Postscript

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1 Introduction: from risks to crises

Ours is a time of risks and crises. To randomly name but a few of the actual or impending risky issues that engender different sorts of crises, be it of a local, a cultural, an institutional, or a global nature: climate change, jihad-inspired terrorist attacks, seemingly random killings or other forms of violence carried out by so-called lone wolves, nuclear threats, warfare within and across nation borders, streams of refugees, human trafficking, large-scale and sometimes institutionalized forms of inequality and discrimination, economic and financial crises, the (popular) fears accompanying the increased and increasing role of European and international law mechanisms, et cetera. Many of the preceding chapters in this book have touched upon different issues that are – sometimes directly, more often indirectly and in a more concealed way – related to these or other risks, dangers, and disasters that have become such familiar concerns in our late-modern societies. In his classical and (still) highly topical book *The culture of control*, David Garland summarized our contemporary obsession with security and risk-avoidance as follows:

> 'Over time, our practices of controlling crime and doing justice have had to adapt to an increasingly insecure economy that marginalizes substantial sections of the population; to a hedonistic consumer culture that combines extensive personal freedoms with relaxed social controls; to a pluralistic moral order that struggles to create trust relations between strangers who have little in common; to a "sovereign" state that is increasingly incapable of regulating a society of individuated citizens and differentiated social groups; and to chronically high crime rates that co-exist with low levels of family cohesion and community

1 With thanks to many of the authors featured in this volume: part of the following text is loosely based on the input that they submitted to the editorial board. Their different suggestions are incorporated as examples of ideas or suggestions for future research in subsections 3.2, 4.2 and 5.2, *infra*. For information on the authors who are featured in this book, please consult the 'About the authors and editors' section in the back of this volume.

> solidarity. The risky, insecure character of today's social and economic relations is the social surface that gives rise to our newly emphatic, overreaching concern with control and to the urgency with which we segregate, fortify, and exclude. It is the background circumstance that prompts our obsessive attempts to monitor risky individuals, to isolate dangerous populations, and to impose situational controls on otherwise open and fluid settings.'[2]

As is well known, the wide range of mostly global and regional problems that were mentioned above have engendered different sorts of (identity) crises. In the face of these problems and crises, one of the important questions that announce themselves is: what are the main tasks for criminal law scholarship, criminology, and forensic psychiatry and psychology in 2015 and onwards? This Postscript does not intend to answer this major question. It merely seeks to (rather haphazardly) formulate a number of thoughts that concern some of the main challenges for future research within and across the disciplines represented by the Willem Pompe Institute. As was stated in subsection 1.2 of the Prologue to this volume, the overall aim of the book has been to trace different developments within our Institute's past research (which was the task of the different chapters of Part one of this book), to connect these developments to current issues and research projects that are presently being carried out at the Institute (as was done in the many chapters of Parts two to five), 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 disciplines that are represented within the Willem Pompe Institute, whereby the notion of cross-border research is taken in a rather wide sense, referring not only to geographical borders, but also to borders between different academic disciplines, and between different historical periods. This Postscript seeks to describe some of the main challenges for different forms of cross-border research, along the three axes that are manifested throughout the many chapters of this book: dehumanizing tendencies that call for a truly *critical* form of scholarship, processes of globalization and Europeanization that call for a more *post-nationalist* approach to issues concerning criminal law and criminality, and the corresponding need for *multidisciplinary and inter-disciplinary methodologies* in our future research projects.[3] But we start with

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2 Garland, 2001, p. 194. Garland based this description on the situation in the United States and the United Kingdom, but most of it seems to reflect the current developments in the criminal justice system of the Netherlands and of other continental European jurisdictions.

3 As was mentioned in subsection 1.1 in the Prologue to this volume, 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, the Utrecht Centre for Regulation and Enforcement in Europe (RENFORCE), and the Utrecht Centre for Accountability and Liability Law (Ucall); see the references in footnote 8 in the Prologue.

a small excursion into the field of fine literature and some related theoretical notes on law, crime, and deviancy.

2 Dazzling modern complexities

In her novel *Schilf*,[4] Juli Zeh – a German author with a scholarly background in international law – features two study friends who both become successful physics professors, but choose radically different academic paths as a result of their strongly opposed views of reality and the essence of time: one is dedicated to the philosophical idea of so-called parallel universes, while the other is one of the principal scientists affiliated with CERN in Switzerland and thus very much involved in the effort to discover the so-called 'Higgs boson'. The continuous antagonism between the two friends ultimately leads to a very disastrous course of events, which need not concern us now. What is interesting in connection with the many subjects that were covered throughout the present volume is what connects the two scholars. Both are driven by their interest in an enormously complex web of causalities; in fact, the objects of their scientific investigations are so extremely complex that their hidden patterns, the hidden laws that govern them, could only be seen and understood, either from a very great distance, or from very, very nearby. That is to say: knowledge of these physical complexities could only be or become fully available to either God or to quantum physicists.

Turning from literary portrayals of physics to the domains of law, criminality, and psychopathology: also the three main academic disciplines that have of old collaborated within the Willem Pompe Institute are confronted with different problems and puzzles of sometimes enormous scales and complexity, entangled in a humongous, intricate web of causalities as a consequence of the differing structural patterns that are largely hidden from sight in our late-modern, Western, capitalist societies. These large-scale complexities confront us, legal scholars, criminologists and forensic psychiatrists and psychologists, with devastating perplexities that could perhaps compete with the ones that the two physicists and protagonists in Juli Zeh's novel are faced with.

First, concerning the necessity of assuming a God's eye view, we could, ironically, note that modernity, as Friedrich Nietzsche has it, saw the death of God.[5] We have taken His place. In other words, man has become the measure of all things. At least man has become the measure of all things *legal*. Modernity, thus, brought about a radical change in our human relationship with reality. This is relevant because also our legal concepts and doctrines are firmly rooted in modernity and correspond to the proportions of modern social life, that is: our legal concepts are accustomed to the dimensions of our capitalist and consumerist societies. In a way, they can even be said to be employed to *sustain*

4 Zeh, 2007 (the title of the English translation: *In free fall*).
5 Nietzsche, 1999.

the existing structures of our capitalist and consumerist societies.[6] However, the problems we are facing in the risk society – the problems that we face as a result of the different successes of the modern era – have by far outgrown our once comfortable human measures.[7] Regrettably, our existing legal concepts were not designed with the purpose of enabling us to solve these complex problems, nor to adequately allocate responsibilities for their causation or rectification.

In his book *Law and Irresponsibility*, Scott Veitch connects this observation to a deeply existentialist feeling of uncertainty or disquietude.[8] Our notion of responsibility is grounded on the modern notions of autonomous individuality and subjectivity; and we are proud of this attainment of modernity, the development of the 'instinct' that tells us we are answerable for our doings exactly because we are in control of our doings. But in the face of the recently discovered *limits* to our control, and in confrontation with the sometimes totally *lacking* capability of foreseeing and controlling the consequences of our doings, this pride easily turns into a radical anxiety: a sense of loss of self, of indistinct fear, of being surrendered to forces that cannot be controlled, be it climate change, terrorism, or something else. It is almost as if we have a restless feeling of living, not in one universe, but in a *multiverse* – which exactly formed the object of theoretical speculation of one of the two protagonists in the novel by Juli Zeh that was mentioned earlier on; and it is a notion, by the way, also alluded to – albeit maybe implicitly – by the late Ulrich Beck in his late writings on the notion of 'emancipatory catastrophism'.[9]

Of course, this fear or anxiety must not turn into paralysis, it must not be a justification for doing nothing; but neither must it be a reason for overhasty and panicky forms of legal excesses. If science or scholarship in the fields of criminal law, criminology, and forensic psychiatry and psychology has any specific task in this regard, it has to be to critically assess the different proposed or enacted penal or legal reforms. This, of course, is a rather self-evident, almost tautological statement, considering that some form of critique is a conceptually necessary attribute of all independent science and academic scholarship. Less self-evident is what the notion of critique essentially amounts to. This is what we will now go on to discuss.

6 See Veitch, 2007, 2015.
7 Beck, 1992, 2006; Garland, 2001.
8 Veitch, 2007, p. 36. In chapter sixteen, Antoine Mooij also touches upon comparable issues of uncertainty and anxiety, from a psychopathological and phenomenological point of view.
9 See Beck, 2015.

3 Conceptual borders: responsibility and dehumanizing tendencies

3.1 Introduction

According to Michel Foucault, the notion of critique refers to an attitude of resistance and rebelliousness: the resistance exercised by a person or subject to the manner in which and the degree to which differing power mechanisms have forced this person to become the person he or she has become.[10] Power, according to Foucault, is not so much a repressive as it is a productive mechanism. By means of different 'disciplinary techniques' individual bodies are being 'normalized', that is: pressed into a mould that forms them into socially useful subjects. A famous example of an institution that embodies such a power mechanism is the prison: by means of a panoptical system of continuous surveillance, prisons are supposed to both *produce* delinquents – that is: to set them apart from the law-abiding part of the citizenry – and to *rehabilitate* them into the type of subjects that society can use (again).[11] Fundamentally, all persons are subject to similar power techniques; modern man is not the autonomous and authentic individual he thinks (or hopes) he is, but a product of disciplinary power structures, a hole filled up with social rules.

This does not necessarily mean that man has become a completely inauthentic robot of disciplinary power. A human being never completely coincides with the ways in which and the degrees to which he is being governed by power mechanisms. There always remains a 'rest' out of which a critical attitude can germinate. According to Foucault, therefore, critique is a 'virtue', and hence an exercise situated inside the domain of practical reason rather than that of theoretical reason.[12] Foucault has often been portrayed as a postmodernist thinker. Especially in his later works he emphasized what he took to be an ethical task of rejection: to rebel against different authority structures and to design new, 'authentic' forms of subjectivity ('life as a work of art'). In most Western societies, the results of this rebellious attitude are quite familiar. The far-reaching anti-authoritarian developments and processes of individualization of the 1960s and 1970s need not to be recounted here; and nor do the different drawbacks to these developments.[13] Since then, numerous attempts have been made to again firmly tie the unchained and 'orphaned' citizen to the authority of the State, *inter alia* with the help of criminal law – so far with not much success.

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10 Foucault, 2007. Cf. Garland, 2001, p. 3 and 125.

11 Foucault, 1995. The term 'panoptical' refers to Jeremy Bentham's 'Panopticon': a type of prison designed as a circular structure with an inspection house at its centre. The concept of the design is to allow a single warder to observe all inmates of an institution without the inmates being able to tell whether or not they are being watched. See also Fijnaut, 2014, p. 129-132; Garland, 2001, p. 72.

12 See Butler, 2002; De Boer, 1993, p. 162-175.

13 See for example Spierenburg, 2013; and Garland, 2001, p. 77-89, 154-163.

However, what we can see now is that the undisciplined and so-called emancipated individual has gone out of the frying pan and into the fire. For, instead of Foucault's *panopticon*, what we have come to inhabit is what Zygmunt Bauman has termed a *synopticon*, that is: a system without a centre, wherein powers that used to belong to the State have been partly privatized and commercialized.[14] Despite his self-image as a unique and autonomous individual, Western man is in fact spoon-fed by industries of commerce. Alarmingly, this phenomenon has also manifested itself behind the walls of the university: also this last bastion of independent thinking can most often no longer evade the necessity of 'putting on the market' its educational programmes and research 'products', with sometimes almost shamelessly slick advertising texts. Put somewhat exaggeratedly, one may say that the disciplined subject of the State has been transformed into a disciplined subject of the Market.

It therefore seems that with the rather heavy artillery that has been levelled at the relativistic and sometimes nihilistic tendencies within postmodernist philosophy, the baby has been thrown out with the bathwater. The castaway baby is the sense of the value or virtue of 'critique'. The principal task of critique in the present time, according to Bauman, is no longer, however, the protection of the private sphere against the colonizing powers of the State – as was advocated by Foucault – but the other way around: the protection of the public sphere against the colonizing powers of 'the private'.[15] The decline of the notion a public sphere is manifested, for example, in the erosion of the notion of 'public interest'. In other words: as a result of the individual's emancipation from public authority structures, something also became lost. What has diminished is the sense of a shared identity, the sense of belonging to a communal bond that transcends the individual and private sphere.

Consequently, the attained (negative)[16] freedom engenders feelings of fear and powerlessness. Already more than seventy years ago, Erich Fromm peerlessly described the different resulting fear-driven socio-psychological processes: people escape from freedom by submitting to authoritarian systems of political thought and by surrendering to self-renunciative forms of conformism.[17] With regard to the latter, we should think today first and foremost of the demands of the market. And with regard to the former, we may think today of several authoritarian developments in the domain of criminal law and of different authoritarian and populist developments within politics.

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14 Bauman, 2000, p. 85.

15 Ibid., p. 39. Both, of course, are still necessary, but as Foucault, Bauman is fond of rhetoric.

16 Well ahead of his time, Fromm distinguished between negative and positive forms of freedom. Negative freedom refers to the idea of being free *from* interferences by external forces, such as the state, whereas positive freedom refers to the idea of being free *to* lead an independent life. For a famous and authoritative exposition of these two forms of freedom, see Berlin, 2002.

17 Fromm, 2005. The book was originally published in 1941, but could as easily have been written today.

However, we could take things a step further. In her seminal, although also somewhat evangelizing book *The Posthuman*, Rosi Braidotti argues that we should distance ourselves from the tradition of Western humanism; in fact, what she argues in favour of – in line with Foucault – is a form of anti-humanism.[18] Why would one argue against an intellectual tradition that is commonly considered to promote such notions as human dignity, individual freedom, and solidarity amongst people, notions that we value so highly? Well because, according to Braidotti, the humanist tradition, with its emphasis on the typical features of humans that set them apart from other objects living and dead, and with its strong inclination to put the atomized, undivided – the '*in*-dividual' – human on the highest throne there is be found inside our universe, humanism has actually caused or at least been complicit in different forms of global and regional injustices (think, for example, of Western colonial history). Whatever one may think of the prospects of following an anti-humanist path as suggested and advocated by Braidotti, it should be a cause for concern that a parallel point is made by Scott Veitch, which is that while the law claims to promote justice, it simultaneously helps to sustain forms of human suffering and other forms of injustices on the very grounds of equality, freedom and formal justice.[19]

This leads to the question: what is the proper role and task of *critique* within contemporary criminal law scholarship, criminology, and forensic psychiatry and psychology *today*? And: in the name of what or whom ought this critique to be exercised? Principally, what it needs to do is to contribute to a reconceptualization of our notions of *subjectivity and responsibility*. And this, obviously, amounts to a massive task, presupposing as it does something like a God's eye view. If we follow Braidotti, what she terms the post-human subject is a 'nomadic' subject, and one seen 'within an eco-philosophy of multiple belongings, as a relational subject constituted in and by multiplicity'.[20] These multiple belongings include linkages of mutual dependency with the environment, animal life, future generations, and so on, as was also emphasized by *Daan van Uhm* in chapter twenty-three above, addressing the issue of animal suffering inflicted by human beings.[21] These belongings clearly transgress the boundaries of nation states. Hence, the critical approach should be, where appropriate, post-nationalist in orientation, or, to use Beck's term: it should be 'cosmopolitan' in orientation.[22]

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18 Braidotti, 2013.

19 Veitch, 2007, p. 105. Veitch provides many examples of this in his book. In the vein of the ideas propagated by the *Frankfurter Schule*, Antonie Peters – who headed the new Utrecht School in the 1970s – developed similar criticisms with respect to criminal law; see subsection 3.3 in chapter one by Ferry de Jong and Constantijn Kelk, and chapter five by Stijn Franken and Petra van Kampen.

20 Braidotti, 2013, p. 49.

21 Cf. also Nagel, 1999.

22 Beck, 2015.

3.2 Examples

If modernity and the theory of risk society have taught us one thing, it is that human beings are creatures whose actions have consequences with a potentially vast scope. However, as Paul Ricoeur put it: 'The question then becomes: how far in space and time does the responsibility for our acts extend?'[23] Given the strong tendency in criminal law to expand its scope and to augment its level of punitiveness, one of the most important tasks for criminal law scholarship, in that connection, will amount to critically scrutinize the limits that are or ought to be set to criminal responsibility and to intrusive State powers in the field of criminal procedure, both *de lege lata* and *de lege ferenda*.

Our just mentioned notions of subjectivity and responsibility stem from modernity, as was stated already earlier on. It is exactly these notions that lie at the heart of the disciplines of both criminal law and psychiatry. Hence, they lie at the heart of forensic psychiatry. This became apparent in chapter sixteen, authored by *Antoine Mooij*, and in chapter seventeen, by *Timon den Boer and Jos van Mulbregt*. Many fundamental challenges for future research face us in this regard, considering that the fundamental notions of subjectivity and responsibility are currently being thoroughly questioned, both by forensic mental health experts and by neuroscientists, for example: if we say, as does Mooij, that the notion of freedom always remains related to man's interiority, we need to ensure that future research into these issues continues to integrate contemporary insights from such disciplines as phenomenology and hermeneutics, as these philosophical disciplines can inform us on issues of interiority like no other.[24]

There is a further important reason to remain occupied with the foundations of and the limits to human responsibility. In section 2, *supra*, it was noted that the fear or anxiety that is a result of our increased awareness of the limits to our control and of our sometimes lacking capability of foreseeing and controlling the consequences of our doings, must not turn into paralysis, but should neither be a reason for overhasty and panicky forms of legal excesses, of the sort that we may see, to some extent, in different governments' initiatives to combat threats related to terrorism and jihadism with legal or quasi-legal means. Another example was discussed by *Renée Kool* in chapter seven above: according to Kool, we need an evidence-based approach with regard to penalization and with regard to the criminalization of cultural offences, against the background of the traditional argument of criminal law as an *ultimum remedium*.

A similar point concerns the future of the legislation on confiscation measures in criminal law – which is a topic addressed by *Wouter de Zanger* in chapter eleven. Regarding this last-mentioned topic, Wouter de Zanger submits that a critical assessment of targets set by both politicians and policy makers will be

23 Ricoeur, 2000, p. 29.
24 See also subsection 5.2, *infra*; and see Mooij, 2015.

called for. Politicians constantly focus on asset recovery as an effective tool in tackling serious, organized crime and as a means to bring in money for the state. This bears the risk of legal instruments with far-reaching consequences for the individual concerned to become mechanisms for the state to bring in (financial) income. It also relates to the sometimes unrealistically high expectation of what the law can establish, which equally deserves a critical assessment, as does the fact that recent changes in legislation on confiscation are illustrative of a wide trend in criminal law concerning the legislative process: characteristics of the law that were once deemed fundamental are altered because it is thought that a tough approach to crime is needed, without a true debate about the fundamental issues underlying the law.

Moving on to the domain of criminal law and human rights, challenges for future research await us, for example with regard to the infliction of sentences and (other) penitentiary matters that were also touched upon in chapter fifteen, written by *Miranda Boone and Elina Kurtovic*. For example: the rather authoritarian developments in the current Dutch (government) policy concerning penitentiary matters have important dehumanizing repercussions. Much more critical research needs to be carried out into, *inter alia*, the increasingly severe so-called collateral consequences of convictions, as these seem to have an increasing (negative) impact on the socio-economic position of (ex-)offenders, restricting a convicted offender in fully participating in society. Future research might look more structurally at how judges and other sentencing bodies take collateral consequences into account in their decision-making, and at how these consequences are perceived by those who are confronted with these.

Furthermore, more critical research is called for with regard to the degree to which detainees and other convicted offenders will be able to exercise the different rights that they have or should have as 'legal citizens'.[25] The rather authoritarian developments in the current Dutch (government) policy concerning penitentiary matters also relate to basic citizens' rights, as was discussed in chapter fourteen by *Pauline Jacobs*. In the case of *Vinter and others v. the United Kingdom*,[26] the European Court of Human Rights was very critical towards the United Kingdom policy and practice concerning sentences with a whole life tariff. And in the case of voting rights for prisoners, the United Kingdom was also severely criticized with regard to the lack of voting rights for prisoners. As these cases have encountered enormous resistance in the United Kingdom, the question is how the European Court will proceed in this. This approach will inevitably also have important repercussions for Dutch policy and practice. Other examples of questions that also relate to both domestic criminal law and human rights issues concern the combating of hate speech and (other) discriminatory utterances with penal means – a topic covered by *Joske*

25 See on this notion also Duff, 2007, p. 191-193.
26 ECtHR, Grand Chamber judgement of 9 July 2013, Appl. nos. 66069/09, 130/10 and 3896/10.

Graat and Marlien van Duursen in chapter eight on the scope of Articles 137c and 137d of the Dutch Criminal Code.

Finally, regarding the developments on the subject of illegally obtained evidence, the principles of proper criminal proceedings and, last but not least, in achieving human rights – as discussed by *Stijn Franken and Petra van Kampen* in chapter five – the persistent efforts of rebellious and 'activist' criminal defence lawyers who have refused to become silenced by legislator or judge, according to Franken and Van Kampen, have proven to be indispensable. They should continue to speak. The legal position of the suspect in criminal proceedings and of detainees has withered to some extent, partly as a result of the advent of a sometimes very harsh or even cynical discourse in politics and the media surrounding the legal status of suspects and detainees. A critical concern for the legal position of delinquents is therefore still highly necessary, probably even more so than was the case during the heyday of the new Utrecht School in the 1970s. One important task and challenge that therefore faces us is to continue and perhaps intensify our efforts in educating our students with an eye to developing a critical attitude, a good sense of professional and social responsibility, and a love for the art of doing justice.

4 Geographical borders: globalization and Europeanization

4.1 Introduction

Given the central theme chosen for this collection of chapters – *cross-border research* in the disciplines that are represented within the Willem Pompe Institute – it is rather unsurprising that a number of chapters addressed different aspects of globalization and Europeanization. The main narratives surrounding the big topics of globalization and Europeanization can be considered to be already widely known, which is why we can keep our introductory notes considerably brief here. Furthermore, the randomly mentioned examples in section 1, *supra*, already attest to the often global scale of the different risks that contemporary societies are dealing with.

The need for 'critique' in the domains of criminal law scholarship, criminology, and forensic psychiatry and psychology is not, of course, limited to conceptual issues and domestic issues concerning criminality and deviancy, as is evidenced by many of the preceding chapters, primarily the ones from parts three and five in this book. Equally if not more important is the critical assessment of developments that concern the Europeanized or even globalized scale of the problems that haunt our three main disciplines of criminal law scholarship, criminology, and forensic psychiatry and psychology. The catchwords globalization and Europeanization also encompass notable *technological* developments, such as illicit trading via the Internet and different forms of 'dataveillance'.

4.2 Examples

In the wide field of cultural and global criminology, we can think of several challenges for future research. According to *Roos de Wildt*, who authored chapter twenty on the growth of the Kosovar sex industry during a United Nations peacekeeping mission, the overwhelming majority of cultural criminological studies focus on the Western societies where cultural criminology was founded, namely Western Europe, specifically the United Kingdom, and the United States. Cultural criminology's emphasis on the specific political, economic, historical and social context in which crime is constructed as such, asks for more ethnographic studies of how meaning, representation and power shape transgressive behaviour, outside this Western realm. Such ethnographic studies outside Western Europe and North America should not be seen as 'exotic' studies which highlight their, versus our, 'Western' reality. The specific development and construction of crime outside the Western realm is namely very much connected to the West.

Another challenging global development that increasingly affects questions concerning identity and crime is addressed by *Rosa Koenraadt* in chapter twenty-two above. She submits that the Internet will increasingly play a role in criminal and deviant acts and social interaction. In the future, cultural criminological research will have to move its focus increasingly towards the virtual world to unravel the growing amount of online subcultures, social interaction and for a thorough understanding of crimes and deviant acts that are conducted on or through the Internet. The use of online ethnographic methods in cultural criminological research is bringing along new challenges and ethical dilemmas.

Furthermore, different big questions announce themselves in relation to what is referred to as processes of 'Othering' with regard to different migrant groups by *Veronika Nagy and Brenda Oude Breuil* in chapter twenty-one. Questions that they deem important are, for example: do social sorting techniques and the disciplining of 'problem populations' through (assumedly 'neutral') digitalised and medicalized ways actually achieve the goal of 'disciplining' these populations, or do they merely invite them to outsmart the system and creatively (re)craft their virtual identities into the ideal picture of the deserving citizen, which the government wants to see? What is the role of non-governmental actors and institutions in procedures of 'dataveillance'? What is the net effect of expelling minors who legally dwell in European countries – since they do not return to their home countries? What could be more sustainable ways to approach legal, but 'unwanted' migrants? Relatedly, but on a more domestic scale: a notable challenge ahead of us concerns public social policy directives targeted at so-called 'multi-problem families' that warrant interventions for the welfare and safety of children and families, crime prevention and public safety – that formed the subject of chapter nineteen by *Tessa Verhallen*. How can these directives be formulated in a different way, in a way that is more useful and more respectful to the families in question?

Turning to the domains of European criminal law and regulatory criminal law, covered in chapter twelve by *John Vervaele and Michiel Luchtman*, it was stated in the last-mentioned chapter that the European Union cannot only be concerned with the interests of member states. European citizens are an integral part of the European Union's legal order and are entitled to a legal regime that ensures their freedom, security *and* justice. They consider it the task of academia, and particularly of the Willem Pompe Institute, considering its past research on both financial and international/European criminal law, to build up the body of knowledge through teaching and research.[27] In addition, one important task for future research in this connection is: given the strong harmonizing tendencies in for example European criminal law, what remains or will remain of the independent role of domestic substantive and procedural criminal law?

5 Scientific borders: multidisciplinarity and interdisciplinarity

5.1 Introduction

As was mentioned before, the notion of 'cross-border' research refers not only to geographical borders, but also to borders between different academic disciplines. Also here we can keep our introductory notes brief. If it is true – as was suggested in section 2, *supra* – that the existing law is, somehow, complicit in the maintenance of forms of injustice or even human suffering, for example by preventing the question of responsibility from even arising, or by legitimating certain social practices that sustain structural forms of discrimination,[28] well then we have to also meticulously trace legal and moral responsibilities for differing instances of human suffering and to trace how links of responsibility may also be fragmented or dispersed. In this connection we need what Braidotti refers to as 'cartographic accuracy': deep readings of present political and legal structures, aimed at unveiling power locations and mechanisms of responsibility and irresponsibility.[29] So in addition to the very wide, herculean (to use a famous term coined by the late Ronald Dworkin)[30] or God's eye view, we need also a much, much closer view that focuses on the quantum mechanisms of social and political structures. Both perspectives are implicated in what Beck termed 'reflexive modernity', where modernity has become its own theme.[31] Rather than some form of philosophical narcissism,

27 One concrete envisaged project involves the drafting of a textbook on the criminal law enforcement of social-economic and tax regulation in English, which takes into account the Europeanization and globalisation of regulatory and enforcement issues in the fields of economics and finance. Such a book is already available in Dutch; see Kristen et al., 2011.

28 As is claimed by Veitch and by Beck. See Veitch, 2007; Beck, 2015.

29 Braidotti, 2013, p. 164.

30 Dworkin, 1986.

31 Beck, 2006.

this sort of dialectical reflexivity, where the God's eye view and the quantum view should mutually enforce one another, seems to constitute a very large and important challenge that also scholars from the fields of criminal law, criminology, and forensic psychiatry and psychology should be occupied with.

This all the more highlights the importance of *multidisciplinary and interdisciplinary research* into the differing aspects of delinquency and criminal law. The Willem Pompe Institute has at times excelled in this type of research, as was discussed in chapters one to four, written by *Ferry de Jong and Constantijn Kelk*, *Frans Koenraadt*, *Frank Bovenkerk*, and *Dina Siegel and Damián Zaitch* respectively. Nowadays, an integrative, multidisciplinary approach is called for more than ever before, considering the fact that new scholarly branches have been growing out of the old existing multidisciplinary tree of criminal law, criminology, forensic psychiatry and psychology, and juvenile criminal law, such as: the internationalization of criminal law, European criminal law, comparative criminal law, regulatory criminal law, and the law concerning victims' rights.

5.2 Examples

Regarding the topic covered by *Ido Weijers, Stephanie Rap and Kristien Hepping* in chapter thirteen: according to these authors, an important task is to maintain an interdisciplinary view of juvenile crime and juvenile justice, because this enables us to gain a broad and deep understanding of the phenomena that are of interest to this field of study. In this connection, it is of importance to maintain a view of juveniles as active participants. Research should imply a focus on studying the world of young people from their own perspective and experience.

With regard to research topics in the domain of forensic psychiatry and psychology – addressed in chapters sixteen to eighteen, authored by respectively *Antoine Mooij*, *Timon den Boer and Jos van Mulbregt*, and *Lydia Dalhuisen*, important issues need to be dealt with that lie at the heart of the discipline, such as: the controversies (both old and contemporary) haunting the concepts of free will and individual responsibility, and the different developments concerning the concept of criminal responsibility in relation to different forms of psychopathology. A continued critical individual approach is necessary when and where new assessment instruments are introduced in forensic mental health. Also these subjects can only be adequately dealt with by employing a multidisciplinary or even interdisciplinary methodology.

And with regard to substantive criminal law doctrines, such as the ones covered by *Marjan Groenouwe and Esther Baakman* in chapter nine, it may be noted that the integration of the corporation as a legal subject into criminal law requires us to rethink traditional definitions of criminal law, for example on who can be a criminal actor and what constitutes a criminal act. It becomes increasingly clear that corporations *can* cause substantial harm, which creates a need for a satisfactory model for imposing criminal liability upon legal persons.

As Baakman and Groenouwe submit, we witness a shift from individual to collective responsibility, as a consequence of which new methods of attribution are needed to bridge the gap between judicial theory and corporate reality.

Connectedly, with respect to the problematic doctrinal notion of corporate *mens rea*, *Mark Hornman and Eelke Sikkema* have explored a possible theoretical foundation with the help of insights from business ethics in chapter ten. With an eye to future research, one may, according to Hornman and Sikkema, for example ask whether the academic discipline of (business) ethics could provide such a foundation also for the related issue of the imputation of the *actus reus to the corporation.* Should liability be based on the attribution of the actions of individual employees to the corporation? Or should one prefer a model of organizational fault, focusing on the corporation's own internal decision structure and policies? Are the criteria that were developed by the Dutch Supreme Court adequate tools to establish liability in this respect? And what should be the role of the (failure to take) adequate due diligence in this context? These questions also relate to fundamental principles of criminal law, like the principles of legality and culpability.

These were just some examples of notable research questions that call for multidisciplinary or even interdisciplinary methodologies. And of course, multi-disciplinary and interdisciplinary research is very much *en vogue* in academia. Additionally, however, a still more *integrative* approach, aimed at thoroughly combining insights stemming from the three main disciplines that have of old collaborated *within* the Willem Pompe Institute – criminal law scholarship, criminology, and forensic psychiatry and psychology – should be an important task to set for ourselves.[32] The same holds true for the need to remain engaged in *fundamental* research. All research is challenging, but the main challenge will be to maintain the independence of academic freedom to question what mainstream thinking considers self-evident. For example, the advent of the 'victim paradigm', discussed by *Chrisje Brants* in chapter six, confronts us with the rather fundamental question of what, ultimately, constitutes the justifying rationale for having and upholding a system of criminal justice in the first place.

6 Conclusion: from slavery to bravery

For the record, the different and many examples presented above served as examples of *possible*, not of *determined* future research projects; it goes without saying that it is simply infeasible to face all of the different challenges that were mentioned, and any attempt at doing just that would amount to a recipe for a collective burnout. To this can be added that another notable restriction is constituted by the fact that fundamental research and multidisciplinary and

32 Cf. Fijnaut, 1986.

interdisciplinary research of course require sufficient funding. The increased and still increasing necessity for academic scholars to engage in fundraising activities and in contract-based, short-term research projects has somewhat overshadowed the value of independent, original and fundamental research. Additionally, the sometimes enslaving demands of bureaucracy, the strong focus on output and targets and the different forms of prioritizing quantity over quality have put the old academic values of contributing to intellectual growth and to critical citizenship under very strong pressure.

And what is more, Law Schools have become increasingly attacked by other academic disciplines for the allegedly unscientific nature of their research; especially the *legal* discipline is considered as the 'odd man out' within academia.[33] As a consequence of these and related developments – and to return to one of the highly contemporary notions with which this Postscript started – Law Schools seem to be caught, or to keep themselves caught, in a kind of identity crisis. A tendency to primarily stick to smaller and 'safer' questions sometimes seems to be the unfavourable effect of an otherwise favourable development, *viz.* the increased awareness of the urgency of carefully accounting for research methodology and feasibility. In some respects, therefore, some more bravura would at times be welcome. With the help of the knowledge that is to be produced by truly integrative and fundamental research, we should dare once again to boldly address such encompassing themes as 'The person of the delinquent individual' or 'Criminal law and trust in the fellow man', as Willem Pompe did at the occasion of his inaugural lecture in 1928 and his valedictory lecture in 1963.[34]

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33 See Stolker, 2014. Something similar can be noted in discussions surrounding the development of an official, strategic national 'Agenda for Scientific Research' (*Nationale Wetenschapsagenda*; see www.wetenschapsagenda.nl, currently in the making in the Netherlands.

34 Pompe, 2008a (in Dutch: *De persoon des daders in het strafrecht*); Pompe 2008b (in Dutch: *Strafrecht en vertrouwen in de mede-mens*).

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