

Summaries

Justitiële verkenningen (Judicial explorations) is published nine times a year by the Research and Documentation Centre of the Dutch Ministry of Justice in co-operation with Boom Juridische uitgevers. 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. The central theme of this issue (vol. 29, nr. 5, 2003) is: *Revenge*.

Honour, revenge, reconciliation

J.H. Nieuwenhuis

A victim of unprovoked violence who loses his left eye as a result of this crime, will prefer financial compensation to the left eye of the offender. An influential view holds that in tort law retributive thought is on the retreat and is steadily replaced by distributive mechanisms to spread the losses which are the inevitable hazards of modern life. This paper challenges this view by confronting tort law as it is today with Greek Tragedy of the fifth century before Christ. Both law and tragedy are ways to tame the tragic. What has (re)reading the *Oresteia* to offer in order to clarify our understanding of the retributive core of tort law which is still very much alive?

Is there anybody, anybody, anybody...? About forgiveness and identity in the context of criminal law

H.M. Verrijn Stuart

Inspired by the South African Truth and Reconciliation Commission criminal lawyers have started a search for new possibilities in criminal law. Reconciliation and forgiveness became key words. But in order to forgive there must be somebody to receive forgiveness. A known identity. Perpetrators of war crimes and other cruel crimes, though, are often lacking just that: identity. When both victims and perpetrators consider themselves to be victims there is no room for facing their own history and accepting new truths. Whether victims and public

consider a guilty plea, like the one of former Bosnian Serb president Biljana Plavsic, depends largely on whether they got the opportunity to get to know her. To forgive and to be forgiven one has to be able to remember, re-write history. The criminal law system should not usurp forgiveness as instrument or target. A criminal trial beyond the boundaries of criminal law becomes a show trial.

The begging victim and the avenging state

J.M.C. Vos

The author wants to restate the position of resentment in modern Western society. The article focuses on the question whether revenge and resentment should have a role in the legal relations between offender, victim and state. First it will become clear that the social and political relations between subject and state have changed significantly over the years. This changed relationship urges us to reassess the private interest in revenge in the broader scope of the public interest in social order. In the second part of the article the concepts of revenge and resentment are analysed. Revenge is the act, resentment is the emotion. Resentment is the desire for revenge. To revenge oneself is to harm another person in reaction to undeserved grief the avenger has suffered. With examples from drama, literature and film, especially the film *Trois couleurs: blanc* by the Polish director Krzysztof Kieślowski, the concept of resentment will be disentangled into four phases. This part of the article is largely based on the ideas of the philosopher Jean Hampton. The author argues in the third part of the article that the analysis of revenge and resentment makes necessary a reassessment of the relations between victim and state in the Dutch criminal justice system. The altered relationship between offender, victim and state in our modern Western constitutional state makes this kind of reassessment all the more necessary. The article ends with some suggestions for changes in the legal system of the Netherlands. The author proposes a new article in the Dutch Constitution, in which it is stated that the state has to react properly and justly to the victims demand for justice.

The revenge taboo; is vengeance morally acceptable?

B.A.M. van Stokkom

This article focuses on the question of whether or not revenge is morally acceptable. Some philosophers respond positively to that question and sketch revenge as a kind of wild justice. Others criticize the moral value of revenge because the infliction of pain to the opponent is combined with joy and self-satisfaction. Moreover it is questioned whether that satisfaction does actually occur. Nietzsche's distinction between revenge and resentment ('hidden' forms of revenge including spite and discontentment) points out that an 'active' attitude towards the 'object' of revenge is in many respects preferable. Next it is indicated how anger, revenge and hate do relate to each other and in what respects those emotions contain morally constructive aspects. The author argues that revenge has moral value when this emotion bears testimony to the injustice done and the offender is stimulated to take responsibility. Finally the author states that nowadays the revenge taboo seems to be weakened. In some respects underacting revenge emotions have been substituted for overacting.

On vengeance; an empirical study

H.F.M. Crombag

At first sight vengeance appears to be a puzzling emotion, as it does not redress the harm that elicited it, while acting on it may well turn out to be counterproductive. For this study a large group of (young) respondents (N=513) was asked to think of a particular recent incident that made them feel vengeful and to report whether they had acted on it or not, what their purpose had been in doing so, and how they felt afterwards. Only a minority of the respondents reported that they had taken action to get even with the perpetrator, mostly in order to restore the disturbed balance of power. The type of harm that they had suffered had no significant relation with the decision to act on it. Although most of them said that afterwards they felt good about it, this may only have been a fleeting satisfaction, as the data suggest that in the end taking action had not made their residual vengeful feelings subside any faster than those of respondents who had not acted on them. The question of the generalizability of the results is briefly discussed.

Revenge; evolutionary aspects

J.M.G. van der Dennen

The revenge motive in feuding and warfare can be understood as an instrument of retributive/distributive justice or 'balanced reciprocity' (the attempt to restore the legal/moral/cosmic order), as an instrument of politics (a balance-of-power mechanism, deterrence), and as a psychological device (a 'flight-from-grief' and ego-restoration device; 'sweet revenge'). The preponderant majority of accounts of warfare in 'primitive' peoples concerns petty feuding: unending cycles or spirals of revenge and counterrevenge. Reciprocity, both positive and negative, is the basis of all-social relations and interactions, and 'tit is returned or tat' is the negative of 'one good deed deserves another'. It is contended that the emotional-motivational revenge complex evolved as a response to the fundamental cost/benefit structure of enduring social relations among potential rivals, competitors, and enemies. Or, in other words, as a strategy to annihilate what is perceived to be threatening to our existence, our kin, and our clan or ethnic group, even though the apparent costs (in human lives, in suffering, in material resources) are tragically large, but less so than the (biological) benefits (personal and community survival).

Conditions for forgiving; a plan of action

J. Duyndam

In this contribution, a concept of forgiveness is discussed in connection to recent practices of restorative justice and to ethics of care. The article focuses on so-called conditions for forgiving, i.e. steps to be taken by offenders and victims on their way to forgiveness, if necessary and if possible coached by a mediator. It is concluded that in spite of the readiness of both the victim and the offender to the process of forgiving, the outcome of the process is not guaranteed.