

## 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 Boom Juridische uitgevers. 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 (nr. 2, 2008) is *Deterrence and general prevention*.

### **The elephant in the room: general prevention and crime trends**

*A.C. Berghuis*

The crime trends in the Netherlands are like those in the rest of the Western world: a sharp incline in the seventies and eighties, stabilisation in the nineties and now a sharp decline. This trend cannot fruitfully be explained in terms of general deterrence. The punitive climate has hardened specifically in the sphere of light crimes for which light sanctions are meted out. For more severe crime the upwards surge in crime did not lead to more severe sanctioning: the extension of the prison systems follows the trends in crime, so has been shrinking fast during the last years. The broader idea of general prevention, which encompasses also the moral function of criminal law in society, lead to more understanding of the trends in crime and criminal justice.

### **Does imprisonment really not work? The ostrich attitude of criminologists**

*G. Suurmond and B.C.J. van Velthoven*

Many criminologists seem to be convinced that prison sentences have no effect on the level of crime in society. This article reviews the available evidence. The authors present data for the Netherlands over the period 1950-2006 concerning the incarceration rate, the average sanction per crime and the number of crimes. They also evaluate available estimates from the national and international literature on the effectiveness of incarceration. Taking proper account of the methodological quality of the various estimates, the authors show that only one conclusion is warranted: incarceration works. Whether prison sentences pass a cost-benefit test, is quite another matter which is not addressed here.

### **Less infringement of the law; because of general state prevention or because of prevention by potential victims?**

*W. Ultee*

After several decades of rising crime rates in the Netherlands, crime rates now have stabilized or are declining. The author reviews contemporary research and pinpoints neglected questions on the causes of trends and misinterpretations of findings. Despite a lot of attention for questions about recidivism, the question of more 'general prevention' as a consequence of higher apprehension rates and more severe punishment has remained understudied. Also, the finding that potential victims have taken more precautions, is not always fully understood. It just will not do to point out that the number of nightly street crimes has declined, since the chances to become a victim for people who are on the street at night may have remained the same, and only the number of people on the street at night declined.

### **Criminal law theory and deterrence**

*J. ten Voorde*

Because punishment constitutes a grave breach in people's freedom, criminal law theorists try to give the best justification of punishment as possible. One theory is that punishment should deter people. Some scholars have made a connection between deterrence and general prevention: by making people afraid of punishment, they are prevented from committing crime. There are two variants of general prevention: positive and negative general prevention. In the negative variant punishment must intimidate future offenders mainly through fixed punishments. In the positive variant punishment is seen as a form of communication. Society must be made aware which norms are punishable. Here we see a disconnection between deterrence and general prevention. Dutch case law and legislation sometimes refer to both variants of general prevention, sometimes in the form of specialized general prevention. Both variants of general prevention are criticized for their portrayal of man, the disproportionality of punishment and the problems concerning the criminal procedure.

**Punishment: a survey, a myth and new varieties**

*J. van der Pligt, W. Koomen and F. van Harreveld*

This paper summarizes the psychological literature on when and how punishment affects human behaviour most effectively. Findings generally emphasize the role of the probability of punishment and the temporal gap between the offence and the punishment or sanction. This knowledge is related to the findings of more applied research on compliance such as research on traffic behavior and tax evasion. Limitations of regimes that put too much emphasis on punishment are briefly discussed, as well as the often claimed link between the severity of sanctions and compliance. The literature fails to provide support for the latter claim. Finally, the paper turns to more social, as opposed to instrumental forms of punishment and reward. The potential benefits and costs of the use of moral norms and name-and-shame techniques are discussed. The final conclusion is that these newer forms of punishment require both more regulation and research.

**Deterrence and acquiring norms; Kelman's theory applied to criminal law**

*H. Elffers*

Arguing within the rational choice paradigm, and using Kelman's typology of rule compliance (forced compliance, identification, internalization), it is proposed that more severe punishment is superfluous for rules internalized by the majority of society (majority rules). For minority rules (not being internalized by the majority) a much more severe punishment can, in theory, play a role. In a responsive judicial climate, however, it is highly unlikely that such a strong increase of punishment severity will be implemented. For the small but harmful part of society that is obeying majority rules for reasons of forced compliance only, it is argued that rather than punishment severity, a high probability of being caught and prosecuted forms the major parameter of successful deterrence. The argument is illustrated by discussing a prolific offenders example.

**Deterrence research: the need to think small if we are to learn anything new***M. Tonry*

European policy makers cannot learn much from the (mostly American) literature on the deterrent effects of changes in criminal sanctions. Although some evidence suggests that some incremental changes have deterrent effects, insufficient knowledge exists to inform policy decisions governing particular changes in sanctions for particular crimes. Most analysts agree that massive American increases in imprisonment rates have contributed to a decrease in crime rates; that conclusion offers no guidance to European policy makers unless they are prepared to contemplate comparable increases. Such American policies as 10- and 20-year mandatory minimum sentences, sentences to life without the possibility of parole, three-strikes laws, and capital punishment have had no significant demonstrable effects on crime rates; even if the minority view (that some such policies have had significant effects) were accepted, no continental European government is likely to adopt such policies. The American legal system, legal culture, and political culture are so different from any in Europe that American research findings are unlikely to be germane to European experience.