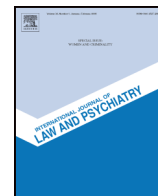




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Is the French criminal psychiatric assessment in crisis?

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ABSTRACT

The criminal psychiatric assessment in France seems to be facing growing criticism related to disagreements between experts and, on the other hand, a lack of interest of psychiatrists for the assessment. We start by explaining the current framework of the criminal psychiatric assessment in France, which differs from the assessment used in English-speaking countries, where Roman law applies. Then, we will describe the disagreements through a literature review and two clinical vignettes. Finally, we will try to understand the causes of discrepancies between experts and the reasons for a supposed lack of interest of the psychiatrists for the expertise. For this, we conducted a survey among the psychiatric experts. We individually questioned experts on the discrepancies and on their awareness of the expertise. We found that 75% of the experts we surveyed had already faced the divergent opinion of a colleague. In addition, the experts were divided on their conclusions related to the fictional scenario we gave them for an a priori assessment (a person with schizophrenia who was accused of murder), particularly in the specific contexts that we submitted to them. The main cause of disagreement between experts was the various schools of thought that influence the psychiatric experts in the forensic discussion and, therefore, the conclusions of a case. Moreover, the experts believed that the decrease in the number of psychiatric experts could be attributed to the adverse financial situation of the assessment, the considerable workload required, and the extensive responsibility that falls on the expert. Calling on a team of forensic experts to perform assessments seems to be the first solution to this crisis. Furthermore, if the experts were better compensated for the assessments, more people would want to undertake this work.

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1. Introduction

Psychiatry in France has its origins in forensic psychiatry and, more specifically, the current psychiatric assessment has its origin in the criminal psychiatric assessment first used during the 19th century. Those who were referred to as “alienists,” such as Pinel and Esquirol, went into jails to help the alienated of society (i.e., mentally ill people), so they could receive psychiatric treatment rather than punishment (George, n.d.).

The dichotomous view of who should be termed “alienated,” and, thus, not responsible for their actions and those who are truly criminals, responsible and hence punishable, has continued to the present day (Manzanera, 2007; Manzanera & Senon, 2008). Although the debate has become more refined over the years, we can say that the psychiatric assessment has played a central role in linking justice

and psychiatry for the past two centuries (Manzanera & Senon, 2008; Pradel, 2007; Senon & Manzanera, 2005, 2006; Senon, Pascal, & Rossinelli, 2007).

Nowadays, criminal psychiatric assessment seems to go through an unease with a collapse in the number of psychiatric experts (Manzanera & Senon, 2008; Senon & Manzanera, 2006). The number of experts decreased from 1400 to 800 between 2004 and 2007, and today is only approximately 500. Furthermore, today's experts are much more committed to assessments, particularly risk assessments, with less experts available (Association Nationale des Psychiatres Experts Judiciaires, 2013; Herzog-Evans, 2016; Senon & Manzanera, 2005, 2006; Senon et al., 2007).

At the same time, assessment faces strong criticism at the institutional, material, and organizational levels (Manzanera, 2007; Manzanera & Senon, 2008; Schweitzer & Puig-Verges, 2006; Senon & Manzanera, 2006). Public opinion, the media, magistrates, and healthcare professionals weigh in on this topic (Manzanera, 2007; Manzanera & Senon, 2008).

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Among the criticisms, some are “disagreements between experts” (Bouley et al., 2002; Manzanera, 2007; Schweitzer & Puig-Verges, 2006; Senon & Manzanera, 2006; Zagury, 2007, n.d.), disagreements that we could define as a lack of concordance within the experts' conclusions. As a result, experts are blamed for a lack of scientific accuracy (Schweitzer & Puig-Verges, 2006; Zagury, 2007).

Criticisms made of expert assessment and the differences between the experts do not limit themselves to the French judiciary system (Combalbert, Andronikof, Armand, Robin, & Bazex, 2014; Fuger, Acklin, Nguyen, Ignacio, & Gowensmith, 2014; Geary & Law, 2015; Gowensmith, Murrie, & Boccacini, 2013; Kacperska, Heitzman, Bąk, Leśko, & Opio, 2016; Large, Nielssen, & Elliott, 2009; Nielssen, Elliott, & Large, 2010). But these issues have taken a quite particular scale in our country since a judicial scandal, namely the Outreau trial in 2005, during which a lack of reliability of the expertise was pointed (Combalbert et al., 2014).

We cannot quantify the rate of disagreement between experts in France concerning forensic conclusions, because no statistical study was ever done on this issue. The fact is that very few documents concerning these inconsistencies are available in the international literature, although it is an important matter (Fuger et al., 2014; Gowensmith et al., 2013). The importance is particularly profound for the defendant whose future—between the hospital and the prison—in a large part depends on the experts' conclusions (Combalbert et al., 2014; Gowensmith et al., 2013; Kacperska et al., 2016). Moreover, this question concerns the judiciary system and the psychiatric profession, both of which can be weakened by these disagreements (Zagury, 2007). For these reasons, it seems important that research is undertaken on this issue (Guivarch, Piercecchi, Glezer, & Chabannes, 2015; Kacperska et al., 2016).

Our goal was to question the psychiatric experts working for a court of appeals and dealing with a large number of criminal cases to try to find the basis of this “crisis of confidence” and how these disagreements arise within the limited framework of the assessment of the schizophrenic patient accused of murder.

After outlining the current framework of the criminal psychiatric assessment in France and explaining—through a literature review and clinical vignettes—what the disagreements are, we will introduce the results of our study.

2. Framework of the criminal psychiatric assessment in France

France is a Romano-Germanic legal country that adopted a non-adversarial procedure for psychiatric assessment in criminal law (Combalbert et al., 2014).

The magistrate, in order to answer a technical question (Sections 156 and 158 of the Criminal Procedure Code), can decide either on his own or at the Criminal Prosecutor's or the parties' request, to ask for an expert (Jonas, Senon, Voyer, & Delbreil, 2013). The expert acts as “a technician” who assists the judge, by providing “information in an area that lays outside the judge's field of competency” (Jonas et al., 2013; Jean-Louis Senon et al., 2007) but does not decide on the merits of the case. The expert appointed, attached to the Court of Appeals, is independent from the parties. Most of the time, he is the sole expert instructed by the court to answer precise questions determined by the judge himself. More rarely, in difficult court cases, the judge can appoint two experts who work together in a “forensic team of experts,” what is called “dual expertise.” Furthermore, the parties and the prosecutor can request to change the questions of the assignment or add another expert to a team of forensic experts, but the judge is free to accept or refuse it (Section 161-1 of the Criminal Procedure Code) (Jonas et al., 2013; Senon et al., 2007).

The foundation of the psychiatric assessment is on one hand to recognize, among indicted persons, the mentally ill, in order to provide care for the latter (Senon et al., 2007), and on the other hand, to determine “the impact of the mental disease considered as potential abolition of

discernment at the time of criminal attempt.” Therefore, the assessment enables the defendant to leave the legal setting for healthcare in the form of a compulsory hospitalization (Senon & Manzanera, 2006).

Indeed, the expert's mission is focused on the mental element, one of three elements alongside the legal and material elements, required for the definition of the offense, to search the accused person's liability (Leturmy & Senon, 2012). Failing one of these three elements, the accused will not be judged liable.

More precisely, under French law, in order for us to say that a mental element is present, it is necessary that the person acted with “intelligence and freedom,” meaning that during the offense he proved to have discernment and willpower. This is what covers the concept of imputability, which is the first feature of the mental element to be considered before looking at the question of culpability (Leturmy & Senon, 2012) [Supreme Court criminal section, case: “Laboube” (Crim 13 dec 1956)].

There are non-liability causes directly linked to the accused and which refer to personality, such that the moral imputability cannot be held, for example, people with psychiatric disorders that lead to the abolition of discernment at the time of the offense (paragraph one, section 122-1 of the Criminal Code) (Leturmy & Senon, 2012).

The psychiatric expert's assignment is focused on the provisions of section 122-1 of the French Criminal Code, which provides for two possibilities. In paragraph one, the complete abolition of discernment due to psychiatric disorders is raised, which can entail criminal non-liability. Paragraph two addresses the alteration of discernment because of psychiatric disorders (between a complete discernment and an abolition of discernment), which will not entail criminal non-liability, but at least in theory, will lead to lessening the liability and thus a reduction of the sentence.

Section 122-1 of the Criminal Code:

“A person is not criminally liable who, when the act was committed, was suffering from a psychological or neuropsychological disorder which destroyed his discernment or his ability to control his actions. A person who, at the time he acted, was suffering from a psychological or neuropsychological disorder which reduced his discernment or impeded his ability to control his actions remains punishable; however, the court shall take this into account when it decides the penalty and determines its regime. If the offense is punishable by imprisonment, it is reduced to one-third or in case of crime punishable by imprisonment or criminal detention for life, it is reduced to thirty years. The jurisdiction can nevertheless decide not to apply this reduced sentence by a specifically justified decision. If after medical advice, the Court considers that the nature of the disorder is justified, it can decide that the sentence imposed allows the convicted person to benefit from adequate healthcare”

The information given by the expert will help the judge or the court to understand whether a psychiatric disorder makes the fault attributable or not.

While the expert gives his opinion on the discernment and the self-control of the acts, the judge, as far as he is concerned, rules on the imputability and criminal liability.

It is important to note that the magistrate is not bound to the expert's opinion. He may seek for a second assessment, which is compulsory when it is requested by the prosecutor or the parties.

Furthermore, it is to be noted that nowadays, it is quite uncommon at the pretrial investigating phase for the investigating judge to order a criminal irresponsibility on account of mental disorder with access to sanitary services (compulsory hospitalization). Moreover, the judge can decide to refer the case to the trial court against the expert's advice.

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