

Justitiële verkenningen

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Schuld

Summaries

Justitiële verkenningen (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in cooperation with the publishing house Gouda Quint BV. Each issue focuses on a central theme related to criminal law, criminal policy and criminology. The section Summaries contains abstracts of the internationally most relevant articles of each issue.

Penal law and mens rea

Y. Buruma

Mens rea in its widest sense - intent, negligence, guilt - has seen an ongoing objectification in the 20th century. In the last few years a revitalisation of the topic can be observed in legal literature, but also in case law. The individual motives of the suspect seem to matter again, not only insofar as they can be constructed by means of established facts. The author welcomes this and hopes that it stands for a trend. He sees it as an important stimulus for magistrates in view of the endeavours to uniform sentencing practices. The importance of mens rea is also stipulated in view of recent developments in social policy law, according to which the administration is empowered to fine according to standard rules.

A society of irresponsible citizens?

K. Raes

The risk society inevitably leads to an insurance and even security society, where citizens are obliged to be insured against all damage they can cause, because high technology destroys any relationship between guilt or fault and the harm that may result from it. Tort law itself thus undermines moral feelings of responsibility, as may be illustrated with the case of so-called 'moral damages'. Social relations are more and more the objects of instrumentalisation and conflict resolution takes mainly the form of tariff conflicts. Nevertheless, utilitarian individualism; which is the resulting ethos of such processes is confronted with limits, as it becomes clear that there is no material compensation for any risk taken. Society should therefore foster preventive thinking and action, and citizens should have a voice when new technologies are introduced, before they have no other alternative than compensation for damages to 'master' these technologies more or less.

The experience of guilt in a culture of images

A.W.M. Mooij

Present day culture can be described as a culture dominated by images: as an image-culture. This might imply that the symbolic dimension of culture and of human existence has become less important. This is supposed to have consequences in the field of human relationships. This change will also be reflected in the prevalence of different kinds of mental disorder and in a shift of moral experience.

Innocent child?

M. Bol

Can children be held responsible for their acts? Are there signs that in recent years juveniles are 'grown up' at an earlier age? In an attempt to answer these questions, a short description of four theories on moral development is given: psychoanalytic, humanistic, cognitivist and (cognitive-

)behaviorist. The author argues that only the behaviorist approach enables a full understanding of the process of moral development and conscience formation. Two basic themes in moral education are the internalization of moral values and the pursuit of self interest (at various levels of sophistication). In the author's view, the moral education of children is not completed earlier nowadays than it was some decades ago. On the contrary, several signs indicate that the internalization of norms proceeds slower and with more difficulty. For more juveniles the immediate gratification of self interest comes first, at the cost of prosocial behavior. Two developments in society might be debet to this moral 'backsliding': increased wealth and prosperity (leading to permissive child-rearing practices), and the exposure to many different norms and values (leading to moral 'confusion').

The internalization of guilt in upbringing

B. Spiecker

This contribution starts by elucidating the concept of emotion. The term emotion is characterised by three conditions, which can be labelled the evaluative-cognitive, the feeling, and the expressive component. With the help of this analysis the question what makes an emotion a moral emotion is answered. These analyses indicate that moral emotions can indeed be cultivated. Next, with the help of the three components of emotions '(moral) guilt' as well as three different forms or levels of guilt are analyzed. Finally, some research findings are presented that indicate under which conditions feelings of guilt can be cultivated.