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## Introduction

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Hans F.M. Crombag, to whom this *Liber Amicorum* is dedicated, is the founding father of modern Dutch Psychology of Law as well as “one of a small band of pioneers outside the United States convinced of the value of combining psychology and law”, as Sally Lloyd Bostock writes in her contribution. In his latter capacity the European Association for Psychology and Law (EAPL), of which Crombag was one of the founders, honoured him with the EAPL-award for life-time achievement in psychology and law at its 1998 Conference in Krakow.

This *Liber Amicorum* will be presented to Crombag on the occasion of his valedictory lecture at Maastricht University on 22 September 2000. In this introduction, we would like to sketch how Crombag came to be a founding father of Dutch Psychology of Law. In fact, his task is not yet completed, as will be explained below. In sketching Crombag’s scholarly career, we will only refer to some highlights. A complete list of the vast number of his publications can be found at the end of this book. After this sketch, we will discuss the general theme of the book and how the different contributions are related to it. Finally, we will express a number of acknowledgements to person and institutions that have been very supportive in making this *Liber Amicorum* possible.

### **Crombag as the Pioneer of (Dutch) Psychology of Law**

Hans Crombag started his academic career as a researcher in the field of higher education. In 1968, after he had written a Ph.D.-thesis on the effect of membership of student fraternities and sororities on study results, he was the first to be appointed to do research on teaching and learning in Leiden University. The demand for such research increased rapidly and Crombag soon became head of the Office for educational research, which already counted almost ten full-time researchers by the mid-seventies. It became a thriving enterprise of considerable reputation. A normal course of events would have led Crombag to a professorship in educational research and in fact several offers of that kind were made to him. However, Crombag’s ambition and main interests had shifted by then. Crombag had established especially close relationships with the Leiden Law Department. Several renowned professors of this old and prestigious Faculty were impressed by young Crombag’s innovative and inspirational mind. The

Law Department nominated Job Cohen, the present under-minister of Justice of the Netherlands, as Crombag's full-time assistant for the many projects being developed on behalf of the Law Department. One of the major projects, which started in the early seventies concerned the development of a programme to train law students in systematic case-solving. The theoretical framework of this programme was published in the book *A Theory of Judicial Decision-Making*,<sup>1</sup> its authors being Crombag, Cohen and De Wijckerslooth, who is at present the Dutch Chief Public Prosecutor. The success of this book and its effect on legal teaching have been considerable. The 'Case-solving Method' is still widely used in teaching law in the Netherlands. In fact, it is still developing as Georges Span, one of Crombag's several Ph.D. students in legal informatics at Maastricht University, presents his AI-implementation of the method in his contribution to this book.

As early as 1975, Crombag was appointed as professor extraordinary in Psychology and Law by the recently established Law Department of the University of Antwerp, a professorship he fulfilled until 1998 when he was succeeded by Van Koppen. The Leiden Law Department took slightly longer to recognise Crombag's great potential. In 1980, he became professor extra-ordinary professor in Leiden as well. After a sabbatical in 1982, largely spent at Stanford University, he published *A Way to Survive: Psychological Foundations of Morality and Law*,<sup>2</sup> a book that is at the heart of Roos' contribution. In 1986, Crombag was appointed professor for the social scientific study of law at Maastricht University, where a new Law Faculty had been set up in 1982 on the basis of a plan designed by Cohen and Crombag in 1978. The programme was based on the student centred-method of problem-based learning, which entailed lowering the traditional borders between legal areas as a matter of division of labour in the teaching of law and legal research. Cohen was also made responsible for the organisation of the new faculty and its programme.

His appointment at the Maastricht Law Department finally made it possible for Crombag to spend all of his time on law and psychology and give up his job as head of the Leiden Office for Educational Research. However, his new position could no longer be combined with his Leiden extraordinary professorship, which he gave up in 1987, to be succeeded by Dick Hessing. Hessing held the position until 1997, when the Leiden Law Department decided that other subjects were more worthy of an extra-ordinary chair. Although Dutch psychologists of law will keep regretting this unwise decision of the Leiden Law Department, they can comfort themselves by the fact that Hessing had been made the second Dutch full-time professor for Psychology of Law at the Law Department of the Erasmus University in Rotterdam in 1991.

1. H.F.M. Crombag, J.L. de Wijckerslooth and M.J. Cohen (1977) *Een theorie over rechterlijke beslissingen*. Groningen: H.D. Tjeenk Willink.

2. H.F.M. Crombag (1983) *Een manier van overleven: Psychologische grondslagen van moraal en recht*. Zwolle: W.E.J. Tjeenk Willink.

The modest – in comparison to his earlier and later books – success of *A Way to Survive* may have stimulated Crombag to try and gain more respect for a psychological approach to law through applied research and, as we now know, he has been most successful in this effort, notably through his collaboration with Van Koppen and Wagenaar, with whom he published a book on the psychology of legal evidence in criminal cases in 1992.<sup>3</sup> The book was also published in English in 1993 under the by now well-known title of *Anchored Narratives*.<sup>4</sup> The book caused quite a stir in the Netherlands in the form of heated debates in the popular and professional media. Some judges and other lawyers saw the book as a vicious blow to the great social prestige of the Dutch judiciary, but the world outside the Netherlands received it as a major theoretical advance. In fact, the theory is still pretty much debated, as is evidenced by Twining's contribution.

Meanwhile, Crombag became more and more involved as an expert witness in an increasing number of cases of sexual child abuse. In these cases, the reliability of alleged early-childhood recollections often played a crucial role. In 1996, Crombag published a book on the subject together with Harald Merckelbach, a young professor of psychology at the also very young Department of Psychology of Maastricht University, which also appeared in German that same year.<sup>5</sup> It contained a devastating attack on theories of repressed memories and multiple personalities as therapeutically induced artefacts, on the basis of which numerous people had been accused and convicted in the meantime. The book has had an important effect on judicial policy (see the contribution by Van Koppen and Cohen). However, as evidenced by Merckelbach and Rassin's contribution, the struggle is not over yet.

Another manner in which Crombag has become more and more busy promoting law and psychology was as an invited expert in several news- and forum-discussions. In fact, being a media figure has become quite a burden on him, also because private persons started to respond and appeal to him. All these activities notwithstanding, Crombag succeeded to publish another book in 1997, this time together with philosopher of law, Frank van Dun, who is also a contributor. The book entitled *The Utopian Seduction*,<sup>6</sup> offers a profound analysis of the psychological and historical-philosophical roots of utopianism. The subject of utopias has been of special interest to Crombag and over the years he has published several essays on it. One of the main reasons for this interest is he is a critical follower of B.F. Skinner, the champion of behaviourist

3. H.F.M. Crombag, P.J. van Koppen and W.A. Wagenaar (1992) *Dubieuze zaken: De psychologie van strafrechtelijk bewijs*. Amsterdam: Contact.

4. W.A. Wagenaar, P.J. van Koppen and H.F.M. Crombag (1993) *Anchored narratives: The psychology of criminal evidence*. London: Harvester Wheatsheaf.

5. H.F.M. Crombag and H.L.G.J. Merckelbach (1996) *Hervonden herinneringen en andere misverstanden*. Amsterdam: Contact; H.F.M. Crombag and H. Merckelbach (1997) *Missbrauch vergisst man nicht: Erinnern und Verdrängen: Fehldiagnosen und Fehlurteile*. Berlin: Ullstein.

6. H.F.M. Crombag and F.M.P. van Dun (1997) *De utopische verleiding*. Amsterdam: Contact.

psychology, who also wrote a novel on a utopian community, called *Walden Two*, designed around his own psychology. *Walden Two*-people are carefully manipulated without their knowing it. They are content with their lives, but not happy in a conventional sense, because they do not know the difference between being happy and being unhappy. They live without great fears and without great expectations and ambitions. According to Crombag, *Walden Two* represents a horrible confusion of the knowledge and the control mentality of laboratories with real life, which calls for people with initiative, capable of creative adaptation, with no or only a very naive answer to the question *quis custodiet ipsos custodiet?*

Although this delightful and very scholarly book was again well received, it is obviously unlikely to be of much support to the further establishment of Psychology of Law in the Netherlands and Flanders. Notwithstanding its many public and academic achievements and an expanding market for psychologists of law as forensic experts, its academic institutional position is still not very secure, as the demise of the extraordinary chair at Leiden has demonstrated. It is fortunate that Maastricht University has recently decided to try and build an Institute for forensic expertise with psychological expertise as the first branch. The new institute will be headed by Crombag's (part-time) successor, Harald Merckelbach. This institute will not only concentrate on research, but also on training future expert witnesses as well as judges and attorneys. It will also provide expertise itself in cases of scientific interest. Meanwhile, Crombag has accepted a position as honorary professor for at least two more years to assist in the establishment of the institute. It would be wonderful if this project succeeded, because it would be the crowning achievement of Crombag's efforts to establish Psychology of Law in the Netherlands.

### About this book

On several occasions Crombag has remarked: "as regards my own person, I am the worst psychologist there is." It seems a paradoxical statement, as Crombag's wife, who should know best, will not hesitate to declare that she could not agree more. Crombag's remark is quite consistent with his anti-introspective methodological position as a neo-behaviourist. However, that position in itself is problematic with regards to the relationship between the neo-behaviourist theory of human conduct and the creation and use of theories within this framework. Crombag never grew tired of teaching his students that intelligence is just a minor factor in human behaviour. If this is true, the question is raised as to how the work of academic psychologists and psychological experts should be seen. What hope is there for psychological intelligence to influence actors by rational means? This question is not just a purely theoretical one. Both Crombag and his comrade in arms, Willem Albert Wagenaar, are quite pessimistic about the practical impact of their work, as evidenced by Wagenaar's contribution .

The question of progress and rationality in relation to Law and Psychology, has several aspects. The first is rationality and progress within Psychology of Law itself.

The second aspect is the influence of Psychology of Law on legal science and the teaching of law, and vice versa. The third aspect is its influence on legal practice. The fourth aspect, finally, is the question of human psychology in relation to rationality and progress in social evolution.

This book starts off with John Griffiths' 'Some Questions to Hans Crombag about Dutch Psychology of Law', a most provocative taking to task of the scientific rationality of Dutch Psychology of Law. According to Griffiths, himself a sociologist of law, Dutch Psychology of Law has focused on applied research and has contributed relatively little to what – in his view – should be Psychology of Law's proper field: research of the relationship between psychological characteristics of individuals and law as a variable social phenomenon. Since Griffiths does not suggest anywhere that Dutch Psychology of Law would be very exceptional in this respect, the editors thought it appropriate to let his contribution be followed by Sally Lloyd Bostock's 'Psychology and Law's Evolution from an Applied to an Interdisciplinary Field', in which she argues that the discipline has outgrown the rather narrow view of applied psychology which provided its starting point. By now, psychologists of law no longer expect a straightforward acceptance of their proposals for empirical operationalization of legal concepts nor an adaptation of those concepts if the psychological assumptions underlying them do not seem to hold. She also argues that the distinction between applied and theoretical research is very misleading, because there is quite some feedback between theory and its objects of application. This interaction is fruitful for both psychology and legal theory and doctrine. Moreover, she points to a much more diffuse influence of psychology of law on legal thinking, whereas psychologists of law have also become increasingly knowledgeable and less naive about the law.

Lloyd Bostock does not suggest that Dutch psychology of law is exceptional in this respect. However, there may be reason to be somewhat self-effacing for Dutch psychologists of law here. Lloyd Bostock refers to William Twining, who as early as 1983 put forward that psychologists of law simply assume that the legal process is indeed striving for rationality and correct decisions. However, in Twining's 'Good Stories and True Stories' we can find him criticising, be it constructively, the Theory of Anchored Narratives in precisely this respect. On the other hand, in his 'Cross-Roads of Disciplines' appellate judge Johannes Nijboer, indeed suggests that Law and Psychology are increasingly converging and integrating in the Netherlands as well. Moreover, in Peter Van Koppen en Job Cohen's 'Psychologists in the Dutch Legal Domain' it is argued that Crombag and Wagenaar are much too pessimistic about the impact of psychology of law on legal practice.

Nevertheless, Griffiths' thesis is only countered in part by Lloyd Bostock's view, because her argument boils down to the fact that both psychology and the law advance theoretically from their interaction. However, Griffiths would like to see psychology of law move to a social scientific understanding of the law where the kind of questions that concern lawyers, are quite different from the questions asked by social scientists. Thus, psychologist of law can use Lloyd Bostock's arguments against Grif-

fiths only to claim that social science is not the only master they are asked and prepared to serve, but also psychology and legal theory. Moreover, when looking at the various innovative contributions to this book by psychologists on special subjects within psychology of law (Part II of the book), it can be noticed that they are all very much in the area of applied psychology. Only one of them, Dick Hessing and Henk Elffers' 'Mens Rea or Mens Insana', touches on jurisprudential fundamentals, which they deliberately avoided to further discuss even though they reflect on ideas of Crombag's which directly relate to the issue of criminal justice.

Griffiths, however, may agree that these contributions are also sophisticated, fascinating, practically relevant and evidence of progress indeed. Hessing and Elffers take Crombag's 1981 Leiden inaugural lecture *Mens Rea* as their point of departure to present a mathematical psychological model of the effects of punishment on criminals. Both 'Crashing Memories in Legal Cases' by Elizabeth Loftus and George Castelle, and 'Thick! A Case Study of Eyewitness Identification' by Willem Albert Wagenaar focus on witnesses. Loftus and Castelle demonstrate how *crashing memories*,<sup>7</sup> originally discussed in relation to the Bijlmer aircraft disaster, apply to the crashing of the TWA Boeing in 1996. Wagenaar offers a fine example of how a combination of recognition by eyewitnesses and offender descriptions given by them could aid the court in evaluating the evidence in a criminal case. In their contribution, 'Why not Claim that They Wear Different Size Shoes? On the Status of Alters in Dissociative Identity Disorder', Harald Merckelbach and Eric Rassin expand on the evidence that Crombag and Merckelbach presented in their book against the validity of psychiatric concepts related to recovered memories.

Friedrich Lösel's 'The Efficacy of Sexual Offender Treatment', and Frans Willem Winkel, Nanneke Snijder and Eric Blaauw's 'Rationality and Treatment of Post-Victimization Emotional Disorders' deal with subjects that are very important from a therapeutic point of view, but of marginal relevance for legal theory. Lösel discusses the behavioural control of sexual offenders, while Winkel, Snijder and Blaauw present research on victim treatment in law that refutes the common understanding in psychology that, as far as therapy is concerned, 'nothing works'. Finally, Bart Groen's 'Reflections from the Border' is a contribution of someone who has worked for twenty years as a State attorney in the field of Dutch immigration law, a field ridden with all kinds of uncertainties in uncovering facts. However, Groen seems to see hardly any possibilities for support by psychologists of law. Groen's view must be quite challenging to Dutch psychologists of law, if only because they have so far not moved into this political and legal minefield which at present is Cohen's political responsibility as under minister for Justice.

7. The term comes from H.F.M. Crombag, W.A. Wagenaar and P.J. van Koppen (1996) *Crashing memories and the problem of 'source monitoring'*. *Applied Cognitive Psychology*, 10, 95-104.

The remainder of the contributions are all by philosophers, theoreticians, informaticians and sociologists of law, all of whom are also members of the Metajuridica Section of the Maastricht Law Department to which Crombag himself belongs. George Span's 'An Intelligent Tool for Acquiring Legal Case Solving Skills' has already been referred to in the preceding section. He discusses his AI-implementation of the Case Solving-Method Crombag and his colleagues developed some thirty years ago. He demonstrates how computerisation also is a tool in the further development of the method. Bart Verhey also offers evidence on how progress can be realised in his 'Dialectical Argumentation as a Heuristic for Courtroom Decision-Making'. He makes plausible that his formal theory of dialectical legal argumentation has a potential for further development of the Theory of Anchored Narratives. Jaap Hage argues, in his 'The Naturalistic Fallacy: A Note on a Note', that Crombag's suggestion that a reflection on human nature would allow bypassing the logical objections against the naturalistic fallacy, is incorrect. He also suggests that Crombag may have a very good case for the construction of a utilitarian logic, in which the step from facts to norms is included in the rules of inference. Nikolas Roos also elaborates on this theme in 'Law as a Way to Survive: A Place for Law and Psychology to Meet?' by re-examining Crombag's ideas on law and evolution from his 1983 book on the psychological foundations of law and morality. In passing Roos notes that Griffiths seems to have overlooked this book when criticising Dutch law and psychology. He also argues that the combination of the theory of evolution and the neo-behaviourist theory of learning can be used as a basis for a normative-institutional theory of law as well as for explaining the historical evolution of modern law. In his view, Crombag's idea of law and morality as a way to survive is a meeting place for the psychological, the sociological and the jurisprudential study of the law.

The critique of the historical evolution of law is also the subject of the last two contributions. Frank van Dun's 'The right to everything: Hobbes and Human Rights' contains a critique of Crombag's view that the idea of human rights is "sympathetic but naïve" and that it has its origins in classical natural law theory. According to Van Dun, the idea is not sympathetic because it comes with an idealistic hyperinflation of fundamental rights as a basis for ever greater powers of intervention given to the State, whereas it has obscured the much more realistic idea of human nature which lies at the root of classical natural law theory. Alexander Jettinghoff's contribution 'Total War and Twentieth-Century Legal Change' provides a challenging analysis of the relationship between total war and the rise of the welfare state. It raises the important question to what extent Charles Tilly's famous dictum "States made wars and wars made states" also applies to interwar-periods of state-control and mobilisation of society within the risky framework of competition of nations as institutional form of modern social evolution. The challenging question as to how psychology relates to that framework, is not discussed in this book, but now, at least, is asked.

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