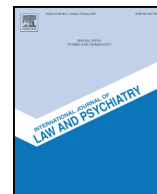




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Introduction

Madness and crime: Historical perspectives on forensic psychiatry

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1. Introduction

It is difficult to overstate the significance of the human sciences in the development of modern society and our current understanding of individuals and groups within them. These biomedical, psychological, and pedagogical sciences enabled us to make the bodies and minds of individuals observable, measurable, knowable, controllable, and transformable. With respect to forensic psychiatry¹ in particular, the combination of this disciplinary field and the administration of justice as well as state power, has had a strong and durable influence far beyond the reach of the individuals concerned: lawbreakers or alleged lawbreakers diagnosed with mental disorders. The particular contours of this influence – across time and from country to country – have varied, but overall the development of the human sciences in general and forensic psychiatry in particular can be understood against the background of the broad cultural shift, in the nineteenth century, from tradition to modernity, and, in the twentieth century, from modernity to ‘post’, ‘late’ (Garland, 1994), ‘new’ (Beck, 1992) or ‘reflexive’ modernity (Beck, Giddens, & Lash, 1994; Giddens, 1990, 1991).

The human sciences have a fascinating history. In broad brush strokes, as products of the bourgeois society that emerged from the era of the Enlightenment and the French Revolution, the human sciences developed in a dialectical relationship between humanization and disciplining, emancipation and coercion, assimilation and marginalization, and democratic rights and political control. Articulating and imposing standards of normality and abnormality, they were thus involved in policies of social integration as well as social exclusion (Barry, Osborne, & Rose, 1996; Burdell, Gordon, & Miller, 1991; Cruikshank, 1999; Dean, 1999; Dörner, 1969; Foucault, 1979; Gaudet & Swain, 1999; Kaufmann, 1995; Miller & Rose, 2008; Oosterhuis, 2007, 2012; Petersen & Bunton, 1997; Thomson, 2000, 2005). In liberal democracies, and also in totalitarian (fascist and communist) regimes, the human sciences, their allied professions and their intervention techniques – classifying, counting, sampling, social surveying, testing, interviewing, assessing personality, treatments and therapies – played a prominent role in the endeavor to solve social problems and frictions associated with mass society. The related effort to develop the potential

of individuals, whereby the notions of (mental) health and social wellbeing were emphasized, pushed the biomedical, psychological, and pedagogical sciences to the foreground. They were involved in the modernizing project of promoting not only virtuous, productive, responsible, and adaptive citizens, but also autonomous, self-conscious, assertive, and emancipated individuals as members of a liberal-democratic society. Aided by new technologies, and against the background of the late twentieth-century therapeutic culture aimed at individual self-development for the sake of social integration and adaptation, new ways of regulating and controlling social problems and risks were introduced. Rising expectations of people about their ability to treat and solve personal problems, to fashion their individual lives by free choice, and to create or recreate their selves, have furthered the demand for the knowledge and interventions of the biomedical and psychological sciences, although their expansion and organization have differed substantially between countries.

Research on the human sciences is particularly well-adapted to both a historical and comparative methodology. Over the last decades, research into the role of the human sciences in Western society has developed as an inter-disciplinary field, one in which social and cultural approaches to science have largely replaced the history of ideas and internalist perspectives which had been dominant previously. Scholarly efforts have been devoted to the task of analyzing the inter-related cognitive content, intervention practices, organizational structures, and institutional, social, and cultural settings of the human sciences (see for example Raphael, 1996; Eghigian, Killen, & Leuenberger, 2007; Brückweh, Schumann, Wetzell, & Zieman, 2012). In particular, there are now a number of national and internationally comparative sociological and historical studies focusing on the role of psychiatry, mental health care and the psychological sciences in modern Western societies, and considering the way these practices relate to social policies and to developments in other professional domains (Bartlett & Wright, 1999; Capshew, 1999; Castel, Castel, & Lovell, 1982; Cushman, 1995; Gijswijt-Hofstra, Oosterhuis, Vjseelaar, & Freeman, 2005; Gijswijt-Hofstra & Porter, 1998; Herman, 1995; Jansz & van Drunen, 2004; Miller & Rose, 1986; Moskowitz, 2001; Napoli, 1981; Neve & Oosterhuis, 2004; Oosterhuis & Gijswijt-Hofstra, 2008; Rose, 1985, 1988, 1989, 1992, 1996, 2001).

There is, however, a notable gap in the literature: the twentieth-century development of forensic psychiatry and criminology, occupying the border-area of the medical and psychological sciences on the one hand and the administration of justice and penal regimes on the other, has received little systematic attention by scholars. The bulk of historical studies on forensic psychiatry and criminology concerns the nineteenth and early twentieth centuries (see for example Barras & Bernheim, 1990; Becker, 2002; Becker & Wetzell, 2006; Chauvaud, 2000; Chauvaud & Dumoulin, 2003; Colaizzi, 1989; Eigen, 1995, 2003, 2004; Forshaw & Rollin, 1990; Foucault, 1975, 1978a; Gibson, 2002; Goldstein, 1987, 1998; Guarnieri, 1991; Guignard, 2006, 2010; Harding, 1993; Harris, 1989; Kaufmann, 1993; Mohr, 1997; Mucchielli, 1995; Nye, 1984; Prior, 2008; Renneville, 1999, 2003, 2006; Robinson, 1996;

¹ The term forensic is derived from the Latin *forensis* meaning ‘of the forum’, the public meeting place for civic affairs. In English and in other languages it refers to legal and court matters. In some languages, such as German and French, the term legal psychiatry (*gerichtliche Psychiatrie* and *psychiatrie judiciaire* respectively) is also used.

Savoja, Godet, & Dubuis, 2008–2009; Skalevag, 2006; Smith, 1981, 1985, 1988, 1989; Ward, 1997, 1999; Wetzell, 1996, 2000; Wiener, 1990, 1999, 2004). Synthetic, comprehensive national studies of the twentieth-century development of forensic psychiatry as well as contextual and internationally comparative research, throwing light on the similarities, differences and contrasts between countries, are thin on the ground (for exceptions see Barras & Bernheim, 1990; Becker & Wetzell, 2006; Harding, 1993; Watson, 2011). This collection goes some way to addressing this scholarly lacuna.

The collection of articles in this special issue of *International Journal of Law and Psychiatry* represents one of the first attempts in the historical study of forensic psychiatry to set the national developments in a number of major Western countries side by side, enabling comparison across jurisdictions, and demonstrating the relevance of key themes that transcend national boundaries. Its overall aim is to understand the history of forensic psychiatry, as discourse as well as practice, in its institutional, wider socio-political and international settings. The collection, comprising twelve articles, offers broad overviews of developments in ten European and North-American countries – the United Kingdom, France, Germany, Italy, Russia, The Netherlands, Norway, Sweden, Switzerland, and Canada. Thus, the collection provides a valuable resource for scholars of different stripes, and offers something of a corrective to the overrepresentation of certain national traditions in the historical study of forensic psychiatry.²

In this Introduction, we sketch the general historical background of forensic psychiatry and we discuss the main themes, points of interest and questions that have served as a guideline for the national overviews contained in this collection. Topics addressed in this collection include: forensic psychiatry's relation to legal traditions and schools; the motives of psychiatrists to push their professional domain towards criminal law, the philosophies, scientific theories and treatments they used and the problems and dilemmas they encountered; the attitudes of lawyers vis-à-vis forensic psychiatry; the relation between legal and medical ideals, theories, discourses and practices, including in particular differing and changing meanings of criminal insanity and non-responsibility, and their implications; the place of forensic psychiatry in the broader field of medicine, psychiatry, mental health care, and social work, as well as the involvement of other professions in forensic work; forensic psychiatry's target groups populating the border area between criminal law and psychiatry, and the way these groups were affected by forensic practices; the forensic institutional infrastructure, in particular the way in which psychiatry became established in the administration of justice; the periodization of, and the continuities or discontinuities in, the development of forensic psychiatry; the socio-political contexts in which forensic psychiatry evolved; and the way historians have interpreted its development, in particular professionalization theory and the Foucaultian view of the entanglement of law and psychiatry and its disciplinary role in modern society.

2. Forensic psychiatry: a contested field

The intellectual content of, and practices related to, what is now known as forensic psychiatry have not progressed in the same way or form at all times and in all places. Nor have they, in a given period and location, always been uniform and consistent. As the contributions to this volume illustrate, the history of forensic psychiatry has not been a linear, continuous and unidirectional development, but rather a succession of innovations, advances and successes as well as breaks, detours, reversals, recurrences, and setbacks. Old views and practices endured while new ones were introduced, rejected, and reintroduced. The meanings of phrases such as 'unsound mind' and the concept of legal non-responsibility, and their consequences for mentally deranged

defendants, has varied. The labels assigned to lawbreakers who have been considered not to be accountable for their crimes, and the cast of actors who identified these individuals and claimed authority over them, have changed over time. Several historical forces have determined the shaping of forensic psychiatry: current philosophies and scientific views of man; legal doctrines and systems; the professionalization of medicine in general and psychiatry in particular; the relations between various professions and other stakeholders; biomedical, psychological and social theories of criminal behavior; the availability of therapeutic interventions; political regimes and the role of the state; class and gender relations; and the social climate with respect to law and order. To a large extent, the theory and practice of forensic psychiatry has reflected broader intellectual as well as social and political currents, and these were often mired by contradiction, confusion and disagreement. In her seminal overview of the history of forensic medicine in the Western World, Katherine Watson writes that 'the capacity for medico-legal controversy was nowhere so evident, long-lived or widespread as in relation to the insanity defense' (cf. Robinson, 1996; Watson, 2011: 8).

The theories and practices of forensic psychiatry, as well as their wider ethical and political implications, have been and continue to be marked by conflict between various views. The central question of forensic psychiatry – the accountability of human action – relates to fundamental discussions about what man is and should be, and how human behavior can be explained. It deals with issues which are situated in the borderland of ethical principles and scientific knowledge about man. Central modern Western values – human freedom, autonomy and self-determination – have been and continue to be at stake. Whereas the Christian view of man stressed freedom of will and responsibility, the enlightened standpoint vacillated between philosophical voluntarism and scientific determinism.

On the one hand the Enlightenment stressed the rational mind as the essence of a common human nature. Philosophers such as Immanuel Kant and Cesare Beccaria (who was one of the founders of the classical school of legal theory), defined human subjectivity in terms of autonomy, freedom and responsibility. The basic assumption of enlightened ethical and legal thinking is that human behavior is oriented towards goals and guided by reasons, intentions and motives, and that immoral and criminal acts imply responsibility and guilt. On the other hand, the development of the biomedical and psychological sciences from the mid-eighteenth century fostered explanations of human nature in terms of man's physical make-up and functioning. The rise of biology, physiology, modern clinical and laboratory medicine, physical anthropology and also psychiatry and psychology was closely connected to the positivist view that man's body and mind should be studied according to the methods and approaches of the natural sciences. Against the Cartesian assumption of the strict separation of mind and body, the psyche was more and more drawn into the body and explained in terms of deterministic causality. The religious and philosophical notions of soul, autonomy, reason and freedom of will were questioned or denied in naturalistic investigations into human behavior. Evolutionary theories suggested that man, like all animals, was a product of the whims of nature. Man was shaped by forces outside his rational awareness and beyond his control: by heredity, instincts and the physical and social environment (Fox, Porter, & Wokler, 1995; Malik, 2001; Moravia, 1977, 1978, 1980; Smith, 1997).

The conflict between voluntarism and determinism, which is inherent in the enlightened view of man, has troubled forensic psychiatry and its relation to the legal domain as well as the public at large until this day. Time and again lawyers and other critical commentators have cast doubt on the role of psychiatrists in court and raised difficult questions, which remain largely unresolved (see Robinson, 1996). Which behaviors and states of mind should be considered to be symptoms of mental pathology, and where should the boundary between sanity and insanity be drawn? How can a medical diagnosis of a particular, abnormal mental state be translated in legal discursive understandings of human behavior in a way that avoids the pitfall of a circular argument,

² Unfortunately we were not able to include the United States; the historical analysis of forensic psychiatry in this country is complicated by the widely varying traditions, regulations and practices in different states (see Robinson, 1996).

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