

Justitiële verkenningen

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Cultural diversity

Summaries

Cultural diversity in Dutch society

G. Hofstede

This article deals with the diversity caused by the fact that part of the present Dutch population was born and raised in other countries. In early childhood we are all mentally programmed according to the culture that surrounds us; this mental programming primarily affects our values, that is broad feelings of evil and good, dirty and clean etcetera. The Dutch majority and the immigrant minorities differ mostly on their values related to smaller or larger Power Distances, and to Individualism as opposed to Collectivism. The children of immigrants are partly acculturated to Dutch values, and they are sometimes torn between two cultures. The third generation is usually culturally integrated. The minorities problem in the Netherlands (and elsewhere) is mainly a majority problem: the majority and its institutions trying to cope with and benefit from an unknown diversity in their society. There is little indication that cultural differences between countries will become smaller in the future.

That's what you say! There are scabs and saints in every culture

P.B. Cliteur

'That's your view!' 'Who are *you* to judge me?' These are common reactions to ethical views or moralising. Behind these reactions lurks a relativist worldview. The author is critical towards relativism. He contends that relativism in its many forms is ultimately self-defeating. This philosophical point is relevant for a multicultural society. No society can exist without some basis of universal values.

Integration or identity; an inevitable choice

N.F. van Manen

It appears that, in the end, there are but two ways to cope in law and public policy with cultural, ethnic and linguistic diversity in present day Western societies: either to respect the distinctness or even autonomy of the distinct community, or integration in the dominant society. In the Dutch history, during the last two centuries, both tendencies have been competing. The first tendency resembles the traditional Dutch pillar-system, the latter a 'love it or leave it' point of view. Both tendencies imply apparent disadvantages but either way, they are offering a consistent policy. Public policy makers, however, tend to avoid this inevitable choice, although they try, through the use of deliberately vague terms like 'social cohesion' and hardly consistent policies like striving for both integration and the *conservation* of identity, to keep this inevitable choice as a skeleton in the closet.

Ethnic collisions with the criminal law

H.M. Willemse and E.F.H. Backbier

As the size of the non-western immigrant population in the Dutch society is rapidly growing - 1% in 1970, 9% nowadays, 22% predicted for 2050 - new norms, values and behaviors are imported. Some elements of foreign cultures collide with domestic elements, especially in the field of criminal law. As criminal law is seen as an expression of basic majority cultural values, radical changes in penal legislation are improbable. So a relatively high level of lawbreaking by non-western immigrants is to be expected. Incidents reported in the media suggest indeed an overrepresentation of ethnic minorities in offending. General information about the relationship between offending and ethnic origin is hard to come by because official registration is restricted out of fear of stigmatisation and discrimination. Out of the scarce available official data, some basic figures are collected and combined. Juvenile delinquency and general crime appear to be strongly related to ethnic origin. Even stronger differences are found for serious offending: hard-core delinquency and the murder rate of ethnic

minorities. The figures are consistent with Tonry's conclusions based on international figures on crime and ethnicity. It is concluded that ethnic crime and delinquency will be a long-term challenge for Dutch criminal policies. It will be insufficient to rely on - often suggested - easy solutions like counting on the 'natural' disappearance of criminal behavior after the the second generation, blaming the selectivity of the criminal justice system or reducing the problem to 'only' an epiphenomenon of low SES.

Multicultural crime and Dutch penal law

F. Bovenkerk

Although not multiculturalistic in spirit the Netherlands have in fact become multicultural in social structure. Crime rates and patterns of delinquency have shown to vary between ethnic groups (including the Dutch) and the article argues that for reasons of both instrumentality (effectiveness) and material equality, some degree of cultural diversity is needed. The criminal law system should include minorities within its ranks and should take culture into account.

'I cleansed my namus'; 'honour killings' and cultural defense

C.W. Maris van Sandelingenambacht

Globalisation and international migration have enriched Western societies with immigrant cultures, but also have confronted them with forms of violence hitherto unknown: killing to avenge or cleanse family honour. The central question in this article is: how should Dutch law deal with 'honour killings'? Should the court accept cultural evidence as mitigating this criminal conduct on the part of immigrant defendants? It is argued that the right of immigrant women to equal protection by the state overrides the cultural rights of ethnic minorities. An appeal to justifiable conduct or duress is out of the question. While recognizing the validity of a cultural defense, this recognition should not lead to reduced sentences.

The multicultural society after September 11th ; in search for foundations

M. Galenkamp

Since September 11th, there is a search for foundations within the context of the Dutch policy on the integration of migrants. Three kinds of foundations - which migrants should endorse - are commonly mentioned. These are respectively: the Dutch norms and values; the human or civil rights; and, the doctrine of the separation of church and state. After a critical appraisal of each of them, it is argued that the current search for foundations is neither feasible (due to current diversity within our society), desirable (due to the underlying polarized language) nor necessary (due to the availability of quite an old normative foundation of liberal societies, the so-called harm principle). Rather than ever searching for new foundations, we had better stick to this old harm principle. We should not ask for more, but we cannot do with less.

Dutch law on a multicultural base

S. Rutten

Since communities from different cultural backgrounds have permanently settled in The Netherlands the question arises whether the existing cultural diversity should be reflected in law as well. During the past decades Dutch judges were asked many times and in all fields of law to decide upon the acceptance of cultural backgrounds of ethnic minorities. Law itself is not yet facilitated to meet with those needs. Certain provisions, like rules on private international law which facilitates the recognition of foreign law, or the freedom of religion can result in the acceptance of certain cultural values. However most cases have to be decided within the framework of Dutch internal law. The legislator will decide whether or not law will leave room for cultural diversity and flexibility. In this view the article stresses the necessity of an open minded legislator. Instead of thinking from traditional concepts he better starts thinking from a multicultural scheme and uses this multicultural scheme as basis for future decision making. The way the legislator could possibly carry out such a task is illustrated by examples derived from especially family law.

When law meets culture; cultural pluralism, legal pluralism and pragmatism

E. Örücü

In this article questions are posed that all need to be considered and and, ultimately, answered when

attempting to bring laws and culture together. The author shows that legal pluralism has not been widely carried through in the western tradition and that the choice for legal pluralism brings along a lot of problems for the legislative powers. Surprising are the examples she gives from the Turkish legal practice. They show that taking into consideration cultural aspects is not only a dilemma in countries that are confronted with an increasing multicultural diversity. In conclusion the author touches on the problems that arise when European countries try to arrive at overarching legal systems.