

## Summaries

*Justitiële verkenningen* (Judicial explorations) is published six times a year by the Research and Documentation Centre of the Dutch Ministry of Security and 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 (no. 5, 2015) is *Changing views of man in criminal law*.

### **On views of the world and man and their corresponding criminal law**

*J.A.A.C. Claessen*

Criminal law is embedded in a specific view of man and the world. This thesis implies that a change of the view of man and the world leads necessarily to a change of criminal law. Since our view of man and the world is constantly changing, the same applies for our law governing wrongful conduct. In this article is described how our view of man and the world has changed through the ages (during pre-modernity and modernity) and what changes have occurred under the influence thereof. Given the limited size of this article, a macro-perspective is utilized. At the end of the article, the author advocates a new (trans-modern) view of man and the world and a new corresponding law governing wrongful conduct.

### **Can we still deal with freedom? The contribution of a religious view of man to criminal law**

*T.W.A. de Wit*

The modern secular democratic state rests on a new portrayal of man and a new status of religions and other comprehensive doctrines compared to the period before the sixteenth and seventeenth century. In this new view of man, as incarnated in the modern rule of law, other persons and communities are no longer seen as a condition for personal aspirations and development, but rather as a limit. This is expressed in the 'harm principle' of the French Revolution and John Stuart Mill. Freedom is at the center of this new constellation, so the homogeneity of the state must be generated from below, by a free civil society and also by religious organizations and traditions. Three problematic developments since the nineteenth century make the Christian view of

man as free, responsible and undefinable 'image of God' relevant: the zoological, 'scientific' description of man that reduces man to a risk factor and an object of security management; the disappearance of 'innocent' disasters and calamities that increases human responsibility and the temptation to blame 'others' for our faults; and the growing gap between a legal and a moral public response to criminal acts that opens the need for forgiveness.

### **Does biocriminology per definition corrode the image of human beings as free?**

*L.J.M. Cornet and C.H. de Kogel*

Does biocriminology by definition corrode the image of human beings as 'free' in the sense of being autonomous and responsible? This article focuses on modern biocriminological research and discusses important aspects in which current biocriminological insights differ from historical perspectives on biology and criminal behaviour. Three aspects are discussed: plasticity, integration and conscious/unconscious processes. Illustrating their case with empirical research examples the authors argue that modern biocriminological research does not consider human beings as 'unfree'. Instead, research shows that biological characteristics are subject to change and that biological insights are complementary to more traditional psychological and sociological perspectives. Finally, the authors argue that recognizing the biological influences on human behaviour should not be viewed as a threat to autonomy, but instead should be considered as an enrichment of our understanding of human behaviour, and may therefore even increase autonomy.

### **Protect the victim, start with the accused**

*W.J. Veraart*

This article argues that the notion of 'victim' primarily refers to the position of the person who, in the course of a (sacred, religious, legal, etc.) procedure, is ritually sacrificed to avert the wrath of the gods or to preserve peace in the community. In early modernity the Latin *victima* (sacrificial animal) was also used as a reference to Jesus Christ. Christ was seen as the Lamb of God, the innocent sacrificial lamb which, after an unfair trial, was crucified and died for the sins of the world. In the eighteenth century, under influence of the Enlightenment, the victim concept has been secularized and come to refer to every casualty

of bad luck, crime, or disaster. Art history, however, offers interesting examples of pictures of mythical figures such as Sisyphus and Prometheus, representing early images of secularized victimhood in the sixteenth and seventeenth centuries. In the present day, the concept of victimhood is often used to define the position of the injured party in criminal proceedings. In this frame, the injured victim, looking for legal recognition, is juxtaposed against the position of the accused who is characterized as the possible culprit. However, reflection on the history of the victim concept reveals that it primarily refers to the position of the wrongly or falsely accused or condemned in the course of legal (or pseudolegal) proceedings. A state governed by the rule of law ('rechtsstaat') can be defined as a legal form of society which does its utmost to avoid the justice system producing its own victims. In this approach, a victim-oriented criminal justice system is fully aware of the need to protect precisely those who are threatened by the power of the state and public opinion because they are in the dock.

### **Changing portrayals of detainees. A short historic overview**

*C. Kelk*

Throughout history the way detainees were portrayed by society has varied. At first, until the Second World War, detainees were mainly seen as blameworthy objects. After the war they became a fellow human being with dignity in need of resocialization or psychological treatment. In the Seventies detainees became citizens with a legal status according to the rule of law. When in the Eighties criminal law became more punitive, prisoners developed into enemies of society. Since then the detainee is moreover seen as dangerous and as a risk. Consequently the desirability of resocialization is questioned. This has resulted in a more individual approach towards prisoners, who need to prove that they are motivated for resocialization programs. In the end this leaves the most vulnerable detainees to their fate and expresses a view of man which could be characterized as *the lost human*.

### **The return of the 'childlike nature' of young offenders? Changing images of the child in the history of Dutch juvenile justice**

*I. Weijers*

This article gives a historical sketch of a century of juvenile justice in the Netherlands. It focuses on the development of the concept of

childhood from the beginning of the twentieth century to the present. Starting from the notion of degeneration and the idea of the neglected child, in the thirties a psychologization process emerged. Crucial was the notion of the childlike nature of the behavior of minor offenders, which was clearly inspired by new insights coming from pedagogy, developmental psychology and child psychiatry. The author argues that recently, after some decades showing a trend towards more toughness on crime, there are indications of a reemergence of the notion of the childlike nature of young delinquents, again inspired by knowledge and insights from the behavioral sciences but also from neurology and brain research.

### **Beyond good and evil. The image of man behind 'meaningless violence' in literature and philosophy**

*J.L. Goedegebuure*

This essay focuses on the parallels between the recently coined phrase 'meaningless violence' and the literary theme of the 'acte gratuit', developed by the French modernist author André Gide, but also represented in the novels of Dostojewski, Camus and Arnon Grunberg. From a philosophical perspective the acte gratuit can be connected with Nietzsche's 'Wille zur Macht', but also with Bataille's interpretation of violence as an expression of the will to break taboos and exceed the borders between the profane and the sacred.

### **Changing views of man in criminal law. A reflection based on experiences in the judiciary**

*G.J.M. Corstens*

In this article the author explains his optimistic view of humanity. He argues that a judge, like he was before, should always keep in mind that defendants and convicted people deserve a positive approach, even if this seems to be contrary to the general experience of recidivism. Criminal judges should never adopt an attitude of cynicism and being merciless. However, criminal justice has to take into account the interests of society in general, of victims and of accused and convicted people. Sometimes severe punishment is required in order to underline the rules we have to obey. But even then the judge has to consider whether there is hope. Pondering all the interests concerned is necessary. Sometimes pardoning is appropriate.