

## BOOK REVIEW

**David J. Cornwell, *Criminal deterrence theory: the history, myths & realities*. Portland & The Hague: Eleven International Publishing, 2018, 208 pp., ISBN: 9789462368156 (hbk).**

In moderate states a good legislator will insist  
less on punishing crimes than on preventing them;  
he will apply himself more to giving mores  
than to inflicting punishments.

*Charles de Montesquieu*

In this interesting monograph, in which the British criminologist David Cornwell builds on earlier work (Cornwell, 2006, 2007, 2016), the concept of deterrence is at the centre. The author pays attention not only to criminal theory and doctrine but also to criminal practice and policy, in which deterrence has played a major role for centuries. In Cornwell's own words:

This book is about the origins and impact of the deterrence doctrine in criminal justice, the claims made for and against it, and the extent to which it has influenced the development of penal policies and practices particularly since World War 2. (xiii)

The monograph focuses on the deterrent effect – or rather, as becomes clear, the lack of this effect – of custodial sentences on individual offenders, that is special deterrence by imprisonment. The conclusion of the book is clear: 'imprisonment fails to deter ex-convicts and contributes to re-offending' (xvii). Although Cornwell almost exclusively discusses the criminal practice and policy of Great Britain, it is quite easy to draw parallels with other Western countries, such as the Netherlands – I will come back to this at the end of this book review.

In the first part of the book (Chapters 1 to 5), the author takes the role of 'the criminologist with the hammer', breaking down 'the holy houses' of the criminal deterrence theory – largely on the basis of (the absence or the ambiguity of) empirical research data. In Chapter 1 attention is paid to the roots of the criminal deterrence theory in modern times. The ideas of its founding fathers such as Thomas Hobbes, John Locke and Jeremy Bentham are discussed. In Chapter 2 the focus is on the criminal deterrence doctrine in the twentieth and twenty-first centuries. It is discussed that the debate about deterrence has slowly but surely shifted from philosophy of law via psychology, sociology and economics to criminology. While reading it is interesting to notice that, although preventionists seem to have it much easier than retributivists in the sense that preventionists are more down to earth and pragmatic than the more metaphysically minded retributivists, it proves extremely difficult to provide hard empirical evidence of the deterrent effect of imprisonment: 'there are and will remain considerable prob-

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lems with empirical research into deterrence in the context of criminal justice' (40). At the end of the second chapter, Cornwell concludes as follows:

The evidence surveyed so far seems to enable us to reach some tentative conclusions which I summarise as follows: [a] if deterrence doctrine is a psychological theory based on threats, then the evidence from recidivism statistics indicates that it fails to deliver substantial crime reduction or control; [b] if it is a sociological theory based on social control in general and crime control in particular, then expanded use of imprisonment and longer sentences do not achieve its objectives; [c] if punitive and deterrent penal policies are predicated on the belief that economic savings will result from their implementation, combined with crime reduction, then reliable longitudinal statistical information has yet to be made available; and, [d] from an entirely criminological perspective, the efficacy of deterrence as a principle and purpose of criminal punishment remains an intuitive philosophical construct rather than a theory based on empirical statistical evidence. These conclusions, if substantially correct, leave deterrence doctrine, as presently conceived, in a parlous state. (43)

In sum: the down-to-earth and pragmatic-looking preventionist who advocates deterrence seems to be more irrational than expected at first glance; although Cornwell speaks of 'an intuitive a priori basis' (32), I prefer the term 'irrational' in the sense of a gut feeling instead of 'intuitive', since, for me, intuition is the highest form of (transrational) knowledge (cfm. the Dutch-Jewish philosopher Benedict Spinoza). Chapter 3 deals with the post-World War II period. While in the first decades after World War II the emphasis is on penal welfare and subsequently on treatment and rehabilitation, in the 1970s despair strikes, when recidivism rates turn out to be towering and the model of treatment and rehabilitation does not seem to work. Under the influence of the pessimistic nothing-works-thesis, the attention shifts to law and order and tough on crime policies and as a result to neo-retribution, deterrence and incapacitation – especially in the 1980s and 1990s. Since that time, the prison population has been rising exponentially and more and more prisons are being built. Given the lack of empirical evidence that deterrence works, 'it seems altogether surprising that the term "deterrence" ... retained such a "taken for granted" status within the political and penological discourses of the post-modern era' (70). Chapter 4 provides an explanation for this by distinguishing between crime control and crime reduction. The chapter starts with a short discussion of the well-known book *The culture of control* by David Garland. Instead of taking an evidence-based and realistic approach to crime reduction, crime control stands for the irrational idea – set up in prevailing criminal policy – that strict action must be taken after a crime has occurred (and also before a crime has occurred); not so much the certainty and celerity of the punishment but its severity and duration dominate in this line of thinking. Cornwell qualifies this crime control approach as 'the strategy of despair' (73). Chapter 5 deals with the paradoxical situation in which, on the one hand, crime rates have been falling for a long time, while, on the other hand, the call for strict and harsh

penalties in the fight against insecurity and unsafety remains invariably high, so that the prison population in Great Britain continues to grow. As for the prison, Cornwell concludes at the end of the chapter: 'Prisons, as presently used in Britain and elsewhere do not change people for the better: such places merely "warehouse" them and "make bad people worse"' (96). Attention is also paid to the return of the victim into criminal law, especially in the context of claiming compensation for damages. With his indictment against the prison and his attention to the needs of the victim, Cornwell builds a bridge to the second part of the book.

In that second part (Chapters 6 to 9), the author plays the role of 'a master builder'. After having taken down 'the sacred houses' of the deterrence theory – and the accompanying crime control policy – it is time for a healthy new criminal law building aimed at real crime reduction. In Chapter 6 the concepts of reparative/restorative justice and desistance (as well as the link between the two) are at the centre. These two concepts underline the importance of investing in people, including offenders. In this regard Cornwell notes the following:

Bad people can change their behaviour, but only if they have a positive incentive to do so. The change process requires support and guidance and the will to change, but it cannot be imposed by threats. Deterrence ... is the legal threat in crime control: it has taken too long for the correctional world to understand that threatening people is not the way to change them. (106-107)

In Chapter 7 ideas are put forward – in line with the concepts of reparative/restorative justice and desistance – to reduce imprisonment in the sense of 'doing time': 'high use of imprisonment leads inevitably to high rates of re-offending; and high rates of re-offending lead to further use of imprisonment and high rates of prison occupancy' (121). It is this vicious circle that must be broken. In this context, Cornwell argues for the replacement of relatively short prison sentences for relatively less serious offenses (in Great Britain more than 30 per cent of the prisoners are currently serving a prison sentence of four years or less) by community service sanctions and for reparative prisons in which prisoners work on 'self-restoration' (e.g. by following training aimed at getting a job) and compensation and restoration towards the victim and the community (e.g. by working) during the last two years of their detention. Chapter 8 deals mainly with victim-offender mediation, that is one of the modalities of restorative justice, and the incorporation of it into the various stages of the criminal process and the enforcement stage. In certain cases – I would think – this could prevent the imposition of imprisonment or to have it organised in a more constructive way (see above). Finally, in Chapter 9 and the postscript a look at the future and some concluding remarks can be found. The bottom-line conclusion is as follows:

Though ... perceptions of deterrence and its place within criminal justice have changed since the sixteenth century, its taken-for-granted status as a principal component of criminal punishment has rarely been robustly challenged. ... However, from ... evidence-based research as is available, it becomes clear

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that increasing sanctions severity and the use of short term imprisonment for deterrent purposes significantly fails to reduce recidivism, and probably encourages it. (153)

All in all, Cornwell's monograph is a must-read not only for academics in the field of criminal law and practice but also for citizens, media and politicians. Not because it contains many new elements but because different ideas (theory/doctrine and practice/policy, past and present) are brought together in a structured manner. And because the book turns from unmasking prevention myths about deterrence into giving input – based on evidence-based facts and reparative/restorative justice values – to come to a realistic, effective and humane prevention doctrine and policy.

Much of what Cornwell writes about the situation and development in Great Britain applies *mutatis mutandis* to the Netherlands (Claessen, 2010, see particularly Chapter 2). A number of Cornwell's recommendations derived from reparative/restorative justice and desistance could and, in my opinion, should also be taken into account in the Netherlands. It is important to note that the Netherlands – under the influence of the culture of control and also because of its Anglo-Saxon neo-liberal orientation – has changed from being one of the mildest punishing countries (in the 1960s and 1970s) to one of the most severely punishing countries in Europe (since the 1980s and 1990s). For example: over the past two decades, judges have started to punish more severely (10-20 per cent overall), the chance of receiving a custodial sanction is relatively high and the number of offenders who have been sentenced to life imprisonment has risen exponentially since 2000, while life imprisonment *de facto* still means a whole life long. However, prisons in my country are nowadays largely empty, and several prisons have already been closed. Since 2005 there has been a spectacular fall in the number of prisoners in the Netherlands. While the Netherlands – together with Great Britain – was in the top-3 of European countries with the most detainees per 100,000 inhabitants in 2005, our country – unlike Great Britain – is now at the bottom of this list, together with some Scandinavian countries. Explanations for this significant change are difficult to give, except that the numbers of registered crime have simply been falling for quite some time, but that also applies to Great Britain.<sup>1</sup>

Another difference with Great Britain is that in the Netherlands around 75 per cent of all prisoners are sentenced to a prison sentence of three months or less, which, in my view, offers plenty of room for alternatives. Unfortunately, experiments with electronic detention and more restorative designed community service sentences instead of short prison sentences are not really getting off the ground in the Netherlands due to the current punitive climate focusing on retribution, deterrence and incapacitation. Neither does the vacancy in prisons provide an incentive for experimenting with alternatives to prison sentences. Nevertheless, Dutch research shows that reoffending rates are significantly lower after electronic detention and community service than after a short prison sentence

1 [www.bbc.com/news/magazine-37904263](http://www.bbc.com/news/magazine-37904263); [www.independent.co.uk/news/world/europe/dutch-prisons-are-closing-because-the-country-is-so-safe-a7765521.html](http://www.independent.co.uk/news/world/europe/dutch-prisons-are-closing-because-the-country-is-so-safe-a7765521.html).

(Blokland, Wermink, Robert & Maes, 2015; Wermink, Blokland, Nieuwbeerta & Tollenaar, 2009). Dutch research also shows that sanctions, interventions and programmes focusing on rehabilitation show significantly better results in terms of reducing recidivism than sanctions, interventions and programmes focusing on deterrence (Wartna, Alberda & Verweij, 2013).

Currently, a bill is pending in the Dutch parliament that aims to shorten conditional release to a maximum of two years – even if an offender receives a 20-, 25- or 30-year prison sentence (at the moment an offender who receives a prison sentence of two years or more is in principle released after serving two-third of his sentence). What the effect on the prison population will be when the bill is passed is not yet clear, but it is certainly conceivable that the prisons in the Netherlands will become fuller again, since a number of prisoners will have to stay (much) longer than is currently the case. It may be clear: this bill has nothing to do with an evidence-based and realistic approach to crime reduction (the current system of conditional release, with its focus on rehabilitation, simply appears to function well) but is clearly linked to the irrational and incorrect presumption that only sanctions focusing on retribution, deterrence and incapacitation can make our country safe again.

Let us hope that some of the wisdom contained in Cornwell's monograph seeps into criminal politics – not only in Great Britain but also beyond.

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