Prologue

Ferry de Jong

'This is it, this is us, here we go ...'[1]

1 On this volume and the occasion of its publication

1.1 The occasion: the eightieth anniversary of the Willem Pompe Institute

In 2014 the Willem Pompe Institute at Utrecht University celebrated its eightieth anniversary; the present book is written with the aim of adding lustre to this festive occasion. On October 1st 1934 Willem P.J. Pompe, Professor of Criminal Law at Utrecht University between 1928 and 1963, founded the 'Criminological Institute' (*Criminologisch Instituut*) within the Faculty of Law at Utrecht University. Soon afterwards, Pompe initiated and epitomized a rather influential academic movement, based on multidisciplinary cooperation between jurists, criminologists and psychiatrists.[2] This is why, in 1974 – forty years after its formation, eleven years after Pompe's retirement, and six years after his death – the Institute was renamed after its founder: the *Willem Pompe Instituut voor Strafrechtswetenschappen*.

Although it developed rather spontaneously, and not as a result of a prefigured intention of creating a certain school of thought, the movement initiated by Pompe was indeed, in 1959, labelled by the French criminal law scholar Jacques Léauté as 'a new school of criminology: the Utrecht School' (*Une nouvelle* école *de criminologie: l'école d'Utrecht*).[3] Ever since, the term Utrecht School has been used to designate the multidisciplinary cooperation within the Institute, strongly influenced by the then popular existentialist, phenomenologist, and philosophical-anthropological theories.[4] The most notable figures behind this movement were, next to Pompe himself, the psychiatrist Pieter Baan and the

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1 Excerpt from the lyrics of the opening song from the album *Songs about Dancing and Drugs* by the band Circlesquare, released by the record label !K7 in 2009.

2 Fijnaut, 2014, p. 461-465.

3 Léauté, 1959.

4 See Weijers, 1991; Abma, Bos, Koops & Van Rinsum, 2009. A more elaborate exposition of the history of the Institute can be found in the first chapter of this volume, authored by Ferry de Jong and Constantijn Kelk.

criminologist Ger Kempe. In addition to the prevailing multidisciplinarity, the different research activities and the different activities that were carried out by the members of the Utrecht School were highly characterized by their so-called 'delinquent-centred' approach: they advocated the ideal that the delinquent in the judicial system was to be treated as an *equal*, a fellow human being and absolutely not an abject object, which was often still the practice in those days.

The communal concern for a multidisciplinary, delinquent-centred approach found a marked expression in the then widely used phenomenological term 'encounter' (*ontmoeting*). In his public lecture of 1947, Baan argued that lawyers and psychiatrists needed to meet one another with a shared anthropological interest in the person of the delinquent.[5] In addition, meaningful encounters should also take place between the various criminal law officials, on the one hand, and the delinquent individual on the other. As a side note: the artwork by the famous Dutch (COBRA) artist Constant Nieuwenhuys (1920-2005) that adorns the front cover of the present volume has not been selected light-heartedly. Its title, 'La Rencontre', neatly fits the traditional thoughts of the Utrecht School. But what is more, over the last few decades it has become something of a tradition to grace publications of the Institute with one of Constant's works of fine art.[6]

The (old) Utrecht School had its heyday between 1950 and 1963. After a short period a new academic movement within the Institute gave rise to a second heyday between the years 1970 and 1980. This movement was initiated by the criminal law scholar and legal sociologist Antonie Peters and was later referred to as the 'new Utrecht School'. Contrary to the old Utrecht School of Pompe, Baan, and Kempe, the new Utrecht School, however, did not involve a truly integrated form of scholarship that combined insights from criminal law, criminology, and forensic psychiatry and psychology; instead, it was focused on the application of strongly socio-critical theories on matters of criminal law, predominantly matters of criminal procedure. This 'turn to critique' in criminal law scholarship did however inspire many staff members from the fields of criminology and forensic psychiatry and psychology. The old School's humanistic and existentialist approach that conceived of the delinquent primarily as a fellow human being was substituted with an outspoken emancipatory approach that conceived of the delinquent primarily as a holder of rights. The prevailing idea in the 1970s was that strong and effective defence rights constitute an important prerequisite for the active participation of the defendant within proceedings and thus for the emancipation of the delinquent.

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5 Baan, 1947. See also Langeveld, 1957 (*Rencontre, encounter, Begegnung*); Moedikdo, 1976, p. 121-122; and Brants, 1999, p. 13-14.

6 Thanks are due to Constantijn Kelk – an old friend of the artist – who carefully selected the work. Constant himself authorized him to freely reproduce Constant's works on the covers of all books issued by or in the context of the Willem Pompe Institute.

From the beginning of the 1980s, however, the ideas held by the new Utrecht School were put to the test because of the unfavourable developments in crime rates and the public reactions thereto in the form of criminal justice policy. The turn towards a starkly instrumental view of the criminal law within governmental circles dovetailed with a number of developments in Dutch society: the increasingly large-scale structuring of organizations and business corporations, the advances of new technologies, computerization and commercialization, economic regression and the accompanying increase in unemployment rates in the 1980s, and the appearance of the first cracks in the construction of the welfare state.[7] In addition, from the beginning of the 1980s one grand, overarching theory that inspired the scientific research that was carried out in all sections of the Institute was no longer available.[8] This change fits the general cultural and intellectual trend: the era of 'grand narratives' or 'ideologies' was considered to have come to an end, which engendered a withdrawal from the pretensions of a grand theory.[9]

Since the 1980s the Institute has not collectively manifested itself to the outside world as a 'school'.[10] Yet, the Institute is still very much alive, and many innovative developments in both research and teaching – some more specialized, some more general – have been initiated over the last few years in criminal law, criminology and forensic psychiatry and psychology. For example: the further development of a distinctly 'Utrecht style' type of cultural and critical criminology; of a very philosophically and anthropologically grounded type of forensic psychiatry and psychology; of strong and innovative research into European and regulatory (procedural) criminal law; of innovative research into procedural criminal law and human rights; of research into the philosophical foundations of criminal law; and further examples could be given.

As was mentioned at the beginning, in 2014 the Institute celebrated its eightieth anniversary. In the course of this jubilee year, several activities were organized to commemorate the eight decades of the Institute's existence,

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7 See Kelk, 1994, p. 45.

8 This is not to deny that the Institute has of course also since then endeavoured to synthesize, to a certain degree, the different research activities in accordance with an 'overarching' viewpoint in its subsequent research programmes. Important reference points have been the (sociological) theories on 'risk society' and the 'culture of control'; see the *loci classici* Beck, 1992 and Garland, 2001. In this connection it is worth mentioning that the Law School at Utrecht University has recently reorganized and clustered its research into, *inter alia*, three overarching and thematic programmes (*Zwaartepunten*), in which researchers from different law domains participate (private law, criminal law, administrative and constitutional law, and international law), namely: that of the Montaigne Centre for Judicial Administration and Conflict Resolution (see for more information http://montaigne.rebo.uu.nl/en/); the Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE, see http://renforce.rebo.uu.nl/en/), and the Utrecht Centre for Accountability and Liability Law (Ucall, see http://ucall.rebo.uu.nl/en/).

9 Lyotard, 1984; Lacey, 1998, p. 39.

10 See Brants, 1999, p. 21-25.

including the production of the present book. In addition, an exhibition on the history of the Institute and its most notable and striking persons was set up in several halls and corridors within the building of the Institute. Furthermore, a series of evening lectures was organized during the year, which addressed different topics that are central to the Institute's research tradition. And lastly, the anniversary year was rounded off with a conference that took place on October 1st 2015, at the end of which this book was presented.

1.2 This volume: the book's primary aim and set-up

The present volume's subtitle reads: 'Rethinking the legacy of the Utrecht School'. The different contributions gathered in this book each deal with one or more aspects of the history and research tradition of the Institute for Criminal Law, Criminology, and Forensic Psychiatry and Psychology at the Law School of Utrecht University. However, we have tried to avoid any indulgence in mere navel-gazing. The overall aim of the book is to trace different developments within our Institute's past research, to connect these developments to current issues and research projects that are currently carried out at the Institute, and to project these developments onto possible future research activities.

The central theme chosen for this collection of chapters is *cross-border research* in the fields of criminal law, penitentiary law, criminology, and forensic psychology and psychiatry. This notion of cross-border research, however, is taken in a rather wide sense; in this context one should think not only of crossing geographical borders, but also of crossing borders between different academic disciplines, and between different historical periods. This wide and dynamic encompassing theme was chosen because it fits in well with the just mentioned overall aim of the book.

The book's set-up somewhat resembles a triptych, depicting the past, the present, and the future of the research in the fields of criminal law, penitentiary law, criminology, and forensic psychology and psychiatry at the Institute. The triptych's first panel is comprised of the book's first part. This first part consists of four contributions that all deal with different aspects of the history of the Institute and its research traditions. The historical reflections on the Institute's traditions regarding criminal law scholarship, forensic psychiatry and psychology, and criminology describe the most notable developments from the beginning of the Institute's existence until present times.

The second panel (or centrepiece) of the triptych comprises parts two to five of this book, each of which contains a number of contributions that represent the current state of the research activities at the Institute. These four parts cover contemporary issues in, respectively, general criminal law and criminal procedure (part two), in regulatory criminal law, European criminal law, juvenile criminal law, and penitentiary law (part three), in forensic psychology and psychiatry (part four), and in criminology (part five). This division into four clusters of disciplines, the assignment of the individual contributions to

one of the different clusters, and the ordering in which they appear in the book have sometimes involved arbitrary choices. Nonetheless, we are confident that the structure chosen for the book is sufficiently representative of the current research activities carried out at the Institute, and reflects the different *liasons* between the various topics and approaches chosen in the different contributions. In conclusion, the triptych's rather small third panel is represented by a postscript. This chapter paints (admittedly: rather haphazardly) a picture of possible directions to be followed in future research on a wide variety of topics. The different chapters already address, wherever relevant, possible future developments. In this way, we have sought to connect the Institute's research tradition with the challenges that face us now and that will or might face us later. As a matter of course, it remains entirely for the reader to conclude whether and – if at all – to what extent we have succeeded in achieving our aims with this book.

2 Introductory notes on the chapters in this volume

2.1 Part I: historical reflections on criminal law scholarship, forensic psychiatry, and criminology

The first part of this volume contains four chapters that delve into the history of the Willem Pompe Institute and trace the most notable developments that have occurred until the present time within the domains covered by the Institute's three departments: criminal law, forensic psychiatry and psychology, and criminology. In the first chapter, *Ferry de Jong and Constantijn Kelk* focus on the criminal law research as it has taken shape at the Willem Pompe Institute between the year of its formation and the present. The authors describe this history along two axes, one chronological and the other one thematic. In the chronological section, the exposition of the main developments in the Institute's history are divided into three main phases: first, the period of the old Utrecht School (1934-1963); second, the period of the new Utrecht School (1970-1980); and third, the period as of 1980. Relatively, a great deal of attention is paid to the heyday of the old Utrecht School and of the new Utrecht School. Subsequently, the authors take a more thematic and diachronic approach and examine what they consider to be three constant traits that can be discerned within the Institute's rich research tradition, which are referred to with the catchwords: 'overarching (bodies of) thought', 'critique', and 'humanity and solidarity'. For each of the three constants they examine the more specific meanings that were lent to these constants and the associated notions in different periods of the Institute's existence.

In the second chapter, *Frans Koenraadt* describes the history of both research and teaching activities in the field of forensic psychiatry and psychology. He discusses the special attention devoted to the mentally-ill offender from the perspective of forensic mental health. The chapter opens with taking a closer

look at the person who stood at the cradle of post-war Dutch forensic psychiatry and psychology: Pieter Baan. Subsequently, attention is paid to the overarching, interdisciplinary approach that has been developed in the course of eight decades since the foundation of the Criminological Institute, and especially since the post-war efforts to integrate theory and practice in founding three new forensic institutions and in the collaboration between university and hospital. The author describes the different research and teaching activities that were carried out within these forms of collaboration. Key persons, key institutions and key topics of teaching and research are covered in this chapter. Teacher and student are the key persons in education; forensic mental health professional and detainee are the key persons in forensic mental health, be it in assessment or treatment. In forensic mental health the detainee is considered not only as an object but correspondingly as a subject of professional intervention, not only in the role of an offender but also in that of an accused.

Chapter three, authored by *Frank Bovenkerk*, describes the Institute's research tradition in the field of one of the main tasks of criminology that constitutes the very heart of criminology, *viz.* the aetiology of crime. Between 1938 and 1957 criminology researchers affiliated with the Institute in Utrecht published a series of pioneering studies on the geography of crime, a field of study that they named 'criminography' (*criminografie*). Willem Pompe – the founder of the Criminological Institute – entertained very good relations with local authorities and statistical material was easily available. It has been the availability of facts ordered by place that has more or less lured criminologists into the viewpoint of social geography. The social description of geographically-ordered facts on crime became criminography. Theoretically this position stood on its own. The author discusses the different books (often dissertations with Willem Pompe himself as the PhD thesis supervisor) that were published between 1938 and 1957 in a book series named *Criminologische Studiën*. The books cover various interesting criminographical topics such as: crime and religion, criminal families in Utrecht, female criminality, Dutch villages with a bad reputation, rural-urban differentials in crime, social deviance and crime among immigrants in Amsterdam, and crime under foreign occupation.

In chapter four, *Dina Siegel and Damián Zaitch* describe the main characteristics and developments in cultural criminology in Utrecht, mainly since 2009, as reflected in the research activities and educational programmes based at the Willem Pompe Institute. Cultural criminology has, as shown in the contribution by Frank Bovenkerk, a long history in Utrecht. However, since 2009 several new developments are visible, some implying continuity, others a shift in direction or focus. The chapter starts by describing the intellectual roots of cultural criminology and the ethnographic tradition reflected in its development. The second part focuses on some concrete initiatives in recent years that have shaped cultural criminology in the Netherlands. These developments are further explored, in the third part of the chapter, for Utrecht cultural criminology, showing how research agendas and activities of the

period 1988-2009 evolved into new initiatives in the recent past (2009-2015), mainly reflected both in research and education programmes such as the MA in (global) criminology and the Doctorate in Cultural and Global Criminology (DCGC).[11] The last part of this contribution summarizes the research and thematic trademarks of cultural criminology 'Utrecht style', with its emphasis on topics like cultural offences, ethnic others, urban resistance, art and crime, hidden communities, prostitution and human trafficking, drugs, new forms of organized and corporate crime, green criminology, and comparative penology.

2.2 Part II: contemporary issues in general criminal law and criminal procedure

The second part of this volume comprises seven chapters that deal with a variety of contemporary issues in substantive criminal law and the law on criminal procedure. The first chapter of the second part, chapter five, concerns some fundamental principles governing the criminal process. *Stijn Franken and Petra van Kampen* discuss the relevance of the academic work of Antonie Peters – who epitomized what was referred to as the 'new' Utrecht School in subsection 1.1, *supra* – for contemporary issues in the field of criminal proceedings. 'Raised' in the United States during what became known as the 'Due Process Revolution', Peters in his inaugural speech *Het rechtskarakter van het strafrecht* ('The legal dimension of criminal law') in June 1972 brought new elements to the fore in Dutch criminal law and procedure. His argument that criminal law needs to offer protection provided food for thought, as did his argument that a (more) adversarial process is vital to that protection. His theoretical framework provided the building blocks on which others successfully built their case against the imbalance(s) in the Dutch criminal process system. Peters is probably most famous for his argument that law is about 'policing the police' rather than about 'policing society'. At the time, this argument fell on fertile ground. Having already decided on the issue of illegally obtained evidence in 1962, the Dutch Supreme Court confirmed the 'exclusionary rule' in 1978. The subject was legislated in 1996 in Article 359a of the Dutch Code of Criminal Procedure. Its wording seems to heed Peters' thoughts; its current meaning, however, does them little justice. Measured by the current case law of the Dutch Supreme Court on Article 359a, the primary meaning of Article 359a is not to safeguard the integrity of criminal investigations, but to offer some form of remedy only in exceptional cases (for example: by reducing sentences, or the exclusion of illegally obtained evidence).

In chapter six *Chrisje Brants* elaborates on one aspect of criminal justice that was always neglected by the Utrecht School (old and new), which is: how it can or should accommodate victims and their concomitant position in criminal

11 See the website of the DCGC at: www.dcgc.eu.

procedure. It is however imperative that nowadays, given the shift from an offender to a victim paradigm that has occurred in all Western societies – and in international criminal justice – we think about victims and their position in criminal law. Indeed the political, social and legal discourse on victims touches on very fundamental questions regarding the goal, significance and function of criminal justice. This chapter argues that there are lessons to be learnt from international criminal law about the effects of the shift to the victim paradigm, in particular with regard to claims that a criminal trial, and allowing victims to have greater agency within its confines, brings justice for victims. The chapter problematizes the concept of justice and argues that criminal procedure is designed as a rational, public enterprise that only has room for rational agency if it is to fulfil its public function. It must therefore, by definition, neglect the emotional expression of the narratives that are part of both coping with victimhood and moving towards reconciliation.

In the following, seventh chapter, *Renée Kool* discusses different discourses on the penalization of forced marriages. Due to extending immigration Western European societies are confronted with foreign cultural practices, including forced marriages. Within the international community these practices are qualified as gross violations of human rights, which should be effectively combated. With a view to the fundamental interests at stake (the individual's right to physical integrity and privacy), the authorities opt for the use of criminal law. Critics, however, point at the absence of evidence-based arguments that might justify such an intervention. One argues that criminal law intervention violates the private sphere, reflects xenophobia and provides for results which are opposite to the ones pursued, thereby driving perpetrators underground, leaving (potential) victims empty-handed. International (human rights) law, for instance the CAHVIO,[12] prescribes penalization. Thus the Dutch and the British governments both criminalize forced marriage, although in different ways and based upon (somewhat) different arguments. With regard to the Dutch discourse, the penalization fits in a consistent policy reflecting identity politics: forced marriage, or any other cultural offence, is said to threaten the 'Dutch identity'. Although the same argument can be heard in the British discourse, British society features as a multi-cultural society in which minority groups are sometimes enabled to influence British (criminal) politics. Nevertheless, a comparative analysis of the distinct national discourses shows that the human rights argument outweighs the argument in favour of a far more restrained use of the criminal law.

Moving on to the domain of substantive criminal law, *Joske Graat and Marlien van Duursen* contrast the right to freedom of expression with the criminal offences of group insult and incitement to hatred and discrimination

12 The Ad Hoc Committee on Preventing and Combating Violence against Women and Domestic Violence; see http://wave-network.org/content/cahvio-ad-hoc-committee-preventing-and-combating-violence-against-women-and-domestic.

in chapter eight. On the evening of the City Council elections in 2014 a Dutch politician, named Geert Wilders, asked his audience if they wanted 'more or fewer Muslims' in the Netherlands. The audience answered screaming: 'Fewer, fewer, fewer!' (in Dutch: *Minder, minder, minder!*). The Public Prosecutor's Office has decided to prosecute Mr. Wilders for this and other statements on the basis of Article 137c of the Dutch Criminal Code (DCC), which prohibits group insult on account of, among others, race and religion, and Article 137d DCC, which prohibits incitement to hatred and discrimination on account of, among others, race and religion. As a result of this decision and of other recent national and global events such as the anti-IS demonstrations in The Hague, the discussion about the thin line between the right to freedom of expression, on the one hand, and criminal statements, on the other, has again resurfaced. This chapter focuses on the question of to what extent Articles 137c and 137d DCC protect vulnerable groups, especially Jews and Muslims, and in doing so also limit the right to freedom of expression. It should be interesting to see how this question is answered in Dutch criminal law, especially because the Netherlands has gained the reputation of being a relatively tolerant nation in the international community.

Chapter nine, written by *Marjan Groenouwe and Esther Baakman*, is devoted to the notion of corporate criminal liability. Corporations are becoming increasingly important as subjects of criminal law. Successful prosecutions of corporations, however, remain a complicated matter. Criminal law was designed with the human actor in mind, and not the corporation with its often complex organizational structures. Different jurisdictions have come up with different solutions to attribute the criminal acts of individuals to fictional entities. This chapter takes a closer look at two of them: the Netherlands and England and Wales. The authors first explore how corporate criminal liability has developed in both jurisdictions, in order to better understand the schemes that are currently in place for assigning criminal liability to legal persons. They then discuss the most remarkable recent developments, like the coming into force of the United Kingdom Corporate Manslaughter and Corporate Homicide Act in 2007. By comparing how the criminal liability of corporations has been incorporated in criminal law, the authors identify some of the problems that inevitably arise when establishing the *actus reus* and *mens rea* of an abstract entity like the corporation. It is the belief of the authors that a new model of attribution might improve the connection between the current corporate reality and its judicial equivalent.

Relatedly, *Mark Hornman and Eelke Sikkema* discuss the notion of corporate culpability in chapter ten. Since the acceptance of corporate criminal liability, criminal law doctrine has been looking for an adequate way to fully and properly incorporate the legal person into the existing framework doctrines on *actus reus* and *mens rea*. Anthropomorphic approaches have proven to be inadequate and undesirable. A model of corporate culpability is favoured by many, but few have been able to design one that is truly suitable and convincing.

After all, such a model should not only live up to its aspirations on an abstract and theoretical level by providing a sound foundation for liability, but it should also work for legal practitioners. Research in the field of economic crimes has a relatively long history at the Willem Pompe Institute and in this tradition this chapter aims to enrich the current state of knowledge on corporate criminal liability with new insights from a non-legal, but still normative discipline: business ethics. After all, questions of responsibility and accountability are not merely legal in nature. This chapter addresses the question whether Bratman's theory of shared intentions – intentions which can be traced back to a 'web of attitudes of the individual participants' – could provide the desired solid foundation mentioned above. Does this theory allow for the construction of corporate *mens rea* without resulting in overly complex routes of attribution or far-fetched and, as a consequence thereof, feeble lines of legal reasoning? If so, an overarching concept or framework could be created which incorporates both of the traditional models for establishing corporate *mens rea*: the derivative model and the model of organizational fault. In turn, this will allow criminal law theory to move beyond the current false discrepancy between these two models.

In the last chapter of the second part, chapter eleven, *Wouter de Zanger* discusses an important issue related to the confiscation of the proceeds of crime: the way in which claims of insolvency should be dealt with. Judges can impose confiscation orders, but if the defendant claims that he is unable to fulfil that payment obligation, an obvious issue arises. How does one deal with such claims: who should be obliged to demonstrate the financial situation of the defendant? And what is the role that the presumption of innocence plays here? This chapter presents the way in which Dutch law deals with such claims of insolvency. That approach was altered by a change in the legislation in 2003, which has had consequences for the legal position of the person involved. These consequences are mapped and evaluated, also taking into account the case law of the European Court of Human Rights. A specific feature related to this issue is the role that the future financial position of the debtor plays. In Dutch law, a defendant is often expected to work legally to re-earn his once illegally obtained profits. In this article, an alternative approach is suggested which would bring about more leniency for the defendant. It is based on a notion of rehabilitation, and on older ideas of researchers of the Willem Pompe Institute, and Willem Pompe himself.

2.3 Part III: contemporary issues in regulatory criminal law, European criminal law, juvenile criminal law, and penitentiary law

The third part of this volume comprises four chapters that deal with a variety of contemporary issues in different, more specific criminal law domains: regulatory criminal law, European criminal law, juvenile criminal law, and penitentiary law. The first contribution to this part is chapter twelve, written

by *John Vervaele and Michiel Luchtman*, and is devoted to economic and financial criminal law in the Area of Freedom, Security and Justice (AFSJ). In the last decade, companies have become the main target of transnational criminal investigations and prosecutions for all sorts of criminal behaviour. The responses of the many national enforcement communities that are involved depend largely on the regulatory policies, tools and practices of the national jurisdictions. Nonetheless, these forms of transnational crime do not only affect the interests and values of states, but also the interests and values of regional institutions and policies, such as those of the European Union and, in some cases like corruption and United Nations embargos, global values. In this chapter, the authors analyse how these interests and values are currently integrated in the legislative policies of the European Union and one of its Member States, the Netherlands. It concludes with a series of observations and recommendations on how to integrate these values and interests further in the existing European Union and national criminal policies.

Moving away from the domain of regulatory and European criminal law, the following chapter is devoted to the domain of juvenile criminal justice. In chapter thirteen, *Ido Weijers, Stephanie Rap and Kristien Hepping* start with briefly referring to the intriguing and rarely studied aspect of the genesis of the Willem Pompe Institute as part of a broad interdisciplinary Utrecht academic circle. It shows how the academic work of Johanna Hudig, who held the first chair in juvenile justice and child protection, and the contribution of next generations in this field must be understood in this broader intellectual context. Then, it refers to several major changes that have taken place in the field of juvenile justice since the foundation of the Criminological Institute in 1934. There have been both changes in the character and variety of youth crime and fundamental changes in the social response to juvenile offending and tremendous institutional changes to the Dutch juvenile justice system. At the same time, there have been important developments in the field of children's rights and, finally, new scientific knowledge and insights have grown and been elaborated enormously. Subsequently, the chapter shifts the focus onto the topicality of an interdisciplinary approach in the study of juvenile justice and juvenile crime and it sketches the main lines of research that have recently been developed in these fields at the Willem Pompe Institute.

After this chapter, the focus is moved to penitentiary law. Chapter fourteen, authored by *Pauline Jacobs*, concentrates on the notion – or the principle even – of what is referred to in Dutch as *rechtsburgerschap* (which roughly translates into the concept of legal citizenship). The principle of *rechtsburgerschap* is based on the idea that a prisoner is a person with rights and duties, similar to any other member of the community. In the Netherlands, the work by staff of the Willem Pompe Institute in general, and Constantijn Kelk in particular, has been very important in this respect, which can be recognized in the fact that the latter has introduced and further developed the term. In this chapter, the development of the notion of *rechtsburgerschap* in the Netherlands is sketched

and the question whether this notion is adhered to in current statutory regulation is examined. In addition, the perspective of the notion of *rechtsburgerschap* is used to critically examine current developments and proposed legislation in the penitentiary field in the Netherlands. Moreover, the development of the notion of *rechtsburgerschap* on the European level is sketched and the question of whether, and if so to what extent, this notion is upheld in the current case law of the European Court of Human Rights is examined. The ongoing 'dialogue' between Strasbourg and the United Kingdom concerning the matter of voting rights for prisoners demonstrates that the idea of *rechtsburgerschap* for prisoners is not self-evident in all legal cultures that are represented in the Council of Europe.

The third part's last contribution is chapter fifteen, written by *Miranda Boone and Elina Kurtovic*; it is devoted to the collateral consequences following a criminal conviction. In continental Europe relatively little research has been carried out on the collateral consequences of convictions, broadly defined as additional consequences flowing from a criminal conviction which restrict a convicted offender in fully participating in society. In this contribution four foreseeable consequences of criminal convictions are discussed: the refusal of a certificate of conduct, the refusal of a residence permit, the alcohol ignition interlock device, and finally financial deprivation. It is argued why these consequences should be involved in considerations regarding the proportionality of sentencing, much more than occurs today. The authors assess these in the light of the notion of punishment, in particular the principle of proportionality, and argue that it is no longer sufficient to look at the criminal sanction only. Examining the collateral consequences of convictions requires that the borders of criminal justice are crossed. The authors argue that it should be carefully scrutinized which consequences should and which ones should not be considered as part of the sentence and be included in the considerations regarding proportionality. Collateral consequences that are legal or foreseeable and can clearly be considered as forms of 'suffering' should be regarded as being part of the sentencing decision, not just on a discretionary and occasional basis. Even if these are only preventive and not retributive in nature, they should at least be roughly proportional to the expected danger to society.

2.4 Part IV: contemporary issues in forensic psychiatry and psychology

Part four of this book contains three chapters that deal with a number of contemporary issues and controversies that haunt the field of forensic psychiatry and psychology. A highly controversial issue that touches upon the very philosophical and anthropological foundations of forensic psychiatry – the domain where the disciplines of (criminal) law and psychiatry intersect – is discussed by *Antoine Mooij* in chapter sixteen. He argues that any debate on the nature or existence of free will ought to be preceded by a discussion of what human beings *experience* as will and as a free will. Without this,

theoretical exercises will remain just that: theoretical exercises, without any footing in experienced reality. The philosophical tradition of phenomenology can be helpful in this connection. Additionally, phenomenology can be of help in our effort to delimit pathological variants of our experience of (free) will, such as the phenomenon of feebleness of will. The result of the application of phenomenological insights is that the experience of free will is grounded on our capability of *reflection*. This leads to the question concerning the possibility and reality of this capability. The author argues that freedom of will in fact amounts to a possibility, which is conceivable, not as a 'hole' in the closed circuit of natural causality, but instead as the effect of the conditions for its possibility: freedom is a *conditional* phenomenon. At the same time, however, the notion of freedom always remains related to man's interiority. The same interiority that underlies the criminal law, and which the criminal law also needs to preserve, if we want to prevent the criminal law from dissolving entirely into a form of actuarial or risk-based criminal justice.

On a somewhat more practical note, *Timon den Boer and Jos van Mulbregt* argue in chapter seventeen that the fundamental notion of responsibility or accountability – as a key concept in the communication between the court and the behavioural expert about a suspect, the crime and the psychiatric or psychological condition – is currently being thoroughly questioned, both by behavioural experts and by neuroscientists, the latter on the basis of a materialistic worldview, the first also on the basis of caution: 'Don't say anything about a matter that doesn't belong to your scientific discipline.' In this article the authors discuss the concept of accountability as strongly needed to demarcate the limits of the behavioural sciences, despite the popular view that this concept is situated outside these limits. To fuel this discussion, they present two cases to show the place and function of the concept of accountability in this matter. The authors show that abandoning this concept can (and already does) lead to widening the possibilities for the court to demand forced treatment – a dramatic intervention in the basic rights of citizens – on grounds that exceed the place and purpose of criminal law. The chapter concludes with suggesting that the concept of accountability is a concept in motion, a concept between two worlds or professions, a concept that finds its value and significance in the interaction between these professions.

Chapter eighteen concludes the book's fourth part with a contribution by *Lydia Dalhuisen* that is dedicated to the question: what is it that drives a person to commit arson? And what is more: why do some people become arsonists and others do not? And why are some fire-setters pure arsonists, in the sense that they do not commit other crimes, while other arsonists exhibit a range of criminal behaviours? Throughout the years attempts have been made to answer these and other questions. Incorporating these previous attempts, this author takes a cross-border theoretical approach in explaining arson behaviour. She first tries to explain arson on a macro and meso level, using existing explanations from the field of criminology directed at the population of fire-

setters. Next, on a micro level, single factor and multiple factor psychological explanations for arson are described to explain why individual fire-setters act as they do. And finally, also on a micro level, arson is explained from a more specific psychopathological perspective, in order to give an insight into different mental disorders, which might contribute to arson as well as the role of pathological motives.

2.5 Part V: contemporary issues in criminology

The fifth part of the book – and the concluding part of the triptych's central panel – comprises five chapters that deal with a variety of contemporary issues in criminological research as it is currently being carried out at the Institute. In the first one, chapter nineteen, *Tessa Verhallen* analyses the utility of the label 'multi-problem family', as it is a means in the Netherlands to target so-called 'multi-problem families' for public policy on interventions for the welfare and safety of children and families, crime prevention and public safety. Although the label 'multi-problem family' has the institutional function of categorising certain families in order to offer them the right services and to protect society, this chapter aims to demonstrate that its use is not without risks in practice. First, it discusses what a multi-problem family essentially is according to the (inter)national scholarly literature and Dutch national and local policy documents. It will seem that there is no consensus on what type of family makes a multi-problem family. Besides being ambiguous, the label has been criticised internationally because it would stigmatise and reify 'multi-problem families', and moreover attributes risk factors and macro-level pitfalls of the care system (unfavourably) to families. Consequently, the adjective term is not used in, for instance, Germany. The question is whether the label 'multi-problem family' must still be used as a family diagnostic category for future policy directives in the Netherlands.

In chapter twenty, *Roos de Wildt* discusses the influence of post-war transition processes on the prevailing images of women who work as prostitutes in Kosovo. When the Kosovo war ended in 1999, its small-scale prostitution market transformed into a large-scale industry with a high demand for commercial sex. The author has conducted ethnographic research on how war and post-war transition processes shape the Kosovar sex industry. Based on a cultural criminological analysis, she challenges the main views that, firstly, the growth of the sex industry in Kosovo after the war was a direct consequence of the demand of internationals and, secondly, that this demand was largely met through forced prostitution. It is argued that an emphasis on the demand of internationals and the victimhood of women can be effective for aid organizations and the media but paradoxically enhances the vulnerability of women involved in the Kosovar sex industry. These women are depicted as criminals if they do not meet the highly symbolic and stereotypical images of victims of trafficking.

Chapter twenty-one shifts the focus to what is referred to as processes of 'Othering' with regard to different migrant groups. *Veronika Nagy and Brenda Oude Breuil* argue that in contemporary times, migrants in European societies face social exclusion and targeted surveillance. Processes of the 'Othering' of migrants take place in media and government publicity, where they are depicted as undeserving profiteers and 'scumbags' to be got rid of. The welfare state having given way to a system of 'workfare', where individual responsibility takes precedence over the governmental social safety net, migrants experience new problems when applying for government support. This chapter looks into the dynamics of *intra*state exclusionary practices directed towards people *legally* residing within nation states' borders: Roma Europeans in the United Kingdom and Maghrebi minors in France. The authors go into nation states' social sorting techniques of 'dataveillance' and medical technology as a means to retrieve 'objective' personal data, by providing ethnographic evidence on how Roma experience the ever more complex digital application procedures for acquiring government funding, and how Maghrebi minors in France undergo intensive medical procedures in order for the government to gain evidence to expel them. The observed 'distancing' tendencies in these surveillance techniques not only make it more difficult for legal migrants to obtain government support, it also allows space for negotiating identity, and to craft it into the ideal welfare receiver's profile.

Another highly contemporary issue is dealt with in chapter twenty-two. *Rosa Koenraadt* describes and analyses practices concerning the trading of illicit pharmaceuticals via the Internet. In the virtual world, moral, legal or national borders can be easily circumvented and it is not without reason that actors within illegal markets are moving their marketplace towards the Internet, blurring the lines between the real and the virtual. One example of an illicit market that is flourishing on the Internet is the market for illicit pharmaceuticals. As the Internet will increasingly host significant and valuable information on various criminological themes, this brings forth new possibilities and challenges for cultural criminological research. How to build trust with respondents online, the authenticity of online information, the fluidity of the internet and ethical considerations, offer dilemmas that are different from cultural criminological research and the use of ethnographic methods in the more traditional forms. In this chapter the author highlights four challenges of conducting online methods in cultural criminology and exemplifies this with experiences from her own research on the market for illicit lifestyle pharmaceuticals.

Last but certainly not least: in the concluding chapter twenty-three, *Daan van Uhm* discusses animal victimization from the perspective of a 'green' criminological approach. Every year World Animal Day is celebrated in Western countries on the 4th of October. This day was initially introduced as a day to highlight the plight of endangered species at a convention of ecologists in Florence, Italy. Since then, World Animal Day is a day when extra attention is given to animals, animal rights and welfare. People celebrating this day by

visiting zoos highlight the attention to animals, and pets are usually spoiled with additional food, toys or activities. Non-governmental organizations and advocacy groups, however, call attention to the bad conditions for animals in farm factories in order to meet the demand for meat, furs and milk. The different activities on World Animal Day reflect the various roles and relationships that humankind shares with animals. This chapter evaluates, based on literature, the changing moral principles towards animals from a green criminological approach. This is demonstrated by elaborating on two examples: trade, the exhibition and keeping of exotic animals and the industrialization of farm animals for food. The author concludes his chapter with a consideration of conflicting Western moral principles from a green criminological perspective regarding harm and animal victimization.

3 Some methodological notes and words of thanks

Some words are in order to account for a number of choices made with regard to the realization of the present book. First of all, one might wonder why we chose to publish this book in English and not rather in Dutch. A risk involved in writing in English on subjects that concern the Institute's research tradition is that many notable nuances may become 'lost in translation': it is – and it has proven to be – everything but easy to ensure that the different connotations of the historical and cultural contexts that accompany the formulations in which such striking scholars as Willem Pompe, Pieter Baan and Ger Kempe (all affiliated with the old Utrecht School that had its heyday in the 1950s) expressed their thoughts, would survive in English. Be that as it may, the members of the editorial board widely acknowledged the fact that far too little material on the Utrecht School (both old and new) is presently available in English. We are convinced – albeit perhaps naively – that an exposition of the main ideas brought forth by our different predecessors and of the threads that connect the current (and future) research activities to these ideas should prove to be of interest for – and thus to deserve to, finally, be disclosed to – a much larger, international audience. On balance, therefore, publishing this book in English seemed the better option.

On a somewhat drier note, we would also like to briefly account for the methods that were followed in the course of the realization of the present book. Soon after the editorial board had reached agreement on the central theme of the book and on the different conditions to be stipulated for proposed contributions, a call for abstracts of envisaged contributions was launched within the Institute. In accordance with the wide central theme of the book (see section 1.2, *supra*), no restrictions were applied with regard to the selection of subject matter for individual contributions. However, in order to secure a sufficient 'fit' between the contributions and the volume's central aim and theme, the following three conditions and suggestions were stipulated, which had to be taken into account by all authors: the subject matter and/or approach chosen must be, in any form,

cross-border in nature; the subject and/or approach chosen should refer to one or more aspects regarding the research tradition of the Institute; and the contribution should – where relevant – consider possible future developments within the domain covered by the contribution. More than twenty contributions, written by over thirty colleagues affiliated with the Institute, were submitted to the editorial board and appear as chapters in this book.

The submitted abstracts were screened on the basis of these conditions and suggestions. During a research seminar, early versions of the different contributions were discussed in 'peer-group workshops', each consisting of around five fellow authors from (more or less) the same discipline as the one covered by the contribution under discussion, for the purpose of enabling the authors to ameliorate their texts on the basis of the received feedback. The draft versions of all contributions were subsequently reviewed in two rounds by two members of the editorial board; for every single draft contribution we took care to appoint one reviewer who shares the disciplinary background of the author, and a second reviewer who works in a different discipline.

Finally: some words of gratitude are in order. Many thanks are due to a number of individuals, without the help and commitment of whom this book could not have been published. We thank *Titia Hijmans van den Bergh and Peter Morris* – both affiliated with the Law School at Utrecht University as professional language editors – for their immaculate work on editing and correcting the English of the different contributions to the present volume. Many thanks go furthermore to *Wieneke Matthijsse*, who – as always – accomplished the herculean task of preparing the layout for the different chapters of the book and of preparing a camera-ready manuscript for the publisher, valiantly defying the nuisances of overdue contributions and last-minute requests for alterations by perhaps overly perfectionistic authors. And we want to thank the publisher, *Eleven International Publishing*, for the fruitful collaboration and for making it possible to have the present volume published as – how befitting – number eighty in our beloved house publication series: the *Pompe Reeks*.

References

Abma, R., J. Bos, W. Koops & H. van Rinsum, 'Ontmoeting over de grenzen. Internationale contacten van de Utrechtse School', in: L.J. Dorsman & P.J. Knegtmans (eds.), *Over de grens. Internationale contacten aan Nederlandse universiteiten sedert 1877,* Hilversum: Verloren 2009, p. 141-166.

Baan, P.A.H., *Het overkoepelend denken in het grensgebied van psychiatrie en recht* (public lecture, Utrecht University), Meppel: Stenvert & Zoon 1947.

Beck, U., *Risk Society. Towards a New Modernity*, London/New Delhi: Sage [1986] 1992.

Brants, C.H., *Over levende gedachten. De menselijkheid van een functioneel strafrecht* (inaugural lecture, Utrecht University), Deventer: Gouda Quint 1999.

Fijnaut, C., *Criminologie en strafrechtsbedeling. Een historische en transatlantische inleiding*, Cambridge/Antwerp: Intersentia 2014.

Garland, D., *The Culture of Control. Crime and Social Order in Contemporary Society*, Chicago/London: University of Chicago Press 2001.

Kelk, C., *De menselijke verantwoordelijkheid in het strafrecht*, Arnhem: Gouda Quint 1994.

Lacey, N., 'Contingency, coherence, and conceptualism. Reflections on the encounter between "Critique" and "the Philosophy of the Criminal Law"', in: R.A. Duff (ed.), *Philosophy and the Criminal Law. Principle and Critique*, Cambridge: Cambridge University Press 1998, p. 9-59.

Langeveld, M.J. (ed.), *Rencontre, encounter, Begegnung. Contributions à une psychologie humaine dédiées aux professeur F.J.J. Buytendijk*, Utrecht/Antwerp: Het Spectrum 1957.

Léauté, J. (ed.), *Une nouvelle école de science criminelle: l'École d'Utrecht*, Paris: Cujas 1959.

Lyotard, J.F., *The Postmodern Condition: A Report on Knowledge*, Minneapolis: University of Minnesota Press 1984.

Moedikdo, P., 'De Utrechtse School van Pompe, Baan en Kempe', in: C. Kelk, M. Moerings, N. Jörg & P. Moedikdo (eds.), *Recht, macht en manipulatie*, Utrecht/Antwerp: Het Spectrum 1976, p. 90-154.

Weijers, I., *Terug naar het behouden huis. Romanschrijvers en wetenschappers in de jaren vijftig* (doctoral dissertation, Erasmus University Rotterdam), Amsterdam: SUA 1991.