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Foreword

The reactions we were happy to receive following the first issue of this annual bulletin last year, formed a stimulus to proceed in the direction taken. The researches reported upon in this consequent issue deal, as we feel, with some interesting topics.

1 Non-departmental research

Research conducted by institutes or experts in the Netherlands

1.1 People who commit robbery with violence

Institute of Criminology of the State University of Groningen, 1976.

Authors:
Dr. F. P. H. Dijksterhuis
O. J. A. Janssen

Background to and design of research

At the end of 1973, it was decided to investigate the incidence of robbery with violence. The project was to be undertaken by the Research and Documentation Centre (RDC) and the Institute of Criminology at Groningen – divided up between the two – the first would analyse the crime of robbery with violence and the Institute of Criminology would principally examine the social background of the perpetrator. This summary deals with the latter aspect of the research. Since it is not possible to select people who have been convicted of robbery with violence on the basis of any particular section of the Criminal Code, it has been defined as an offence in which two elements are central, namely (1) the threat or use of violence (as a means) and (2) unlawful material gain (as the object). Further, the project was limited to violent robbery committed by one or more perpetrators on banks, security carriers and petrol stations. The target group was composed of persons convicted of offences of this kind during the period July 1974 to May 1975. A comparison with cases of violent robbery recorded by the Central Criminal Information Department indicates that the sample did not deviate significantly from the overall group of persons convicted during that period.

The interview, which was standardized, covered sixteen subjects: planning, execution and result of the attack (the three subjects that RDC undertook to deal with), the probability of being caught, alternatives (legal and illegal) to robbery, work, financial situation, marital status, friends, education, self-reported criminal past, military service, origin and home background, expectations for the future and attitudes to violence or aggression. In addition, data were also obtained on official criminal records.

Some findings

The information available on persons who commit violent robbery on banks, security carriers or petrol stations is fragmentary. The results are no more than

hypotheses that can be further researched. The salient findings are given below, subject to this reservation.

Age: the perpetrators are on average about twenty-five years of age, which means that this group still have a good number of active years ahead of them. Having regard to the nature of the crime, this means that they are worth a certain amount of attention. Where possible, it is important that such people be rehabilitated, all the more so, because their long records make recidivism more than likely.

Failure: they have failed in virtually every field where this is possible – in their education, their work and their criminal behaviour. There are indications that failure at school can lead to crime. It is possible that under a different educational system the chance of failure might be reduced and with it the criminogenic effect of the schools. In the future, schools might, in this way, contribute towards the prevention of crime. This is a further field for criminological research.

Work: more than half of those interviewed were jobless. It appears from the survey that these people are the ones who obtain longer unconditional sentences of imprisonment. The researchers cannot explain these longer sentences in terms of the offence committed, where this information was available to them, nor through a more extensive or serious criminal past (whether self-reported or recorded). It is, of course, going too far to say in the light of this investigation that the courts punish unemployment; the investigation was not, of course, directly concerned with that point. However, this finding deserves further examination.

Alternatives to robbery with violence: in the case of most of these persons, there were none. Having regard to their continued failure as indicated above, one may wonder whether they will find any in the future. In this respect, one can hardly expect improvement from nothing but punishment.

Criminal record: this is substantial and consists chiefly of offences against property. This confirms the prevailing opinion that those who commit robbery with violence are in fact essentially guilty of theft. There are indications that carrying weapons – which gives rise to associations of aggression – is in fact done in order to prevent rather than commit violence. To follow this

line, one could argue that the heavier sentence should be based not on the carrying of arms but on injury.

Criminal procedure: The lengthy waiting period between confession and the court hearing should be a matter of concern. It further affects the possible value of heavy sentences given for committing such offences.

The future: having regard to the background of failure and the long records of these persons, the prognosis cannot be all that positive, certainly not if the reaction of society to their offence is limited to punishment.

Suggestions for further research

The project would indicate that the group of people who commit robbery with violence cannot be investigated as an independent category of law-breakers. This would be an argument for placing the problem of this type of offenders in a broader framework in the course of any subsequent research. In this connection, the researchers are considering proceeding with the project in stages.

The *first* stage of such a project would have to deal with the specific social backgrounds of 'chronic offenders', i.e. habitual offenders with long records who started off on their criminal career in their youth. It appears from both this study and from other studies that those who commit robbery with violence must be included in this category. The central question in this case is whether this group, as the researchers postulate, are really at the bottom end of society.

The *second* stage – if the reply to the premise in the first stage is affirmative – would involve further analysis of the group of 'chronic offenders'. The subject of such an investigation would have to concentrate on (1) the crime-patterns of this category, (2) the differences in social background within the 'chronic offenders' category and (3) the significance of the informal structure of the crime pattern. By this means, any specific characteristics of persons who commit robbery with violence could be isolated.

A *third* stage of the project would comprise an analysis of the group of persons committing robbery with violence. After distinguishing the various types within the category, particular attention will have to be paid to the way in which the object of the robbery is selected.

The *fourth* stage of the project would have the robbery itself as its subject. This must be analysed from the angle of the use of violence and the inducement to violence.

1.2 The effects of prosecution policy in the case of minors*

Bonger Institute of Criminology, University of Amsterdam, 1975.

Authors:
Dr. O. W. M. Kamstra
Ed. Leuw

Object and design of the project

The aim of this project was to check in the light of file data whether action by the public prosecutor has any effect on the recidivism pattern amongst juvenile delinquents. In research terminology, such action is the independent variable (the explanatory variable) and the recidivism pattern the dependent variable (the variable which is explained). From an information-gathering inspection of the file material, it emerged that only a very rough definition of these variables was possible. The action of the public prosecutor was defined as 'strict' (summonsing of the juvenile delinquent) or 'clement' (non-summonsing of the delinquent). The effect on the recidivism pattern was determined as: non-recidivist, recidivist after a brief period, or recidivist after a lengthy period.

The group concerned in this project may be defined as all Dutch boys who had their first contact with the law during the first six months of 1972. The period covered by this project runs to June 1975. The juvenile delinquents could therefore be monitored for nearly three years at least. For the purposes of this project, therefore, non-recidivist means no recidivism before June 1975. The recidivism pattern was traced by gathering the criminal records relating to all first offenders appearing in the files for the first six months of 1972. The files of the recidivists could be traced in turn in this way.

Results and conclusion

Only on first contact with the law did there appear to be any statistically significant relationship between the two

* This report is entitled 'Research into the effects of the action of the public prosecutor on the recidivism pattern in the case of minors'.

variables. Non-summonsed first offenders displayed less recidivism than the juvenile delinquents whose cases were pursued. On second, third and fourth contact, there was no further question of such a relationship. Two alternative explanations were formulated for the difference found in the recidivism pattern between summonsed and non-summonsed first offenders. The first assumes that there is an essential relationship between the action of the public prosecutor and the recidivism pattern. Summoning can have a stigmatizing effect on a juvenile delinquent and, as such, contribute to earlier incidence of recidivism. The second possible explanation is that the public prosecutor selects 'more serious' cases for summoning and that the young people concerned are in any event more or less prone to recidivism whatever action the courts might take. According to that explanation there is no relationship between the action of the public prosecutor and the recidivism pattern.

The above explanations are incompatible. The 'causal explanation' is acceptable only if it can be demonstrated that there is no relevant difference between summonsed and non-summonsed delinquents. On comparison, however, it emerged that summonsed first offenders had on average committed more offences and had also been involved in more serious thefts. These findings pointed to the conclusion that the public prosecutor's decision has no demonstrable effect on recidivism patterns, a conclusion which is necessarily based on far-reaching reduction of what the researchers are really interested in, i.e. the nature of the judicial process. What is the attitude of the courts towards juvenile delinquents? What motives, considerations and objectives play a part in this? How is this attitude experienced by the delinquents concerned? Does it have any effect on the delinquents' pattern of behaviour and, if so, what? Questions of this nature are most pertinent but could not be investigated within the framework of this file based research.

If meaningful research is to be undertaken into the effect of action by the public prosecutor against juvenile delinquents, the number of factors examined will have to be greatly expanded as regards both independent and dependent variables. The policy adopted by the public prosecutor is a comprehensive factor within the judicial process and more of its aspects than merely the formal difference between summoning and non-summoning ought to be investigated. This point has even greater force where the delinquent is concerned: a wide range

of social and psychological factors concerning the life history and present situation of the juvenile delinquent needs to be studied. When analysing contact with the law, the significance of this for the juvenile delinquent must take pride of place. How does the juvenile delinquent perceive his contact with the law? What effect does it have on his image of himself, on his expectations for the future, on his social relations, and the like?

With research of this type, which is here sketched in broad outline, the methods to be used will be more laborious and demand more of the courts and the juvenile delinquents than was the case with this file based research. Because of the widely differing aspects as to both content and research techniques, it is recommended that any such research should be designed on a multi-disciplinary basis; co-operation between remedial teaching experts and criminologists would be useful. With a more qualitatively aligned investigation of this kind, material can be collected with the aid of interviews, tests, possibly, and observation of the contact between the juvenile delinquent and the criminal justice system.

1.3 **The development of crime in the Flevo polder; a first report***

Bonger Institute of Criminology, University of Amsterdam, 1976.

Author:
Ed. Leuw

This research is based on the daily reports prepared from 1 January 1967 to 1 January 1976 by the State police of the Lelystad Group on events in the present area covered by the Southern Ysselmeer Polders Public Authority. This analysis of daily reports is the initial phase of a number of sub-projects aimed at obtaining an understanding of the development of deviant/delinquent behaviour in the new residential areas of Southern Flevoland and the patterns of formal and informal reactions to it. On the one hand, the research material used in this case has a limited value because it contains only summary information on the events concerned; further, it is open to all the objections associated with

* This report on the first stage of the project is entitled 'Deviance and delinquency in the new residential areas of Southern Flevoland; an analysis of daily reports by the police, 1967-1975'.

'official' data. The effects of selectivity on the material and the internal functions that daily reports have to serve in the police make any understanding of the 'true' course of events during the period of time covered impracticable on the basis of the present material. On the other hand, the material is valuable because it can be approached as a systematic record of everything that happened involving the police at Lelystad during this period. In this respect the daily reports are in fact the most appropriate material because they form the initial 'raw' material to which no further selection has as yet been applied by the police or the courts.

The total number of events listed in the daily reports has grown from 133 in 1967 to 1094 in 1975. Most of it relates to misdemeanours, mainly traffic offences. As from 1972, there is an increase in the ratio of crimes and non-criminal acts to the total number of events. There is also a slight increase in the number of offences recorded per 100 inhabitants, from 1.1 to 1.5%, within the period. Particularly noteworthy is a sharp increase in the number of 'social problems' in 1974 and 1975. The time of year plays a small role in the occurrence of the various kinds of event. A slight increase can be noticed in crimes and traffic offences during the summer months. The geographical distribution of events roughly follows consecutive development and occupation of the various areas. The central area, in particular, begins to play a steadily more important role over the years as the place where events are recorded. Many events, and offences against property in particular, take place on building land and public works sites.

Commercial property is the main target of offences and destruction; private persons are the target in 30 to 40% of these cases. The increase in the number of recorded events over the years is paired with a relative drop in 'own detection' by the police. The police are therefore increasingly dependent in carrying out their duties on information from the community. This applies particularly to the criminal offences and vandalism category. The percentage of events on which the police report officially fluctuates greatly over the years. The number of 'no official report' cases has in subsequent years increased to about 40%. By far the largest number of official reports on criminal offences and vandalism are prepared at the instigation of third parties.

In order to obtain some understanding of the relationship between five variables - criminal offences, traffic offences, other offences, population size and police strength - a correlation analysis was carried out.

The question of the effect of population growth and the increase in police strength on the development of the number of events in the three other categories was given special attention. It may be inferred from the correlation analysis that a good 70% of the increase in the number of criminal offences can be put down to population growth. The increase in police strength has no demonstrable effect on these figures. Traffic offences, on the other hand, can be explained particularly by the police strength. These facts would indicate that the detection of traffic offences is dependent on police action, while the development in the number of criminal offences is determined principally by influences external to the police. The increase in the number of offences recorded is associated with a drop in the number of recorded traffic offences. This effect is in all probability due to the priority given by the police when turning their attention to the various kinds of events. The relation thus found is therefore a clear illustration of the premise that daily reports tend rather to give a picture of what the police have been concerned with over the years than of actual developments in the area covered by the Public Authority.

1.4 Rehabilitation* – fourth report – ‘Recidivism’

Institute of Criminology, Free University of Amsterdam, 1976.

Author:
Dr. G. Snel

Introduction

This report deals with that part of the rehabilitation study relating to recidivism. In most research, recidivism is regarded as repeated contact with the law. This is to ignore the fact that there may well be one or more new offences without there being any contact with the law (called "hidden recidivism"). This study is an attempt to determine to what extent this occurs. To this end, all respondents concerned in the original investigation in 1973 were again asked whether they had committed further offences since their release. The information obtained showed that the number of recidivists, which amounted to 118 according to the official data, had risen to 167. Four groups could now be formed on

* This research was originally called 'Hidden criminality amongst ex-prisoners'.

the basis of this information – a group of non-recidivists, a group of total recidivists (official and semi-official), a group of official recidivists and a group of semi-official recidivists. A number of comparisons will be made with the aid of these groups.

Results

The report consists of two parts. The first part discusses the results of comparisons between total recidivists (= official + semi-official recidivists) and non-recidivists, official recidivists and non-recidivists, semi-official recidivists and non-recidivists, and between official and semi-official recidivists. These comparisons were made using personality tests, biographical data, information concerning the criminal career, and questionnaires completed during detention and after release by both clients and their social workers. These comparisons certainly produce some kind of picture, particularly where total or official recidivists are compared with non-recidivists, but the statistics were fairly small in number (although generally greater than might be expected on a chance basis).

If we compare total recidivists and non-recidivists, the following sketch of recidivists can be obtained. They are persons who on personality scales appear as less socialized and with less sense of responsibility and self-control. In their early youth, they stand out through their conduct (truancy, conduct at school, running away from home), residence in homes, and a lack of control on the part of father and mother. Their adolescent phase is distinguished similarly by their conduct (quarrels with neighbours and the police, bad influence of friends, frequenting of bars), the level of their first job after leaving school and frequent changes of job. In their last year before detention, they are characterized by their attitude to the neighbourhood, which was impaired on a number of points, the frequency of job-changing, leisure time which is more frequently spent away from home, and the degree of contact with persons with whom they circulate, marital status and whether or not they have a partner, the degree to which the police and the public prosecutor let them have their say, the degree to which court proceedings were understood, the attitude to a stay in a House of Detention, the degree of contact with other detainees, the dislike of prison staff, relations with staff, a tendency to consider crime as normal the longer they are detained, and visits, correspondence and the prisoner's attitude towards them during detention.

Those total recidivists interviewed within the first two months of release think differently about the atmosphere at home, spend their leisure time differently (more away from home), have had more contact with the 'criminal world', and differ more in marital status and whether or not they have a partner. They found that they then did less well in a number of ways, encountered more difficulties, had more frequent contact with the rehabilitation service, and had acquired a rather different image of themselves.

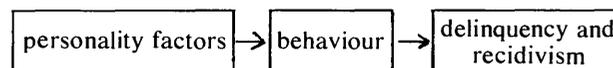
In the period two to eight months after their release, recidivists stand out with regard to the atmosphere at home, their neighbours, joblessness and their relationships with others in, amongst other things, the 'criminal world'; marital status, whether or not they have a partner, and their attitude to the latter, the atmosphere at home with their parents, how well they function during that time, difficulties and a number of aspects of their image of themselves.

As regards the period from eight to fourteen months after release, those recidivists interviewed have more negative attitudes towards the atmosphere at home, are jobless more often, are more critical of the boss and fellow workers, spend more leisure time away from home, and are more prone to bad influence by others; during that period, they also functioned less well. As regards the questionnaires completed by social workers on their clients, it should be noted that it is particularly clear that social workers rate the chance of recidivism of subsequent recidivists more highly.

It has not as yet been easy to determine which of the large quantity of variables are the most important with regard to recidivism. This point will be dealt with in the fifth report.

Final remarks

How can the differences now determined be assessed? There is a temptation to set up the data obtained as a kind of cause-and-effect model on the following lines:



However, this model is to be rejected because it is based only on data obtained by interviewing delinquents. The model must at least be complemented by more "objective facts" such as information on the criminal career, a procedure which accordingly has been followed in this study. From the major differences in this respect between recidivists and non-recidivists, it

can readily be inferred that experience of the courts and police also plays a major part. What is more, the personality factors were obtained during detention. This alone makes it impossible to assume that these are the cause of the recidivist's conduct and his recidivism. More likely than not, the personality factors are the consequence of experience obtained in the ordinary course of life, including experience obtained from contact with the courts and police and prison and the House of Detention.

In the light of these considerations and of the present theoretical state of affairs in criminology, a more allround approach would seem to be to adopt a kind of *interaction-model* where behaviour, i.e. including recidivism, is seen as the result of the interplay of personality (which in itself cannot be looked at divorced from social environment), behaviour and the reactions of others, including those who semi-officially and officially react to behaviour (whether or not defined as deviant or criminal). What must undoubtedly be studied in this connection is whether the characteristic differences between the recidivist and the non-recidivist that we have discovered in this survey are not at least partly brought about by the sanctioning actions of the police and officers of the court who arrived at their decisions in the light of precisely those characteristics.

1.5 Fraud and public transport, and aggression in traffic*

Institute of Criminology of the State University,
Leiden, 1977.

Author:

Dr. A. R. Hauber

Introduction

Attention was paid to comparative aspects in particular. A hundred transport companies in a large number of European countries were involved in the project in the role of victims of public transport fraud, while in the Netherlands, Switzerland and Denmark 'perpetrators' of public transport fraud were approached anonymously by means of a procedure specially designed for the purpose and asked about the background to their behaviour.

The project on 'aggression in traffic' also involved the three countries referred to. In addition, the findings

* In May 1977 a doctoral dissertation was published entitled 'Gedrag van mensen in beweging'. This may be regarded as an interim report on a section of the researches into 'Fraud and public transport' and 'Aggression in traffic'.

obtained in the field were supported by laboratory research.

The study consist of three parts:

- 1 a theoretical section, in which the way in which rule breaking behaviour may arise and the conditions under which less serious forms of rule breaking behaviour may affect the development of more serious forms are analysed;
- 2 an empirical section, in which specific results of experimental and field research are analysed and compared;
- 3 a policy section, indicating by what measures these forms of rule breaking behaviour in travel situations might be reduced and what the possible consequences might be of such changes.

Results

In this summary, the emphasis is placed on some results of the research into 'Fraud and public transport'. The private and public transport situations examined proved to invite aggressive and fraudulent behaviour respectively in a large number of cases, those who accepted the invitation, amounting to 15 to 25% of all those observed in both situations, did so for emotional reasons. Their behaviour may be regarded as a way of resolving conflicts in an anonymous environment which is appreciably less threatening to them than a personal confrontation with the adversary in the conflict. The percentages of interviewees admitting that they had travelled by public transport at least once during the past five years without paying differ appreciably: in Zurich the percentage (36.2%) is more than three times as great in Amsterdam (11.1%) and in Copenhagen it lies in between (25.2%). The relatively low percentage applying to Dutch Railways (14.5%) is probably connected with the fact that the opportunities for fraud on the railways tend to differ from situation to situation. The number of fare-dodgers is of course no indication as to the average absolute fraud. For that, figures are required on the average absolute fraud frequency per year. This, too, appears the highest in Zurich, where the average fare-dodger travels (1973) 49 times without a valid ticket. In Amsterdam (1972) the figure is 23.3 times, in Copenhagen (1974) 22.7 times and on Dutch Railways (1974) 11.7 times. It must be remembered that the price of an average journey by Dutch Railways and in Copenhagen is appreciably higher than that in Amsterdam and Zurich. In the case of public transport fraud, the weight of financial reasons must not be under-

estimated, though when people mention this, it is generally a rationalization.

The author feels that the project has enabled him to show that rule breaking behaviour in these situations may be the result of a learning process. It became clear from the research into aggression in traffic that there is a significant relationship between aggression in upbringing and the existing home situation on the one hand and aggression in traffic on the other. Aggressive behaviour therefore proves to be an acquired method of solving conflicts.

The public transport project indicated that fare-dodgers belonged to a sub-culture in which failure to pay for a ticket is part of the pattern of values and norms. These values and norms are transferred by the older to the newly arrived members of the sub-culture. Here, too, it is clearly a question of teaching effect. Rule breaking and criminal behaviour can be regarded as wrongly acquired behaviour which can be unlearned and replaced by new behaviour patterns that can be learned. The changeability of human behaviour has recently also been generally demonstrated by experiment (see Bandura, 1973, *inter alia*) and this fact is being applied in behaviour therapy.

The research data offer us an opportunity to increase our understanding of the changeability of rule breaking behaviour. The project in fact is of a longitudinal nature: the data concerning one single person or situation extend over a period of at least five years. In this way, we were able to deduce from the available material that 37.8% of fare-dodgers ceased committing fraud during the course of the research period, even though they continued travelling by public transport.

Another group of fare-dodgers showed they were willing to end their fraudulent conduct if certain conditions were met. On the other hand, many new fare-dodgers commence their activities each year, so that on balance the percentage of these people increases yearly. In 1974 the transport companies lost some 5% of their income in this way.

A last, fundamental contribution offered by the theoretical model concerns the consequences that lesser forms of antisocial behaviour may have for the creation of more serious forms of rule breaking behaviour. This generalization effect is supported by empirical research. Here, too, use was made of a double testing procedure: the results of experimental and field research confirmed each other. It appears from the interviews that fare-dodgers are responsible for a greater amount of and more

serious forms of rule breaking behaviour than the control group that does not dodge fares. The experimental research indicated that with regard to rule breaking behaviour, people are inclined to take greater and greater risks if certain forms of rule breaking behaviour are repeatedly successful, and greater risks generally imply more serious forms of such behaviour.

In addition, the empirical research revealed that the dark numbers are very high in both public transport fraud and aggression in traffic. The probability of being caught seldom exceeds 5%. It was also demonstrated that other forms of rule breaking behaviour produced a corresponding picture as regards the dark number aspect. This implies that virtually everyone breaks the rules now and then. Of 8673 persons interviewed, 96.4% appeared to admit as much.

As regards public transport fraud, the analysis enabled four types of fare-dodger to be distinguished, based on seriousness and motivation. The generalization effect referred to above is most likely to arise amongst the most sophisticated fare-dodgers, who frequently actively attempt to avoid payment. On the other hand, increasing the fines appears to have the strongest effect on the more naive dodgers, who fail to pay just now and again.

Further, the "inviting" situation was clearly a contributing factor: the frequency of fraud was found to be the highest where a self-service system exists with tickets sold off the vehicle, where charges are high, where inspection by uniformed staff is infrequent, and where fines are low.

This has little bearing, however, on the detected frequency of fraud. This depends chiefly on the frequency of inspection. A comparison of the results of research in Zurich and Copenhagen shows that actual frequency of fraud does not differ significantly, despite a great difference in detected frequency of fraud.

Amongst fare-dodgers, the following categories are over-represented: young people, men, unmarried, people with a low income, and those who have no private transport. This picture in many respects coincides with that of those adopt other minor forms of rule breaking behaviour. An interesting finding is that the percentages (15 to 25%) of this behaviour in both investigations barely differ. Further analysis shows that in both cases a high percentage of the causes may be put down to transferred aggression, the solution of conflict in which an attempt is made to work off anonymously unpleasantness experienced in the home or at the office. Depending on the means of transport

used, one of the two forms of rule breaking behaviour will be selected for this. Both forms are complementary at a certain level. Only seldom do both forms of rule breaking behaviour appear to be adopted. As a result of the findings produced by this research, policy guidelines have been developed which, if desired, could be used to reduce the frequency of these forms of rule breaking behaviour.

As regards the public transport situation, the introduction of free transport within the conurbations in the near future is recommended, provided that at the same time the quality of the transport is raised. As regards short-distance inter-city transport, a system of charges more adapted to the degree of utilisation should be introduced (halving the charges during off-peak hours), while almost full automation of payment and inspection is also to be recommended. In order to regulate aggression in traffic, changes are recommended, on the one hand, in irritating traffic measures and situations by, amongst other things, introducing speed restrictions adapted to the local situation instead of a general limit. On the other, attention should at the same time be paid to improving inter-personal relationships in traffic situations by, inter alia, compulsory courses aimed at a more positive experience of participation in traffic. This would result in situations less inviting to aggression, while the individual, after the obligatory training, would feel less need to choose aggression in traffic as a solution to conflict.

1.6 Consequences of imprisonment*

Willem Pompe Institute, State University,
Utrecht 1977

Author:
Dr. L. M. Moerings

Formulation of the problem and method of research

According to section 26 of the Prison Administration (Principles) Act, the deprivation of liberty should, while retaining the character of punishment, at the same time be useful as a preparation for return to society. This task of re-socialisation should amount to more than merely preventing recidivism. A stay in prison should have a *positive* effect on the life of the prisoner. This

* A doctoral dissertation was published in June 1977 entitled 'De gevangenis uit, de maatschappij in', based on this research.

project therefore examines the true significance of a stay in prison for the prisoner's social relationships. In order to determine the significance of imprisonment as affectively as possible, it is important to know the prisoner's situation before his entry into prison. The 195 prisoners interviewed were therefore questioned intensively during their imprisonment on their social contacts before their stay in detention. Their contacts with the outside world, through visits and the post, during their stay in prison were also discussed with them. A second conversation, six months after their release, dealt with their social situation since the ending of their term. The wives of married prisoners were also involved in the investigation. The mothers of unmarried prisoners were interviewed.

Contacts during imprisonment: visits

The only opportunity of maintaining contact with home during a stay in prison is through visits and the post. More than half the wives (56%) visit their husbands each week. The high cost of travel and the brief visiting times are important factors inhibiting a weekly visit. Amongst the unmarried, a large number (30%) receive no visits at all.

During the visit, according to the husband, they mainly catch up on what has been going on at home. It would appear from the problems brought up during the chat that the husband's absence has left its marks on the family: financial difficulties, education problems and physical/mental problems for the wife. By no means everyone, discusses present problems. Nearly half the prisoners admit to keeping off certain problems: sexual difficulties, adverse prison experiences, marriage problems, etc.

It is noteworthy that the *wife* sees the visit differently: she finds that chiefly her difficulties are not given an airing and that talk centres mainly on the problems of the husband. Both partners therefore find that the other's problems receive more attention. The closed nature of an institution and the presence of a warder during the visit contribute to the misunderstandings that can thereby arise in the relationship. 60% of prisoners in closed institutions and 32% in open institutions say that they avoid certain subjects. The paradox then arises that prisoners with relational problems, partly owing to these difficulties, are less likely to be considered for transfer to an open institution, so that precisely those whose need for an open discussion is greatest are denied the possibility of a relatively

favourable situation for discussing their problems.

Family situation during imprisonment

While it may already appear during the visit that problems have arisen in the prisoner's home owing to his absence, the conversations with his wife on the family situation confirm this impression further: financial worries are one of the problems most frequently mentioned by wives, bringing up the children is an additional heavy burden on the wives, while wives' contacts with their surroundings also become more of a problem – they are stigmatized by neighbourhood residents and are sometimes cut off from their acquaintances. A number of women have difficulty in coping with this, as is clear from among other things the increased visits to doctors in connection with mental and/or physical complaints.

Marriage

Because of the restricted opportunity for contact between man and wife during imprisonment, the husband is insufficiently aware of marriage problems. Divorce, always initiated by the wife, is sometimes unexpected and deterioration in the relationship (without this amounting to a break as yet) eventually becomes more pronounced than the husband had anticipated.

Job

The prisoner's job situation does not look too rosy six months after his release. One third of ex-prisoners had done no work at all, while another third had worked only temporarily: periods of working alternate with periods of joblessness. However, the job background is put into relief only when comparing it with the situation before imprisonment: this was in many cases no better, and it is only that the outlook becomes still more bleak after imprisonment.

Social contacts

Ex-prisoners are stigmatized more frequently by neighbours than by relatives or friends or acquaintances. Neighbourhood contacts, however, were generally not all that close before imprisonment; the more superficial the contacts, the sooner imprisonment becomes such a drastic event that it leads to stigmatization. Imprisonment has an adverse effect on prisoner's social relations in various ways. Yet, the changes that occur are not all that great in the situation before

imprisonment is taken into account; this is evident merely from the prisoner's employment record which was poor before imprisonment and deteriorates still more after imprisonment; for a large number of prisoners, no further deterioration was possible because they had already been unemployed beforehand.

The conclusion is that although crime is not restricted to the lowest classes – as is clear from other research – it is predominantly the lowest social classes, and the socially weakest groups within them, that end up in jail. A stay in prison does not so much set a process of stigmatization and social isolation in motion but is more an *expression* of a low, poor social position. Imprisonment is chiefly the continuation of a trend, but in a downward direction.

First offenders and recidivists

This downward trend becomes more acceptable if the research group is divided up into first offenders (in the sense of imprisoned for the first time) and repeated offenders. The basic situation is generally worse for repeated offenders than for first offenders; the former are more negative towards their relationship with their wives, the job circumstances are poorer, and above all they complain more frequently about living conditions. It is repeated offenders' marriages that deteriorate further or reach breaking point. They find it more difficult to obtain work on release and it is they who speak more frequently about reduced contact and stigmatization. These differences between first offenders and repeated offenders have yet further consequences: during the second interview, held six months after release, it appeared that one third of recidivists (37%) had again fallen foul of the law in the meantime, while this had occurred with only 11% of first offenders.

Labelling approach

In the course of this research, a theoretical link was sought with the labelling approach (Becker, Goffman, Lemert). The renewing element and force of this view lay in the different, relativizing definition of deviant behaviour: behaviour which is labelled as such. The social reaction is allotted a central role. A person who has the label of "deviant" stuck to him by the authorities or his immediate social environment is deprived of his chance of leading the life of a normal, unremarkable individual. The social reaction becomes the origin of existence as a deviant. Applied to the theme of the project, this means that according to the

labelling approach, a stay in prison has a stigmatizing effect: everyone who has been inside has the label of ex-prisoner attached, which will play a dominating role in his life, so that his chances of becoming an adequate member of society diminish or are, even, fully removed. By following certain critics of the labelling approach and using his own research findings, the author attempted to introduce some shading into the application and consequences of stigmatization. We might refer to the distinguishing effect of the nature of the deviant behaviour, the relationship of the stigmatizer and the stigmatized, and the deviant's opportunity of resisting the label imposed upon him.

1.7 The legal position of minors*

Institute for Applied Sociology, Nijmegen, 1977

Authors:

W. C. M. Scheffer

C. Woldringh

M. H. J. M. Knapen

The initiative to have research undertaken into the views of Dutch society on the legal position of minors was taken by the Ministry of Justice at the beginning of 1975. After the Second Chamber of Parliament had, in a motion in October that year, urged the drafting of a bill for a broader arrangement of the legal position, the Minister of Justice commissioned the Institute for Applied Sociology to undertake an investigation. An advisory committee set up by the Minister gave advice and assistance.

Formulation of the problem and design of the research

The social changes that have taken place since the Second World War have also had their effect on attitudes to relationships within the family. A plea has been made on many sides for greater independence of young people and for a strengthening of their legal position. In 1971, the Committee for a Review of the Law on Child Care and Protection (the "Wiarda Committee") made proposals in this connection. The discussion that has broken loose in recent years concerning minors who run away from home has also

* Subtitled 'Research into the actual occurrence of difficulties between parents and their minor children in a number of 'choice fields', preconceived views on certain of the problems that arise, and attitudes to a broader formulation of the law in this respect'. A summary was prepared by the first and second of the authors and Or. D. W. Steenhuis, and published simultaneously.

contributed towards the topicality of the question of minors' rights. The research carried out by the Institute centred on three points:

1. To what extent do difficulties actually arise in the Netherlands between minors and their parents on a number of important "choice fields" such as school and vocational training, place of stay or residence, membership of organizations and associations, relationships, assistance, and the like?
2. How do parents, young people and adults view the occurrence of difficulties of this kind generally and to what extent do they consider them serious?
3. What are the attitudes to, amongst other things, solving such problems and granting rights to minors, and extending their decision-making powers?

The project did not cover problems with which the children's courts already deal, the contractual capacity of minors, statutory age limits, legal interpretations and criminal matters.

To answer the three questions, three samples were taken of which the first two were interdependent. Of over 2,800 persons approached, 33% refused to co-operate. The following were interviewed:

- 932 minors (unmarried, age range 12 to 21);
- 932 of their parents (fathers and mothers alternatively; parent and child were questioned independently of each other);
- 937 adults aged 21 to 75 (including married persons aged 18 to 21).

The areas to which the questions related were: education and occupation, income and appropriation of income, place of stay and residence, church membership and membership of associations, relationships and going out, and assistance received. Questions were also asked about habits and appearance.

Minors and their parents (samples I and II)

As regards the subject of school and choice of vocation, there proved to be few problems between parents and their children. Regarding the choice made on completing basic education, 85% of parents and children appeared to agree. About one fifth differed in opinion regarding the choice of job. More than half of the young people were financially quite independent of their parents. They differed very little in how they spent their money. In two thirds of the cases, those who had their own income were allowed to keep it entirely. A very large majority wanted no greater financial independence

(in the sense of receiving more money but also then having to pay more).

Only a small percentage of those questioned mentioned conflicts connected with the place of stay or residence. The absconding problem was not great; 20% of the young people could, however, imagine circumstances in which they might run away from home, something that their parents were hardly aware of. Of the young people questioned, only 6% no longer lived at home. Children stated appreciably more frequently than their parents that they belonged to no church organization. This did not appear to be so much a matter of conflict, except on the point of nonattendance when the parents were loyal churchgoers. Nor did the large majority of those questioned consider their friends, holidays, association and contacts (if any) with assistance organizations a source of insurmountable difficulties. Appearance and habits (hair, clothing and smoking) proved to be a source of friction to a far greater extent than questions of greater substance such as school and vocational training and place of stay or residence. More than 30% had had problems in this respect. As regards going out, three quarters of the young people considered it right that their parents should exercise some control as to the time of home coming. Parents were rather more reserved than their children, and were less willing to discuss their difficulties. It could not be inferred from the results of the survey whether, or to what extent, certain difficulties were associated with certain types of family.

Adults on difficulties now and in the past (sample III)

This sample may be considered representative of the Dutch population with regard to sex, age, degree of urbanization of residential districts, region and marital status. The persons concerned differ in a number of ways from the group of parents referred to in the previous section: on the whole, they were younger, had fewer children, and included more skilled workers and fewer small traders and churchgoers.

A good third of the parents of children of 12 years and over within this category stated that no conflicts had arisen in the areas about which they were questioned. The greatest friction was caused by the time the children returned home at night and their appearance. This was followed by more serious problems such as the choice of a (marriage) partner. It is noticeable that some 36% of these parents were no longer able to remember what solutions were found: an indication that their

children had their own way? This is certainly the case the more serious the problem and the older the age at which it occurs. There was also some indication that the occurrence of problems is linked with age: 63% of all conflicts arise after age 15, 36% even between 18 and 21. Certain problems are to a certain extent linked with the sex of the children. Of the 53 cases mentioned of problems in choosing a marriage partner (courting, engagement) only one third concerned boys as against two thirds concerning girls. As regards appearance (86 cases) it was precisely the reverse.

The problems that adults previously had with their own parents did not appear to differ appreciably from those that they have or had with their own children. There seems some indication of increasing tolerance towards young people.

So much for the actual occurrence of problems between parents and children now and in the past.

Preconceived views

Apart from the facts, however, the preconceived views that people have on these difficulties is important, so that questions were also included on this point.

Topics which are most the subject of preconceived views among all categories of respondents are living together outside marriage and the time of returning home at night.

The group of adults adopts no median position on virtually any of the problem areas. It takes a rather darker look at matters than the other respondents. Amongst adults, image and reality appear to differ appreciably from each other. Many of them have exaggerated ideas regarding participation in action groups and living together unmarried. The reverse also occurs: the choice of a school or training, actually problem number five, and magnitude, problem number seven, rank only twelfth and fourteenth in seriousness in the view of adults.

Attitudes

The attitudes of all respondents were first sounded as to the independence of young people in general, on the basis of eleven concrete statements. What was most noticeable when the answers were analysed was the great concordance between the three groups, even where some difference of opinion might be expected. The postulate 'parents in the long run know best what is good for their child' was subscribed to by a good 25% of both parents and adults and by as much as

31% of the young people. Another noteworthy fact is the moderateness of opinions. Here, the adults generally occupy an intermediate position between parents and young people.

As regards 15 of the 17 topics then submitted, half of all respondents considered that young people should be able to decide independently at a certain point. An exception was early school leaving and deduction of earnings (if any) for board and lodging. The age at which they wanted to grant decision-making powers differed appreciably per subject, but for the most part lay beyond the 16th year. Respondents were further asked how they might feel if minors' rights were laid down in an act of Parliament, so that everyone would have to abide by them. There appeared to be little need for a general provision of this kind. While only 4% of the parents and 6% of the young people gave affirmative answers, a majority (64% of young people, 71% of adults and 79% of parents) considered that decision-making powers for young people was a matter to be resolved by parents and children themselves. Nonetheless, a quarter of all young people and a fifth of the adults considered certain matters to be suitable for statutory regulation: living together outside marriage, applications for a passport, living away from home, leaving school early, and choice of school and occupation.

Apart from this, what did they think about conflicts being solved through the mediation of impartial third parties? This, too, a majority (average 80%) considered a matter for parents and children alone.

A minority – 12% of young people, 13% of parents and 19% of adults – felt that third parties might be involved, a social worker coming first to mind (child care and the children's courts were hardly involved) but other suggestions were a good friend and someone from school.

Final considerations

Is prevailing opinion now based more closely on reality than on preconceived views? This question cannot be answered within the framework of this project since the relationship between reality, preconceived views and attitudes appears more complex than had initially been supposed. Nonetheless, it may be concluded as far as the attitudes of the population are concerned, that there is but little need in Dutch society generally for statutory provisions to govern in detail the legal position of minors in general with regard to their parents;

- a quarter of young people, 14% of their parents and one fifth of adults consider statutory provisions desirable in certain fields.

The main conclusion with regard to the information provided by the project on the actual occurrence of problems between parents and children is that it is not all that clear in what direction these facts point. True, the overall picture is one of relative calm, but substantial problems arise in certain areas. The extent of these becomes more apparent when the percentages obtained are converted into assessments of absolute numbers in the population as a whole. A noteworthy finding in the enquiry is that the difficulties that arise most frequently are least susceptible to statutory regulation because they lie within the sphere of life style and rules of the home. Problems that are susceptible to statutory provision, on the other hand, are to a large content those that concern persons in the age group of 18 to 21: if the age of majority were to be reduced to 18, therefore, their importance, legally speaking, would be sharply diminished.

2 Departmental research

Research conducted by the Research and Documentation
Centre of the Ministry of Justice

2.1 Crime and the retail trade

Research and Documentation Centre, 1976.

Authors:

Dr. D. W. Steenhuis

A. W. M. Coenen

Background and design of the project

Having regard to the increasing disquiet of the retail trade concerning the crime with which retail traders are faced, RDC has carried out a study of the nature and extent of this phenomenon. The object of the research was primarily to summarize what was really happening in this field in order to be able to determine whether the Government should give more consideration to the problem.

In consultation with the trade associations of medium-sized and small businesses, a questionnaire was drafted and used in an attempt to obtain replies to the following queries:

- 1 What is the extent of the problem: to what extent are retail traders faced with various forms of crime?
- 2 What is the nature of the problem? This question has three aspects:
 - What are the facts of the offences: is violence used, are offences notified, etc.?
 - Are there specific (groups of) businesses that encounter more trouble than others? If so, in what way are they characterized?
 - Is the problem a seasonal one, i.e. does it cause more trouble at certain times of year than at others?

In order to answer these questions, a questionnaire was sent to a sample comprising some 5,500 retail traders in April, July and November 1975. The sample was taken from businesses in the four large cities of the Netherlands and in Haarlem, Groningen, Nijmegen, Apeldoorn and Maastricht. They were asked whether they had ever had any trouble with rowdiness, revenges, damage to goods inside or outside the shop, damage to vending machines, shop lifting, theft from vending machines, intimidation, protection rackets, damage to property, breaking and entering, robbery with violence and any other kinds of crime. They were also asked whether they had encountered any one or more of these crimes during the month preceding the enquiry.

Results

Information on the subject was received from 3,443

retailers: 55% of them had at one time or another been affected by shop lifting, about 30% had on occasion been broken into, a quarter had had some trouble with rowdyism and 14% had had some trouble with damage to the shop and 12% with damage to goods set up outside. Less than 10% of the retailers had met with any of the other offences. From answers to the question whether they had encountered any one or more of the crimes referred to during the preceding month, the overall picture was the same. Here, too, shop-lifting takes pride of place: on average some 20% of the retailers had experienced it, followed by rowdyism (8%), damage (2 to 3% in each case) and breaking in (similarly 3%). The figures for the various months differ little, if at all, (except in the case of shop-lifting) so that, generally speaking, the problem cannot be said to be a seasonal one.

As far as the nature of the problem is concerned, it was found that the use of physical violence was the exception. Of the 1,558 shopkeepers who indicated that they had met with one or more of the crimes referred to in the preceding month, 72 said that blows were exchanged. Violence of other kinds or shooting did not occur in a single case. Further, the police were called and informations laid as an exception rather than a rule. Only in 467 (15%) of the 3,192 cases recorded were the police called, and the number of cases where informations were laid amounted to only half that number (6%). The police were most commonly called for breaking in (75%), robbery with violence (50%) and theft from vending machines (40%). The results also show that crime is distributed fairly irregularly over the various retailers. Of the 2204 cases recorded of crime involving property, more than half (55%) related to only 183 (23%) of the shopkeepers indicating such a crime. Businesses that have a relatively large amount of trouble are distinguished from the others in that they are not geared to specific commodities (department stores, supermarkets) and for the most part are located in the centre of the town or in shopping centres. The overall picture emerging from the investigation is that crime is not a major problem in the retail trade. Serious offences (the settling of grudges, robbery with violence and protection rackets) occur only on a very limited scale and crime as a whole is strongly concentrated on certain businesses, particularly those not geared to specific commodities. There would therefore appear to be little general cause for increasing disquiet. This is not to say a limited problem is not a

problem for all that. Such offences as shop-lifting and breaking and entering can have particularly annoying consequences for the businesses that encounter them frequently. Seen in that light, the scope of a phenomenon such as shop-lifting should be a matter of continuing concern both to Government and to the retail trade.

2.2 Individual remissions in the case of criminal offences and recidivism

Research and Documentation Centre, 1976.

Researcher: Mrs. C. van der Werff

Introduction and problem

This is a report of an investigation into the effectiveness of remissions. It was initiated by a request from the Constitutional and Criminal Law Division, which deals with applications for remissions and with the granting and revocation of conditional remissions. In this connection, the following questions were considered. From the point of view of special prevention, (1) does the remission of punishment have a positive or a negative effect? and (2) should preference be given to conditional remissions over unconditional remissions? In other words, does the granting of conditional remissions have a greater preventive effect than the granting of unconditional remissions?

To answer these questions, a comparison was made between (a) recidivism statistics for those granted remissions and those not (it was not known whether the latter had unsuccessfully applied for a remission) and (b) the recidivism statistics for persons who received unconditional remissions and those who received conditional remissions.

Research design

Questions of this kind – into the relative effectiveness of criminal sanctions and treatment in general – can be irrefutably answered only by means of experiment in which the decision whether to proceed with a particular sanction or treatment is based merely on chance. Only in an experiment of this kind can interpretation of the outcome be free of difficulty. A difference in the outcome of various treatments is the consequence of the differing effects of such treatments. Similarly, the same result from differing sanctions or methods of treatment means that the effect of the various sanctions or

methods of treatment is the same. Decisions on whether to grant remissions do not in fact rely on chance; all kinds of considerations are involved in practice. Only when particular requirements are met can a convicted prisoner be considered for remission. Apart from the fact that the decision-making procedure itself works selectively, it could be that those who apply for remission form a distinct selection. The net result is that when making comparisons based on actual decisions – which we have to do in this case – we are always left with the question whether any differences may perhaps be explained by variables other than the difference in the method of treatment. Up to a certain point, this problem can be dealt with by selecting the groups to be compared in such a way that they are equivalent in relation to the background variables known to be associated with recidivism.

For this purpose, the individual matching method has been adopted in this project. This means that for each convict granted remission in the group studied, a convict is selected who has not received remission and corresponds in a number of characteristics such as age, criminal past and nature of the penalty imposed. Both the convicts granted remission and those not granted remission were sentenced in 1966. Recidivism for the purposes of this project means that, within six years of a case being recorded at the court, one or more new criminal cases resulting in a conviction are recorded. Comparable groups were formed in the same way in order to compare the recidivism statistics of convicts with unconditional remissions.

Results

The investigation showed that the recidivism statistics are somewhat lower in the case of convicts granted remission than in that of those not granted remission. This could be the consequence of (a) the fact that the group of convicts granted remission forms a 'favourable' selection of offenders or (b) a possible favourable effect of remission on the convicts concerned, or both. In the case of (b), possible factors could be gratitude for clemency and the absence of the stigmatizing effects of a stay in prison. Whatever the case, the results justify the conclusion that *full or partial remission of punishment does not have an unfavourable effect from the special preventive aspect.*

Comparison of the recidivism statistics of the group of convicts with unconditional remissions with those for a comparable group of convicts with conditional remissions

shows that the circumstances of the pardon are not related to recidivism. It may be concluded from this that *conditional* remissions are *no more effective* from the special prevention point of view than *unconditional* remissions. Since conditional remissions are seldom granted to long-term prisoners, it was not possible to determine the effect of conditional remissions on that category. When deciding whether to grant a remission therefore, there need be no fear that the special preventive effect of the penalty will be nullified or reduced thereby. On the other hand, there seems no justification for believing that, from the special preventive point of view, a conditional remission should be preferred to an unconditional one. Whether conditional remissions are desirable on other grounds is not, of course, at present under discussion.

2.3 Crime and preventive devices

Research and Documentation Centre, 1976.

Authors:

Dr. W. Buikhuisen

G. A. van Bergeijk

Introduction

One of the studies carried out at the request of the Ministerial Steering Committee on the Prevention of Crime was a study of literature on the crime prevention facilities that technology can offer. One of the premises in this case was the increase in 'opportunity' crime such as shoplifting, the theft of bicycles and mopeds, joy-riding, pocket-picking and the like. 'Petty crime' of this kind is largely responsible for the increase in recorded offences. Further, the percentage of cases solved is on the low side, which is probably connected with the lower priority that the police attach to cases of this kind. Unless special steps are taken, it is only to be expected that this situation will persist in the future. This development could give rise to various undesirable consequences such as a reduction in confidence in the police. In addition, the idea that crime can be left unpunished could lead to a deterioration of standard, and a reduction in detective work by the police could increase the risk of people taking matters into their own hands. The report asks to what extent preventive devices could play a part in preventing petty crime.

Results

The study indicates that, to date, work in the field of

preventive devices has been directed chiefly towards preventing armed robbery and breaking and entering. Lager businesses, in particular, have benefited from the expertise developed in this field. Attempts have been made in a number of ways to make crime more difficult. Three general principles can be distinguished in this connection:

- *signalling the approach to the target.* For this, use is made mainly of alarm and observation equipment;
- *preventing access to the target.* The security of doors and windows, for example, can be improved with good hinges and fastenings; and
- *making valuable objects less attractive by means of special procedures.* An example of this is marking and registering valuable objects.

Even where less serious crime is concerned, there are ways and means of applying technical aids. Research carried out in the United Kingdom, Germany and the United States shows, for example, that the compulsory introduction of steering locks has reduced the incidence of car theft in those countries. Preventive devices can form an effective means of prevention against shoplifting and bicycle theft as well. The report mentions various possible applications and includes a number of recommendations. It stresses that Government and the producer must be more aware of the possibilities of preventive devices and designs in connection with such matters as the planning of new districts, house-building, the production of cars and bicycles and other crime-attracting objects. Risk analyses can be used to determine what and where the weak points are. This relates to the answers to such questions as where and when crimes take place, under what circumstances and in what way. The public too, will have to become more aware that they sometimes make it very easy for potential thieves (by leaving their car or bicycle unlocked, their house unsecured, etc.).

Apart from encouraging new applications of preventive devices and carrying out basic research into them, it is important that the quality of existing devices should be tested. A kind of hallmark should be introduced for security systems.

In order to make Government, the producer and the public more aware of what is available in the prevention field, certain work should be done: in particular, action should be taken to promote the development, diffusion and application of technical know-how. Concrete examples include the encouragement of development projects, an information service for interested persons

(i.e. local authorities, producers and the public), and support for legislative work, e.g. regarding quality requirements.

At the end of the report, the authors deal briefly with whether preventive devices possibly encourage feelings of insecurity and whether such an approach amounts only to fighting against the symptoms. Their conclusion is that there is no reason to assume that the measures proposed in the field of preventive devices should have detrimental side-effects and that such an approach could benefit both potential victims and potential offenders (by preventing certain persons from committing an offence).

2.4 **Alternative sanctions**

Research and Documentation Centre, 1976.

Author:
L. J. M. d'Anjou

Introduction

At the beginning of 1976, the Alternative Penal Sanctions Committee asked for a literature study to be made into the effectiveness of *alternative* sanctions, as a follow-up to the 'Effectiveness of Sanctions' report made to it some time previously (see Bulletin No. 1, 1977). When this project was discussed with the Committee, it turned out that they were chiefly interested in two points: (1) What is the relative effectiveness of alternative sanctions as compared with imprisonment, and short sentences in particular? and (2) What are the consequences of introducing one or more of these alternatives? In order to answer these questions, the literature had to be extensively sifted through, reference also being made to a summary of literature on alternative sanctions that had been prepared for the Committee under the guidance of C. Oomen.

The report, which was made to the Committee at the beginning of December 1976, is divided into five chapters. The first delimits the subject-matter, since when the literature gathered together was examined it soon became clear that writings on alternative sanctions covered a boundless field. The study was therefore limited to measures (in the general sense) that the courts could adopt instead of detention of up to six months when dealing with criminal cases.

Results

The number of alternative sanctions remaining was still quite large. Furthermore, the same names were used in the literature for different measures while different names were used for sanctions that were very similar. In order to bring about some order in this extensive and relatively uncharted territory, the alternative sanctions were divided into a number of categories in the second chapter.

The third chapter gives information on the effectiveness of short terms of imprisonment and of the alternative sanctions discussed in the report. The question of effectiveness is dealt with in the light of the aims of punishment as set out in the literature. The following aims – much the same as those adopted by the Committee on Financial Penalties – are distinguished:

- Influencing the conduct of others than the offender. This aim is referred to in the report as '*primary prevention*'. This includes the prevention of unlawful conduct (general prevention), deterrence and steps taken to ensure that such conduct ceases (repression);
- influencing the conduct of the offender. This is referred to in the report as '*secondary prevention*'. It includes changing the delinquent (resocialization), deterrence and actually preventing him from continuing his delinquent behaviour;
- resolution of conflicts, this report dealing only with the offender and his victim.

Two kinds of effectiveness must be clearly distinguished: (1) Do sanctions work? (absolute effectiveness) and (2) Does any one sanction work better than another? (relative effectiveness). On the absolute effectiveness of sanctions, little reliable research material exists. This point was dealt with briefly in the previous report and it was accepted that the threat of sanctions has a general preventive effect. Because of the lack of reliable research data, the absolute effectiveness of sanctions cannot be dealt with further but alternative sanctions will be compared with short-term detention.

When an attempt is made to examine the effectiveness of the various alternative sanctions from a primary prevention point of view, it is noteworthy that little comparative research has been done thus far. In fact, there is no evaluation research in this field whatever. In general, all that is examined in the research is how the system of sanctions can be changed in order the better to achieve the aims of rehabilitation and resocialization.

The provisional conclusion is that brief periods of detention are not, relatively speaking, more effective than a number of the alternative sanctions dealt with in the report in achieving the aim of primary prevention. More research has clearly been done in the field of secondary prevention, although certain sanctions have been investigated little if at all. Further, a fair measure of research is sub-standard. If account is taken of these restrictions, it may be concluded that sanctions differ little from each other from the secondary aspect. There are indications that certain sanctions are more successful for certain kinds of crime than other sanctions. It seems worthwhile to seek out the correct recipe for the particular individual. An advantage of alternative sanctions is that they do not produce the side-effects of imprisonment that promote recidivism, or do so to a lesser extent. Research further shows that the application of certain alternative sanctions need not be restricted to first offenders or petty criminals. There are two sanctions – compensation and restitution – that can contribute towards resolving the conflict between the offender and his victim. The other alternatives are, in this respect, better in any event than short-term imprisonment, which adversely affects the chance of such a solution. Conditional sanctions can make a contribution through the special conditions imposed. The fourth chapter examines the possible consequences of introducing new sanctions. In the first place, there are factors that can benefit or, on the contrary, lessen the success of new alternative sanctions. These factors can be inferred from experience abroad with the introduction of new sanctions. In the light of this experience, a number of conditions can be formulated that must be met if the introduction of alternatives is to have any chance of success. For example, the social climate must be such that alternatives can take the place of imprisonment. To achieve this, the courts and the public must be aware of the substance of these sanctions and their advantages. The alternatives put forward must offer the courts a real set of choices and the framework for implementing them must be present. Secondly, the extent to which there is scope for applying new sanctions must be examined. The 13,000 short sentences of detention passed each year seem at first sight to be adequate for this purpose, but the greater part of these are of less than one month. The more radical alternatives, which are those chiefly discussed in the literature, such as community service orders or day training centres, could not be considered

a suitable substitute for sanctions of such restricted duration. If we base ourselves on the group of convicts sentenced to one to six months' imprisonment, some 4,000 cases remain. The question then arises whether it is desirable and possible for meaningful alternatives to be adopted for such a small group of offenders, convicted for the most part for offences against property. A third factor is related to a number of disadvantages of short periods of imprisonment of the offender, his environment and to society as a whole, which are less aware, or unaware, of the alternatives. New alternative sanctions would appear in this respect to be advantageous, although account must be taken of the fact that the rights of the accused and of the convicted criminal may be encroached upon.

Final remarks

In the final section, some comments are made on the results of the study in order to return the question of alternative sanctions to its true proportions. The report dealt only with a limited number of alternatives, namely only those sanctions that can be imposed by the courts. Decriminalization, depenalization, diversion and doing little or nothing are all ways of reducing the number of prison sentences. It must further be remembered that from the potential 4,000 cases that could be earmarked for an alternative to short-term imprisonment those cases must be subtracted where preventive custody has been previously imposed.

Consideration is then given to whether it is worthwhile introducing these sanctions, having regard to the advantages that the alternative sanctions have over short periods of imprisonment and to the restricted scope for applying the alternatives. Because of the definition of alternative sanctions adopted and the subsequent restriction to substitutes for terms of imprisonment of one to six months, only a small number of alternatives in fact are left, namely semi-detention or weekend punishment, day training centres, community service orders and provisional sanctions with intensive supervision by the probation service.

The differences between the sanctions and short-term imprisonment are not, however, sufficiently great, with regard to the disadvantages and the cost of implementation, for introduction of the alternatives to be recommended. However, change must remain the objective since, otherwise, the present practice of short-term imprisonment will continue to apply. This may be brought about by using existing alternatives to

imprisonment, such as fines and compensation, more than hitherto; thought could also be given to allowing the courts more room for experimentation.

2.5 **The harmonization of sentencing under discussion – the Arnhem District**

Research and Documentation Centre, 1976.

Authors:

Dr. D. W. Steenhuis

J. J. van der Kaaden

Introduction

Equality before the law is one of the essentials of just sentencing. Similar cases must be dealt with in a similar way, dissimilar cases differently according to the degree of their dissimilarity. How can sentences in comparable cases be prevented from differing too greatly? This was the question put by the public prosecutor at the Arnhem Court to the Centre when he asked it to help consider the practicalities and difficulties of further harmonization. The guiding principle was that once more information is obtained on the considerations that play a part in the hearing of a case and the reasoning on which the sentence is based, a basis for harmonization will have been found. An attempt to obtain this information has been made by working as closely as possible from the day-to-day practice of the public prosecutor.

Sentencing in two concrete cases was discussed in the course of two consecutive group sessions with members of the prosecutor's offices in the Arnhem district.

Design and content of the first part of the project

The first discussion with members of the public prosecutor's offices covered the sentence and reasons behind it in the two cases. The public prosecutors participating had committed a sentence and reasons to paper before the case was discussed, which they then explained in the course of the discussion. In order to obtain a better understanding of the differences between sentences and reasons, the prosecutors were asked to comment on each other's sentences and the reasons they gave for them. From this it became clear that, although it is often assumed that there is a link between the sentence and the reasons, this was not necessarily the case, and the discussion gave rise to the impression that the absence of this link could to some extent be explained by a difference in the terminology used. What

one prosecutor called 'retribution' the other referred to as 'resolution of the conflict'. As a result of these findings, it was decided to hold a second discussion session which would deal further with the meaning of the terms used to describe reasons, particularly insofar as they concerned the objectives of the punishment.

Continuation of the project

For the second session, the public prosecutors were given a note describing the objectives of punishment most commonly put forward. In the course of discussion, they were asked in each case to what extent they agreed to the description. Not only the substantial significance of the aims was discussed but also the question to what extent account was taken of the aims in actual sentencing. In fact, there are major differences in the significance that the prosecutors attached to certain aims of punishment. In particular, terms such as retribution, resolution of conflict, deterrence and the maintaining of standards clearly meant quite different things to different prosecutors.

However, once the terminological differences had been clarified, it appeared that the differences in sentences discovered during the first session could not be clearly attributed to differences in attitude as to the aim of punishment. As to the reasons for the sentences, it was found that the same decisions were taken on the basis of different aims, while very different decisions were taken on the basis of the same aims. It was also felt that considerations as to the aim to be achieved by no means played so explicit a role in all the cases submitted to public prosecutors. In the course of the two sessions, the question that is central to this project became steadily clearer, namely "Why is it that different public prosecutors assess the various aspects of a case so differently?".

Final comments

The literature on the decision-making process of the court authorities is an extensive one. One of the studies which went most deeply into this process was that made by Hogarth. By examining all the personal characteristics of the person passing sentence and linking them to the sentences that the metes out, Hogarth attempts to attach a particular significance to decision-making factors. To the offence and offender aspects, the aim of punishment and the procedural matters that play a part in sentencing, he attaches the significance that the individual person passing sentence

himself gives them. In this way, he gains information which is lost in a study of files and he avoids the risk of neglecting differences in terminology. He, too, with his examination of the differences in sentencing, comes to the conclusion that they cannot be attributed merely to a difference in underlying reasons. The sentence is to a high degree related to the attitude of the person passing it; this attitude largely determines his assessment of the facts. Through his research, Hogarth demonstrates how attitudes are formed and how they relate to this person's image of himself. With this discussion project completed, it may be concluded in accord with Hogarth that sentencing is essentially an individual matter, each person seeing the case according to his own views. In order to prevent this leading to too great differences in sentencing, consideration can be given, in accordance with the research findings, to a re-orientation in the recruitment, selection and training of people who pass sentences. Since such an approach can bear fruit only after some considerable time, and in view of the complexity of the problem, solutions of a more technical kind should be sought in the short term. Organizational measures, such as further specialization, might well lead to greater harmonization. It goes without saying that with measures of that kind other arguments are involved.

2.6 **The extent and development of crime**

Victim surveys 1974-1977
Research and Documentation Centre, 1977.

Authors:
Dr. J. J. M. van Dijk
A. C. Vianen

Background and research design

The way in which police statistics are compiled, i.e. by offences of which the police become aware being reported to the Central Bureau of Statistics, means that they cannot be used as a reliable indicator of the extent and development of crime. By no means all offences are reported to the police and by no means all reports lead to the police drawing up a complaint form signed by the person making the report. Changes in the extent of recorded crime can therefore also be the result of changes in the population's willingness to report crime, in the policy of the police towards drafting official reports, and, of course, in the extent of crime itself. Since 1973, RDC had made a survey each year in which

a representative sample of the Dutch population was asked whether they had been the victim within the past year of one (or more) of ten named offences. The sample which originally covered some 3,000 persons was upped in recent years to more than 10,000. This produces a precise picture of the actual extent of crime and allows the determination of those sub-categories of the Dutch population that have a greater chance of becoming victims. Further, a question in the survey was whether the police had been informed that the interviewee had become the victim of an offence, and, if so, whether an official report was subsequently signed. In this way, an insight can be obtained into the fluctuations in the willingness of the population to report offences and into the police's policy on official reports.

Results

A comparison between the outcome of the survey for 1975 and that for 1976 indicates that, in the case of six of the ten types of offences included, the percentage of victims in 1976 was appreciably higher than in 1975. The offences concerned were bicycle theft (percentage of victims amongst bicycle owners in 1976: 5.2%), theft from private cars (percentage of victims amongst car owners in 1976: 2.9%), pickpocketing (percentage of victims in 1976: 3.0%), running down by motor cars (percentage of victims in 1976: 7.0%), threatening or violent behaviour in a public place (percentage of victims in 1976: 2.3%) and malicious damage (percentage of victims in 1976: 5.7%). The percentage of victims in the case of car theft (percentage of victims amongst car owners in 1976: 0.5%), breaking and entering private premises (percentage of victims in 1976: 1.1%) and common assault (percentage of victims in 1976: 1.2%) reached the same level in 1976 as in 1975. The extent of these forms of crime did not therefore rise in 1976. Finally, there was an appreciable fall in the percentage of victims in the case of moped theft (the percentage of victims amongst moped owners being 6.0 in 1975 and 3.6 in 1976). On average, the offences listed by the interviewees were less serious than those recorded in the police statistics. In the case of crimes against property, the sums concerned were mostly small, and as regards offences involving violent or threatening behaviour in a public place, injury was sustained only in a minority of cases. Victims (innocent) in running down cases, suffered the most serious injury and heaviest financial loss.

The percentage of victims of the various types of offence is not equally great amongst all population groups. Young people, men and residents of the large towns are generally more likely to become a victim of an offence than older men, women and residents of smaller communities. Crime rose far more rapidly in 1976 in large towns than elsewhere. The chance which persons in the top social class (factory managers and the like) have of being burgled is three times as great as that of other Dutchmen. Amsterdammers – Amsterdam adolescents in particular – and university students and the like form the highest victim percentages. Of the offences listed by the interviewees, some 50% had been reported to the police. The percentages reported were appreciably higher in the case of the more serious property offences such as car theft, moped theft and burglary (approx. 80%), than in the case of aggressive offences such as violent or threatening behaviour in a public place, common assault and malicious damage (approx. 25%). As a reason for omitting to make a report, approx 40% of non-reporters said they did not think the matter sufficiently serious to report. Similarly, 40% gave as a reason that a report achieves nothing. A smaller percentage gave as reason that "the police do nothing anyway". Of those who had failed to report a case of common assault to the police, 10% replied that they did not dare to do so.

The decision whether or not to report an offence depends in the first instance on its seriousness. Minor theft and damage are generally not reported. The willingness to report offences to the police is more or less equally great amongst the various population groups. Young people, women and city dwellers are neither more nor less inclined to report offences than other Dutchmen. The inclination to report offences was smaller amongst Amsterdammers and students. Precisely the two population groups with extremely high victim percentages, therefore, display relatively low reporting percentages. Of victims who had made reports to the police, about two thirds signed an official report. No official report is therefore prepared by the police in a good 30% of the cases. The decision by the police whether or not to prepare an official report, like the decision by the victim whether or not to report the offence, is determined initially by the seriousness of the offence. In the case of minor property offences and offences involving aggression, statements are drafted less frequently. The police in the larger cities proved, contrary to expectation, to be no more reticent in

preparing official reports than the police in smaller towns. In fact, the police in smaller municipalities relatively frequently omitted to prepare an official report. A contributory factor in this case, seems to be that the police in the country have more opportunity of providing a solution without having recourse to criminal proceedings. Finally, the analysis showed that reports by women led to an official report less frequently than similar reports by men.

2.7 An observation study of police patrol activities

Research and Documentation Centre, 1977

Authors:

Dr. J. Junger-Tas

Mrs. A van der Zee-Nefkens

The chief aim of this study was to obtain a better understanding of the amount and nature of police activities by patrol men. It was carried out during the second half of August 1976. Patrol activities were studied in one large, one medium-sized and six country municipalities. 24 observers, 20 Centre staff and 4 Ministry of the Interior staff took part. In the cities, observation form completed in all cases where some in country areas, only day and evening shifts were observed.

Altogether, 91 complete shifts were observed. The total period of observation was 711½ hours. The observers used two different forms: a special diary sheet on which all police activities – both at the station and on patrol – were noted down, and a standardized and structured observation form completed in all cases where some time was taken up and where citizens were involved. The latter form was completed not only with the nature of the event and how it was dealt with, but also with some information on the persons involved, such as adolescent/adult, Dutch/foreign, white/coloured. The behaviour of those concerned was also entered up on a scale.

The chief results of the investigation are as follows.

- The uniformed police spend two thirds of their working time on patrol and one third at the station.
- Two thirds of total patrol time consists of preventive patrol and one third is devoted to incidents.
- More than half of all incidents have to do with traffic control, infractions and traffic accidents.
- Providing help and information takes up about one fifth

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Erratum:

On page 47, item 2.7, line 8 of the first paragraph should read:
'observation extended to day, evening and night shifts;'

of all incidents; only 5½% of the events related to crime.

- In country areas, the police have more contact with the population and render more actual assistance than in the town.
- Long-haired and coloured persons and those classed as 'untidy' tend to behave less politely and more indifferently, inimically and aggressively towards the police. The police attitude towards these classes of person is more patronizing and authoritarian.
- It must be emphasized, however, that the behaviour of the public and of patrol men is closely correlated.
- Only seldom were the police seen to exceed their powers.

Some conclusions can be drawn from this study. The task of the uniformed branch is first and foremost one of maintaining order rather than combating crime. In addition, giving help and assistance takes an important place, not always particularly appreciated by the police. Also noticed was the wide freedom of decision that the policeman has in his daily work. The way in which tasks were fulfilled differed widely as between town and country. The task of the National policeman is less specialized and he has more autonomy; he is also more integrated into local community.

Finally, the police adopt a somewhat differential approach towards certain population groups and the behaviour of patrol men is too strongly correlated with that of the citizens they deal with. The study report was ended with a few suggestions concerning the organization of the police-officer's work and the effect of police behaviour on the population.

2.8 The judiciary and class justice

Research and Documentation Centre, 1977

Author:

Dr. W. Buikhuisen

Background

The author offers a critical scrutiny of two articles by Professor R. W. Jongman and Mr. T. Schilt of the Institute of Criminology, Groningen. The articles were published in 1976 in the October and December issues of the Netherlands Journal of Criminology (*Tijdschrift voor Criminologie*) and were written within the framework of an investigation made by the authors into the policy of public prosecutors towards the non-

institution of proceedings and the sentencing policy of the Bench. The conclusion drawn in the articles was that class justice exists. The author questions on both theoretical and practical grounds the research methods advocated and applied by Groningen.

The report

Theoretical objections to the research method applied

The basis material for the Groningen project consisted of 3450 cases of theft in 1972 which had led to conviction. The research was limited to male suspects aged 18 to 25 and, as regards the offences, to articles 310 (simple theft) and 311 (4) (theft in company with others). Ten research variables were involved in the analysis. Examples are age, recidivism, unemployment, social class, etc. The intention was to examine to what extent these factors influenced the punishment imposed by the court. Particular interest was shown in the extent to which the social class of the suspect exerts a specific influence.

If, as in the present case, a research method is adopted in which use is made of a splitting technique instead of multivariate techniques, care must be taken to see that the research group is sufficiently large and the variables to which the splitting is to be applied are not too great in number and not too disadvantageously distributed if we are to avoid from the outset the possibility of finding spurious relationships. Even then the following objections apply:

- Unlike correlative methods, no insight is obtained into the relative significance of a factor (it remains unknown, for instance, how much variance is explained per variable).
- Conclusions are based on statistical analyses made within the split-off sub-groups. This means that little efficient use is made of the material as a whole.
- Working with sub-groups is not only undesirable from the point of view of efficiency but also faces the researcher with problems of generalization. After all, outcome is not always characteristic of the overall sample or population investigated, but only of one or more sub-groups (e.g. suspects who have returned to crime, or who are jobless or unmarried, or unmarried and from a certain social background). General conclusions as to the sentencing policy of the courts cannot therefore be just drawn from a sub-group of that kind and applied to persons before the courts generally.

- Following on the previous point, one may even wonder whether general statements on the population which this sub-group represents are justified. The sample on which this is based is, after all, arrived at in a way which is anything but aselective. In addition, the splitting technique greatly increases both the number of comparisons to be made and the chance of a significant result being arrived at by accident. Consequently, when a splitting technique is used, cross-checks are definitely to be recommended (repeating the investigation on a comparable sample.)
- No less important is to check, for all sub-groups that have ultimately been compared, whether the findings obtained are not to be explained by other factors which also relate to the sentence imposed by the court. True, it has been found with regard to the entire research group that these variables cannot produce a distorting influence. However, they revealed no connection with e.g. social class, the factor that the project is concerned with. This does not mean, however, that such distorting relations do not exist within certain of the sub-groups resulting from the splitting technique. On this the Groningen study has nothing to say. An analysis carried out by the Centre of material kindly provided by Groningen shows that, uncorrected, the correlation between social class and the punishment imposed by the court is .16. If the distorting influence of the recidivist variable is removed, the correlation already falls to .11 (data calculated from the simple theft group).
- The Groningen splitting technique encourages the dichotomization of the variables (sub-division into two parts). After all, if more classes were to be adopted per factor yet more splittings would have to be made. The number of individuals obtained per split-off sub-group then becomes steadily smaller so that the point where no further splittings can be made is reached earlier. Thereby, the whole purpose of the method is at stake: the establishment of true relationships. In order nonetheless to achieve the latter, the researcher will have to seek refuge in simplifying the scoring of the variables. Divisions will be made into two. On the question whether the place of residence might have any effect on the sentence imposed by the court, the municipalities are divided into two groups – those with more than 20.000 inhabitants as against those with less than 20,000 inhabitants. In the case of social class, only the dichotomy upper/lower is used, etc. This way of scoring variables leads not only to unnecessary reduction in spread within the variables and consequently to a

reduction in their capacity to explain variance, but also detracts from reality.

Objections to how Groningen applied the method

The Groningen study shows that four factors influence the sentence imposed by the courts for a single, simple theft. They are recidivism, unemployment, the availability of positive (or negative) information on the suspect, and social class.

Each of these variables display a significant correlation with social class. If the distorting influence of recidivism, unemployment and positive or negative information is to be eliminated, we must resort to splitting. It is clear that, having regard to the small number of individuals retained in the higher social class after the first split, not much remains for splitting. The group of first offenders from the higher social class then amounts to only 64 persons, and the group of recidivists only to 20.

We could still try to continue, at least with offenders in the lower social class. A split could then be made e.g. on the basis of the criterion of the availability of positive or negative information. But this does not work either, since this variable is too unevenly distributed. Again, there are too few individuals left to be able to draw scientifically justifiable conclusions. Neither there is a further sub-division on the basis of the criterion of joblessness. Not unimportant in this case is the composition of the group of offenders allotted to either the lower or upper class. The latter group proves to consist predominantly of pupils or students. The criterion of unemployed cannot therefore apply to them. But this does not leave us with much to split, in any event.

The comparability of the research groups

Various studies (van Leeuwen and Oomen; van der Werff, RDC) indicate that all kinds of variables relate significantly to the gravity of the punishment. If we examine the relation between social class and seriousness of the penalty, care must be taken to ensure that these variables in no way distort the results. The Groningen project limited itself in this case to the variable of 'recidivism'.

Class sub-division

In the case of both projects, the large majority of delinquents in the upper classes consisted of school children or students. What is therefore compared is not so much justiciables from the upper classes with delinquents from the lower social classes, 'students' with 'workers'.

If, in fact, a students effect were to be adopted instead of a class effect, and if this category of justiciables were then omitted from the material, there would no longer be any link present between social class and the penalty imposed by the court. Should this assumption be incorrect, a relationship would then have to be discerned within the group of 'workers' between social class and type of sentence. The author has tested this hypothesis against the base material kindly provided by Jongman and Schilt, with regard to policy on both non-institution of proceedings and sentencing. The original Groningen coding was strictly adhered to. As regards both simple theft and theft in company with others, the author can find no demonstrable relationship between social class and penalty imposed.

2.9 **The role of the judge in society**

A supplementary literature survey

Research and Documentation Centre, 1977

Author:

O. R. de Lange

Background and design of the research

At the request of the Commission of State on the Review of Judiciary Organization, under the chairmanship of H. E. Ras, a literature survey has been carried out intended as a supplement to the descriptive report 'The role of the judge in society' which was issued by the Centre in October 1973.

In order to underline its supplementary nature and to increase its serviceability, it was decided, in consultation with the Commission, to dovetail with the layout of the previous report as closely as possible. The contents of the new report are therefore limited to matters dealt with in the 1973 literature survey. For the same reasons, the literature included consists largely of Dutch publications of a predominantly legal nature, relating to the situation in the Netherlands. As was the case in the previous report, the items covered are mainly in the nature of 'fundamental principles', so that articles more aligned to questions of organizational technique were included only to a very limited extent. Finally, it may be said that every section begins with a summary of the chief points from the previous report on the subject concerned, so that the present report can, too, be read as a self-contained document, if necessary.

The report

An exposé of the law on the basis of the existing social situation has various consequences. First of all, it means that to elucidate the phenomenon of law and how it functions it is not sufficient to rely on the explanations offered by legal science and related interpretations. Resort must also be had to social and human sciences such as e.g. politics, sociology (of law) and (social) psychology. Secondly, this approach means that we must ask in what kind of society law functions. A description of its role in society in the abstract is not a fruitful way of proceeding if a satisfactory understanding is to be obtained of the role and functioning of the judge. Various writers when considering the place of the judge in society have explicitly proceeded on the basis of Western democratic society, with all the values associated with it. The value choice has an influence on the way in which the role of the judge is perceived. This applies all the more if we consider that law is a reflection of social order, that law does not primarily create order but regulates existing order. To speak of 'the *function of the law and the judge*' does not therefore portray the variety of their functions and the variety of ways in which they can be interpreted. The functions can, for example, be looked at from the point of view of the maintenance of order, or of the maintenance of law. In the latter case, the emphasis is placed very much on the autonomous values of law and legal principles. Here, the role of the judge is that of a referee, applying the principles of 'fair play'. One of the most commonly mentioned functions of the judge is that of a *conflict-solver*. However, the question is whether the courts can and may play a conflict-solving role in nonjuridical matters. In addition, it would appear that the judge who attempts to solve conflicts in (civil) law between parties who in principle are equal, is in practice confronted with the fact that the parties are not always all that equal (e.g. consumer against multiple store). In literature much attention is devoted to *the judge as a source of law*. Reference is usually made, in this connection, to the link between a more liberal attitude towards the law and the fact that statutory provisions are out of date, have gaps, are unclear or lay down vague principles. One wonders, however, whether this concern does not relate to 'atypical cases', in other words cases which do not fit in with the view that the judge chiefly ascertains facts in accordance with the dictates of law. Or can it be argued that, in such cases too, an administrator is still required, with his own interpretations? The problem with the judge's role in interpreting the law arises

particularly when he has to deal with socially highly controversial matters (i.e. 'political questions'). A liberal attitude towards the law gives rise to questions, particularly regarding the capacity to decide in such cases, the legitimation of the judge's opinion and legal certainty. Reference is sometimes made in connection with these 'political questions' to political administration of justice. In the case of *political administration of justice*, what comes to mind is the political nature of jurisprudence itself (the Marxist view), the influence of the political component via 'Vorverständnis' and the attitude of the judge, and finally the types of case (the 'political questions') that have to be decided. The judge can try to stand aside from the political aspects by setting himself up as a referee who merely decides whether the rules of the game have been observed. On political matters, however, the parties are not so much interested in how the judge has come to his decision but rather in the outcome of the decision. This must be acceptable as far as possible, not only to the parties themselves but also to society and the judge.

The term '*class justice*' is sometimes used in connection with political administration of justice, although most writers feel that, strictly speaking, this term is no longer usable. Other terms are preferred in practice ('privileged' and 'under-privileged' strata). Matters that come to mind with regard to class justice include the kind of decisions, the kind of cases and the background of members of the judiciary and offenders.

What is important is not only whether 'class justice' is in fact meted out, but also whether justiciables feel that this is the case.

As regards the latter, *communication* between the judge and the justiciable is important. The mass media play an important role here, but, in the direct confrontation between the judge and the justiciable, the judge can also make an important contribution to increasing people's trust in the judiciary. The importance of such trust is stressed by many writers and regarded by them as a necessary precondition for the proper administration of justice. At the same time, however, various writers feel that a crisis of confidence reigns. This distrust of the courts is in part translated into doubts as to the independence and, particularly, the impartiality of the judge, although such distrust often appears to relate more to the process of law in general. On political matters certainly, a link is quite often alleged to exist between the decision of the court and the (presumed) ill-balanced composition of the bench, it often being implicitly

assumed that the fact that the judge himself comes from the ranks of the privileged means in itself that he adopts a specific (political) approach. Leaving aside any influence which the judge's background may have on the (im)partiality of his decision, it is generally considered desirable that the composition of the bench should as faithfully as possible reflect the various strata, political currents and (religious) convictions of the population. A problem here is the fact that people eligible for judicial office mostly come from a rather small section of society. A survey by the Institute of Applied Sociology indicated that of students reading for their final examinations in Dutch Law who obtained their intermediate degree before 1972, 20% came from the so-called lower social bracket. The above also applies with regard to the *position of the judge within the system of criminal law*. Further, there is the question whether and to what extent the judge should help to give shape to the implementation of criminal law policy. Various writers have come to the conclusion that this is no task for the judge. The task of the judge is to uphold the law, not to maintain order.