Nederland* was published. An abbreviated version appeared in English in 1995: *The emancipation of prisoners: A socio-historical analysis of the Dutch prison experience*, awarded best foreign study by the American Society of Criminology. Franke analyzes the developments in the Dutch prison system from the end of the eighteenth century to the end of the twentieth century. Despite the size of almost a thousand pages, the book reads like a novel. Even before Herman Franke's untimely death in 2010 there were plans for a re-publication of the book in a hardcover. That re-edition was finally made available by Boom criminologie in 2020. In this special issue of *Justitiële verkenningen*, eight prison experts from science and practice reflect on the contemporary prison system from the perspective of the book. It offers tools to rise above the delusions of the day in public and scientific discussions about punishment and to relate new developments to the theoretical concepts introduced by Franke.

### **Civilization and emancipation, but whose exactly? *Twee eeuwen gevangen* revisited after thirty years**

*René van Swaaningen*

In 1990, criminologist Herman Franke published a seminal book on 200 years detention in the Netherlands. For the occasion of the reissue of this book in 2020, the question is posed to what extent Franke's vision of a gradual 'emancipation' of prisoners, in the realm of a societal 'civilization process', as it is put forward by Norbert Elias, still holds today. The author confronts the civilization perspective with the

three main competing paradigms in penology, derived from the work of Émile Durkheim, Max Weber and Michel Foucault. After describing some recent developments in penal practices, he concludes that despite the fact that sanctioning is increasingly taking place *within* society, which can well be analyzed from an eliasian perspective, there is little reason to still adhere to the progress optimism, implicit in Franke's book, and that today we rather witness an emancipation of the 'angry citizen', in which vulnerable groups in society, such as prisoners, are despised rather than 'emancipated'.

### **Then and now: Does the Dutch prison system have the means to achieve its goals?**

*Toon Molleman*

Starting point in this article is the classical work of Herman Franke on the history of the Dutch prison system. Franke showed how policy-makers and other people who influence prison policy and practice tried to reduce criminal behavior in the past two centuries. These attempts had various backgrounds, among which religious, sociological and biological, and varied greatly in scientific substantiation. Every new prison policy elicited high hopes, but in practice criminal behavior was rarely pushed in the desired direction. The means of the prison system, among which staff, buildings and regime regulations, showed to be much later realized than the formulated goals established by law. Another problem that came up more than once in history was that the urge and compulsion mechanism of a new prison policy lacked support base and (agogical) skills among prison staff. Recommendations are formulated for the (near) future in favor of more successful prison policy implementations.

### **From internal coercion to soft power. How civilization swallows emancipation**

*Miranda Boone*

In his famous dissertation *Twee eeuwen gevangen* (Two centuries of imprisonment), Franke explains the history of imprisonment in the Netherlands as a development from external to internal coercion, based on the civilization theory of Norbert Elias. Central question of this contribution is in how far the pursuit of responsabilization of prisoners as described by modern penologists can be conceived as a continuation of this process and what the consequences of this pursuit

are. It is concluded that the forces behind these two processes differ, but that both rehabilitation strategies are modelled on a new citizenship ideal. In so far the introduction of the responsabilization strategy illustrates Franke's main thesis, namely that developments within the penitentiaries can only be understood in their social and historical context. It is argued that responsabilization can lead to the erosion of the legal position of prisoners, while emancipation was precisely described by Franke as an achievement of the Dutch prison system.

### **On emancipation and prisoners' rights. How living conditions worsened during the corona pandemic**

*Judith Serrarens*

In the second half of the last century, the position of detainees in the Netherlands improved considerably. As far as is possible in the case of persons deprived of their freedom, there has been a certain emancipation of detainees. A well-functioning right of complaint and appeal has been created, for example, that offers detainees the possibility to have decisions of the government, in particular those of the director of the institution and the selection official, that are unfavourable to them, reviewed by an independent judicial authority. Their living conditions have also improved during this period. However, in recent years there has also been a tendency for the government to make ever greater demands on the behaviour of detainees, in return for fewer opportunities for activities and freedoms aimed at resocialisation. Since last year, the corona pandemic and the way in which it is dealt with in prisons have put further pressure on the already vulnerable position of detainees. Since March 2020, prisoners have had their opportunities for phasing in and resocialising further reduced by the virtual prohibition of leave. Furthermore, the visiting possibilities and the activity programmes within the penitentiary institutions have been minimal for over a year.

### **Brittle foundations and alarming signals. Lessons from the 'cellular drama' for closed youth care**

*Jolande uit Beijerse*

In this contribution, a comparison is drawn between the origins of the cellular system in the 19th century and the system of closed youth care in the 21st century. The comparison then focuses on the alarming signals from closed youth care practice and how these are dealt with. The

author argues that shortages in the provision of regular youth care have led to situations in which young people are unnecessarily placed in closed youth care institutions. By focusing on eliminating this deficit closed youth care can be gradually phased out and reduced to a minimum.

**You can be anyone in a novel. On creative writing in a prison context**

*Christine Otten*

This article examines why literary fiction (based on extensive research and cooperation with inmates) allows us to understand the reality of being incarcerated sometimes better than non-fictional work or scientific research. Based on her long-term experiences as a creative writing coach in a Dutch prison the author explains why literature is such a great tool for empowerment and developing the talent of inmates, because it creates a 'free space in prison', where inmates are (aspired) writers instead of prisoners. She describes in detail how equivalent working relations between her as an 'outsider' and inmates have allowed her to create the novel *Een van ons* (One of us), an intimate story told from the perspective of a prisoner sentenced to life and a writing coach, and how she avoided the clichés of the questions of guilt and stigmatization. Otten explores the 'unique power' of fiction as a tool for opening up the closed world of incarceration.

**The meaning of Herman Franke's dissertation in an international and comparative context**

*Cyrille Fijnaut*

One can only welcome the re-edition of Herman Franke's impressive Ph.D. thesis on the history of the prison system in the Netherlands. Although a short English-language version of this book has been published, one still has to look out for a comparative assessment between his analysis and histories on the prison system in other Western countries. This contribution to the special issue of *Justitiële verkenningen* (Judicial explorations) does not make up an attempt to fabricate such an assessment. It only relates to the ways Franke has dealt with, on the one hand, international authors such as Cesare Beccaria, Edouard Ducpétiaux and Cesare Lombroso, who have played an important role in the development of the Western prison system. And it looks into Franke's dealing with, on the other hand, international authors such as Georg Rusche and Otto Kirchheimer, and Michel Foucault, whose

interpretations of its development to a large extent still dominate the academic debate with regard to the history of the prison system. The conclusion is that Franke's analysis of the first category of authors really is rather superficial and his analysis of the second category is a much more balanced one.

**Power, emancipation, powerlessness. On the history of the suffering of inmates and madmen**

*Pieter Ippel*

This article reflects on the brilliant 1990-book of criminologist Herman Franke on long-term developments in the Dutch prison system from 1800 onward. A pertinent question is whether it is possible and adequate to use the discourse of 'emancipation' to catch the historical processes in total institutions. A comparison is made with parallel transformations in the institutional sector of mental health, a social field in which there has been a radical movement claiming better legal protection and more humane living conditions. Surely an improvement has occurred in the actual situation of prisoners and mental patients, but one has to be reluctant (or even sceptical) to frame this in terms of 'emancipation'.