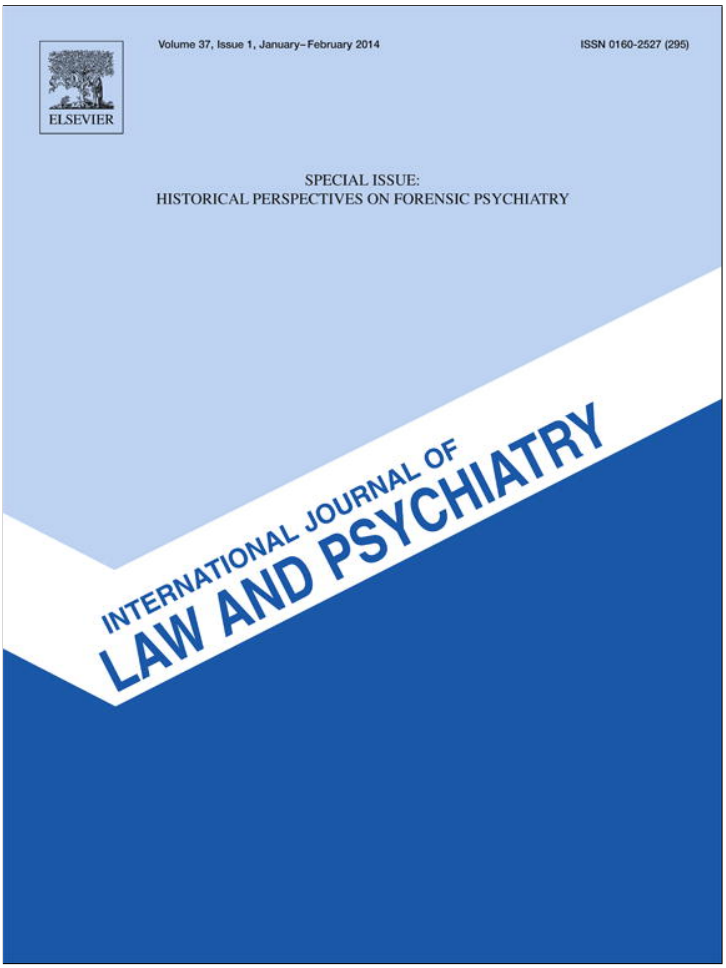
# Introduction. Madness and crime



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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 psychiatry[1] 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 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, Vijselaar, & 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.


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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).

when the diagnosis of mental disorder is based on the same deviant and criminal behavior as the forensic expert is supposed to explain? How can a causal relation be established between mental disorder and legal non-accountability? Do psychiatric and psychological experts have privileged access to the workings of the mind? Are they needed at all in court to explain human behavior or can lawyers rely on common-sense folk psychology to decide which criminal acts should be understood in terms of unsound mind?

Another legacy of the Enlightenment in the contested borderland of law and psychiatry concerns the uncertain fate of mentally disturbed offenders and the ambivalent social and political repercussions of their treatment at law. There is no univocal answer to the question whether the notion of illness, implying compassion and a right to medical care and treatment, has been of benefit to these delinquents. The differentiated and individualized assessment of lawbreakers by forensic experts has vacillated between, on the hand, a shift from punishment to treatment and rehabilitation, and, on the other hand, a collective aim of preventing crime and protecting society, whereby the civil rights of defendants tended to be downplayed. The growing involvement of psychiatrists in courts not only has been applauded as a desirable humanization of legal processes, but it has also been criticized as either an objectionable infringement on legal standards of culpability and punishment, or an unjust hardening of criminal law. The growing influence of psychiatry in the administration of justice, critics point out, violated the proportionality principle, gearing the severity of punishment to the seriousness of the crime, as well as the safeguards against arbitrary intrusions on civil rights. Offenders have been detained on psychiatric grounds in mental institutions far longer than they would have been in prison on the basis of a judicial conviction (Robinson, 1996). Also, they have undergone medical treatment and eugenic interventions such as sterilization and castration without explicit consent. Michel Foucault, and several historians and social scientists who build on his work, have argued that forensic psychiatry played a key role in the development of a disciplinary and normalizing medical–legal apparatus which was directed towards social control and surveillance (Christie, 1992; Dörner, 1994; Foucault, 1978a, 1978b; Garland, 1985a, 1985b, 1992, 1994; Nye, 1984; Scull, 1991; Sim, 2010; Stover & Nightingale, 1985; Wacquant, 2009).

## 3. Legal traditions

Notwithstanding religious and philosophical voluntarism, in the Western legal tradition there has always been a tension between the punishment of the guilty and the exception accorded to the accused who is considered insane and therefore not accountable for his or her criminal actions (see Robinson, 1996; Watson, 2011). By custom, madness was associated with a lack of rationality and knowledge as well as irresistible compulsion, and it implied an impairment of free will and responsibility. Already in the early seventeenth century the first medical treatises appeared in which criminal insanity was discussed: Felix Platter's *Praxis Medica* (*The Practice of Medicine*, 1602), P. Zacchia's *Quaestiones Medico-Legales* (*Medico-legal Problems*, 1621), and Sir Edward Coke's *Institutes of the Laws of England* (1628–1644). However, in general, before the nineteenth century, it was judges and juries, not physicians, often relying on testimonies by laymen who were close to or acquainted with a defendant, who decided whether he or she was mad, and deserved some leniency, or should not be punished at all. The determination of insanity used to be based on informal and common-sense interpretations of the clearly visible erratic behavior of lawbreakers. They were the so-called *furiosi*, raving madmen; their insanity was obvious, evident, or blatant and therefore, they were not to be held accountable for their crimes. In the absence of sophisticated legal tests for exculpatory insanity, common knowledge formed an animating framework for decisions about mental incapacity. In this era, a variety of different formulations of exculpatory insanity coexisted, of which the 'wild beast' test is the best known. Each of these was as much descriptive as prescriptive of insanity (in the context of England and Wales, see Loughnan, 2012).

To recognize mad criminals, no specific expertise, theory or technical vocabulary was supposed to be necessary. Only when courts were faced with the question whether the accused was dissimulating madness and they were uncertain, a physician might be called upon to solve the matter. In general the role of doctors in courts was restricted to physical examinations of defendants. Body and mind were associated with different fields of knowledge — that of medicine and theology respectively. Priests might be asked to comment on the moral qualities of perpetrators (see Skalevag, 2006). Kant, who acknowledged that offenders who were not able to exercise free will, were not accountable and should not be punished, argued that the forensic role should not be given to physicians as experts on the body, but to those who had studied the human mind, that is to say philosophers (Mooij, 1998).

Over and above the fact that, before the nineteenth century, it was probably not common practice to summon a physician in court in order to determine whether an offender was insane or not, differences in European legal systems have to be taken into account. Since the middle of the fifteenth century, there has been a contrast between the logic and the organization of the continental European and the Anglo-Saxon legal traditions. While the notion of a single, archetypal adversarial or inquisitorial 'system' has been criticized (see Hodgson, 2006), it must be acknowledged that these legal systems have entailed different court procedures, methods of proof and testimony, and sentencing practices. The boundaries for the insanity defense tended to be firmer and narrower in the Anglo-Saxon world than in continental Europe (see cf. Crawford, 1993; Harding, 1993; Watson, 2011).

The continental inquisitorial tradition, which is rooted in Roman and canon law, has long been dominated by academically trained lawyers. It relied on the investigation of crimes by legal experts and the evidence they collected on the basis of fact-finding and testimonies. In order to establish solid proof, formal legal procedures were followed and testimonies were recorded in dossiers. In continental systems legal officials interrogated accused and witnesses according to codified procedures in order to establish the best evidence possible and the verdict was the result of reasoned judgment by lawyers. This approach allowed space for invoking expert advice, for example, that of medical doctors, in matters beyond the capacity of lawyers and lay witnesses. It is for this reason that, in continental European countries, several medico-legal writings were published in the seventeenth and eighteenth century in order to teach physicians about crimes requiring medical evidence, how to conduct their examination and how they should present their findings in court.

Under the influence of the Enlightenment in general and the French Revolution in particular, each of which advanced a uniform and humanitarian approach of criminal justice, continental legal systems were further rationalized and physical punishments were abolished. In his *Dei delitti et delle pene* (*On Crimes and Punishments*, 1764), Beccaria advocated a criminal law system in which punishment was geared to the seriousness of the offense, the defendant's motives and background were taken into account, and the sentence was intended to serve the goal of rehabilitating and reintegrating the criminal. Viewing man as a calculating creature, Jeremy Bentham and British and continental followers of utilitarianism also strongly favored a legal system that deterred socially harmful actions by introducing a transparent and proportional scheme of efficiently enforced penalties and programs to re-educate and rehabilitate offenders. Bentham attributed a prominent role to law as well as medicine in his social reform projects. Considering a politics of health as an indispensable element in the advancement of social progress, harmony and justice, he compared medicine to legislation and the administration of justice. Just as the doctor cured the individual body using a scientifically based treatment, which was attuned to the type and seriousness of the disease, the judge healed the social body by his balanced verdict, which should be proportionate to the character and seriousness of the conflict or the crime. Medicine and criminal

justice also resembled each other because of their potential preventive effects. In the social–utilitarian view, both had essentially the same purpose: fighting grief and promoting the greatest happiness for the greatest number (Semple, 1993; ten Have, 1983, 1986).

The effort to make legal codes more consistent and more transparent and the introduction of ameliorating objectives into the penal system meant that criminal non-responsibility and unsoundness of mind were defined more explicitly than before. The French *Code Napoléon*, which exemplified the more general wave of legal and administrative rationalization and which was introduced in many European countries, stipulated that defendants, who had committed a crime while they were in a state of insanity (*démence*) or under the influence of an irresistible force, should not be held accountable. The Code did not mention greater or lesser degrees of free will and accountability or the need to call in physicians, but, in practice, they began to make their appearance in courts in order to assess the mental condition of offenders who were suspected to suffer from madness (or to simulate it). In France as well as in Austria and many German states, physicians were involved in the state's inquisitorial investigative procedures. They joined the ranks of court-appointed experts and began to discuss their forensic research and reports in medical faculties at universities (Watson, 2011). In these countries, in which enlightened despotic regimes aspired to administrative centralization, rationalization and efficiency, the state and universities were more supportive of medical involvement in the legal system than in the Anglo-Saxon world, where they more or less kept separate from reforms in medical education and the professional ambitions of physicians. In that context, the drivers of medical knowledge, and the nascent professionalization of medicine, included the development of a core body of licensing, learned societies as well as recognized educational institutions (see Lawrence, 1994). While in Britain and the United States the medical profession was more pluralistic and depended to a larger extent on the free market of supply of and demand for health services, on the continent systems of academic teaching, examination and certification were established which raised physicians' professional status and authority under the shield of the state (Bynum, 1994; Houwaart, 1991; Huerkamp, 1985; Lane, 2001; Lawrence, 1994; Léonard, 1981; R. Porter, 1997, 304–427; MacClelland, 1991; Schepers, 1989; Starr, 1992; Waltraud, 2002; Warner, 1986; Weindling, 1991, 1993).

The inquisitorial tradition offered more opportunities to physicians to enter court than the Anglo-Saxon common law tradition, which was grounded in an empirical and common-sense rather than a formal and logical way of thinking. Anglo-Saxon customary law had an accusatorial rather than an investigative tenor and, in trials, laymen as well as lawyers played a role. The criminal trial in this era – typically referred to as 'trial by altercation' – centered on the idea that direct confrontation of the accused with his or her charge was the best means of discovering the truth of the allegation (see Duff, 2007). Juries of laymen, drawn from the local community, and guided by their own common-sense interpretation, decided on the verdict, whereas the judge's main task was to control procedures, to refer to precedent and to pronounce the sentence. Lay-consensus was the standard of proof and the need to invoke additional evidence by consulting expert-witnesses hardly arose. Since recourse to experts was not advanced by legal practice, there was little incentive for doctors to think and write about forensic medicine.

However, the gradual introduction in the course of the eighteenth century of more formal arrangements for prosecution and defense in the trial process as well as the subsequent passage of the *Criminal Lunatics Act* (1800) stipulating indefinite incarceration of insane defendants who had committed serious crimes, would clear the way for the elaboration of the insanity defense and the associated entry of physicians in court in order to testify to the mental condition of defendants in the nineteenth century (Eigen, 1995). These developments were part of the rise of adversarial criminal process, which profoundly affected trial process over the 1700s. From the turn of the nineteenth century, testimony from alienists and other experts gradually became more important, although defendants' neighbors and relatives continued to provide evidence of what Eigen calls 'manifest distraction', as they had in the seventeenth and eighteenth centuries (see Eigen, 2004). Since the defense attorney as well as the public prosecutor could call in medical experts to support or dispute an insanity plea, the English and also the American adversarial tradition of justice brought with it collisions not only between lawyers and medical experts, but also among lawyers and among physicians about the diagnosis of insanity and its relation to legal responsibility. Such disagreements risked undermining the credibility of doctors as scientific experts and hampered the acceptance by lawyers and the general public of psychiatric testimonies in the court-room. The highly charged atmosphere of the insanity trial was overlaid onto the contestation around specialist knowledge about madness at the time — a range of ideas about 'madness' (revealed in clinical concepts such as 'moral insanity', 'lesion of the will' and 'monomania') competed for space, with a range of individuals claiming authority over 'lunacy', in the British context (see Loughnan, 2012). Such difficulties – skepticism and distrust among judges and the lay public – troubled forensic psychiatrists on the continent as well, in particular when a trial was covered by the press. In Italy for example, psychiatrists called in by the defense could argue against experts summoned by the public prosecutor, until in 1913 the law was amended and allowed only a single forensic report by two or three experts (Watson, 2011).

Until 1843, when the eponymous *M'Naghten Rules* were formulated, in England there was no general standard for evaluating an insanity defense and forensic practice was characterized by a flexible approach. The *M'Naghten Rules*, which were formulated as a result of the trial of Daniel M'Naghten for the murder of Prime Minister Robert Peel's secretary and his acquittal on the grounds of insanity, provided that an accused might be excused where he or she suffered from a 'disease of the mind', leading to a 'defect of reason', which has the effect that the accused did not know the 'nature and quality' of their act, or that it was wrong. Until the present day, these criteria provide the formal requirements for an insanity defense in England (see Loughnan & Ward, in this volume) as well as in Canada (see Moran, in this volume) and the United States (see Robinson, 1996; Watson, 2011). In contrast with England, in Scotland the plea of diminished responsibility was employed in relation to a variety of mental disorders in murder cases from 1867 on — a plea that would only be introduced in England and other European countries in the course of the twentieth century.

However, in their overview of the modern history of forensic psychiatry in Britain in this volume, Arlie Loughnan and Tony Ward caution that the impact of the *M'Naghten Rules* on forensic practice must be put in perspective. Since English common law was not fixed and required ongoing (re)interpretation, they contend, there was room for flexibility and adaptation, for negotiation and co-operation between lawyers and medical experts. In this way, forensic psychiatry developed by means of muddling through in the practice of jurisdiction. The *M'Naghten Rules* were a stimulus to continuous debate about the insanity defense among and between lawyers, physicians and political commentators rather than a barrier for psychiatrists to enter the court-room. In his outline of the development of forensic psychiatry in Canada in this volume, James Moran also points to the distance between, on the one hand, the regulations in the statute (which hardly changed between 1892 and 1992) and, on the other hand, the practical way courts dealt with mentally disturbed offenders as well as the eclectic psychiatric views on criminal insanity.

Neither in Anglo-Saxon countries nor in the European continent legal Codes were legal provisions a decisive factor in the development of forensic practice. Although the continental criminal law Codes were usually based on the classical legal principles of accountability and retribution, and hardly mentioned the need to enlist psychiatric advice, in jurisdictional spaces, there was room, to varying degrees, for psychiatric expertise. In his article about German forensic psychiatry in the late nineteenth and early twentieth century in this volume, Eric Engstrom

depicts the ways that, from the 1880s onwards, German psychiatrists were increasingly called upon to testify in court and how legal judgments were gradually more tuned to their reports, although no legislation was passed that required or regulated such practices. The authority of psychiatrists in court depended not so much on legal criteria as such as on their public reputation and their ability to persuade lay people of their diagnosis and prognosis. Also in Switzerland and The Netherlands, as Urs Germann and Harry Oosterhuis elucidate in their contributions, the expansion of forensic practice in the late nineteenth and early twentieth century was neither preceded nor accompanied by major legal changes. In both countries it was not until the period between the two world wars that legislation was enacted which underpinned psychiatry's role in the field of criminal law. By contrast, in Norway, as Svein Atele Skalevag makes clear in his contribution to this volume, forensic psychiatry progressed as a direct consequence of the enactment of a new criminal code in 1902.

Loughnan's and Ward's argument that the emergence and development of forensic psychiatric practice in Britain did not depend on the formal stipulations of the law dovetails with Martin Wiener's (1990, etc.) explanation of the growing frequency of the insanity defense in English murder and homicide trials during the nineteenth century. Forensic psychiatry entered English criminal justice by an indirect and hidden route, Wiener asserts, that is to say against the background of changing attitudes on the part of judges and other legal actors in court as well as society at large towards aggressive behavior. Before the nineteenth century, many violent offenses were judged by courts in the context of the traditional culture of honor, in which violent responses to serious provocations by others, such as physical assaults, grave public insults or sexual abuse of one's womenfolk, were viewed as more or less acceptable responses. However, when, from the late eighteenth century onwards, the tolerance of inter-personal aggression in civil society diminished, the state was increasingly able to implement its monopoly of violence, and the traditional culture of honor waned, attention in criminal justice shifted from the interaction between a provocative victim and an aggressive perpetrator to the individual mental state of the accused. Resorting to violence was considered no longer a self-evident and more or less condoned response to provocation, but evidence of incapacity to control one's impulses and passions.

Wiener argues that this change in legal and social thinking, which was an ingredient in the greater use of psychiatric evidence in courts, reflected a broader transformation of social norms and values. Under the influence of enlightened values and moral reform, the dominance of the liberal bourgeoisie and its standards of respectability and social order, and the growth of the market economy, the use of the 'reasonable man' construction gained ground. This somewhat implicit norm pre-supposed that the average citizen was a rational and calculating being endowed with free will, individual responsibility, self-control, and the ability to consider one's longer-term self-interest. The question was no longer whether aggressive acts could be excused as a self-explanatory response to provocation but whether an individual was unwilling or unable to control his impulses. This change of perspective facilitated the involvement of psychiatric evidence and an expansion of the insanity defense in homicide trials. If ordinary men were expected to control their violent impulses, even when faced with grave provocations, the only way to avoid a guilty verdict or to mitigate the sentence was proving that the defendant was not able to master his passions because of his abnormal mental condition. In Wiener's words, 'if ordinary men were now expected to master their passions, then the only successful path to avoid a guilty plea was likely that of showing the prisoner to be not ordinary' (1999: 504). Although some lawyers might attempt to block the expansion of the insanity defense and the *M'Naghten Rules* formally implied strict criteria, in the course of the nineteenth century expert medical evidence came to carry increasing weight. In this way, reliance on the insanity defense for a minority of grave offenses confirmed the general standard of reasonableness and self-control for the great majority of citizens, and forensic psychiatry contributed to defining the liberal ideal of good citizenship.

Wiener's powerful socio-political explanation of the development of forensic psychiatry also sheds light on the influence of cultural differences on national forensic practices. In her article on Italy, Mary Gibson refers to its Criminal Code of 1889, which, in contrast to British legal and social norms (and probably to those of other Northwestern European countries as well), sanctioned a reduced punishment for defendants who, in order to defend their honor, had responded with violence to serious provocation, in particular relating to the seduction or rape of wives and daughters.

## 4. Professionalization

Whereas forensic medicine is older, forensic psychiatry – the application of medical knowledge about mental disorders in the administration of justice – originated in the late eighteenth and early nineteenth century, when, in the Anglo-Saxon world as well as on the European continent, psychiatry began to take shape as a medical specialty. As a branch of medicine, psychiatry emerged alongside the establishment of the first mental asylums as therapeutic facilities. Under the influence of enlightenment thinking, the idea had gained ground that madness should no longer be understood in religious and moral terms – as God's punishment for sin or as a demonic influence that took possession of people – but that it was an illness that could and should be medically treated, and possibly be cured. Insanity could be treated, thus asylum doctors or 'alienists',[3] as they were also known, argued — by isolating the insane from society and hospitalizing them in special institutions in the countryside, where they could be placed under a medical regimen, re-educated by means of moral therapy, and thus be brought back to reason (Binneveld, 1985; Binneveld & van Lieburg, 1979; Blasius, 1994; Castel, 1988; Donnelly, 1983, 1991; Dörner, 1969; Gaudet & Swain, 1999; Oosterhuis & Gijswijt-Hofstra, 2008, 30–56; Oosterhuis & Slijkhuis, 2012; Porter, 1991; Porter & Wright, 2003; Rothman, 1971; Scull, 1975, 1976, 1979, 1993; Shorter, 1997; Shortt, 1983).

While the traditional perception of unsound mind and legal non-accountability, and the definitions of these terms in most nineteenth-century legal codes and case law revolved around an unelaborated notion of madness, which could be recognized via ordinary people's perceptions, the development of psychiatry advanced a more intricate and differentiated notion of insanity. Philippe Pinel, one of the first French alienists, argued that there were several forms of insanity with a large variety of symptoms: apart from a lack of rational thinking, madness could also display itself in disturbances of the instincts, the emotions and the free will without a serious intellectual impairment (*manie sans délire*). Around 1820 Pinel's successor, Jean-Étienne Esquirol, drew attention to behavioral disorders that, in his view, revealed partial insanity. He introduced the category of monomania to refer to the diminished power of self-control and the irresistible urge of some criminals to commit certain acts while they seemed to be normal and reasonable at first sight. In Britain James Cowles Prichard, author of *A Treatise on Insanity and Other Disorders of the* Mind (1835) and *On the Different Forms of Insanity in Relation to Jurisprudence* (1842), coined the label of moral insanity, to refer to the mental disturbances of criminals whose rational faculties appeared to be intact and who did not show symptoms of insane illusions and hallucinations (other Anglo-Saxon psychiatrists used related terms such as moral derangement). Other diagnostic labels that stretched the definition of mental illness – such as degenerative and instinctive insanity, psychopathy, sexual perversion, kleptomania, and pyromania – followed in the second half of the nineteenth century (Dowbiggin, 1991; Gilman & Chamberlain, 1985; Huertas, 1992, 1993a, 1993b; Oosterhuis, 1999, 2000; Pick, 1989; Tollebeek, Vanpaemel, & Wils, 2003). Such derangements could not be recognized by laymen, psychiatrists argued: scientific knowledge and clinical experience were needed for precise

[3] This term was derived from the notion that madness is mental alienation from reality.

diagnosis, and only medical experts could provide conclusive evidence of a criminal's state of mind and the nature of his behavior. With this claim, psychiatrists attempted to create a distinct profile for themselves as forensic experts — not only vis-à-vis lawyers and laymen, but also to distinguish themselves from other physicians such as general practitioners who, in the nineteenth century, were called in by courts in cases of criminal insanity. Apart from stretched definitions of insanity, many alienists also highlighted naturalist explanations of the human mind, such as phrenology, propagated by Franz Joseph Gall and Johann Spurzheim. The phrenologists held that the physical characteristics of the brain, the shape and the volume of its different parts, determined an individual's intellectual capacities and mental make-up. In the first half of the nineteenth century phrenology became popular in the Anglo-Saxon world, and alienists used it to explain criminal insanity: homicidal madness, they argued, was caused by a specific disorder in the part of the brain where the mental trait of destructiveness was located (Cooter, 1985).

The rise of the medical discipline of psychiatry and its institutionalization made possible the advancement of forensic expertise in the legal domain. Conversely, the pursuit for a formal role of the psychiatrist as an expert witness and authoritative specialist in court also served these individuals' professional ambition to expand their field of activity beyond the asylum, into society, and to strengthen their ties with the state. For example, as Jan Goldstein has shown in her book *Console and Classify* (1987), French psychiatrists used the diagnosis of monomania in courts (at least, in part, strategically) to promote their professional expertise in the public arena and the administrative apparatus of the state. However, in other countries, they were far less successful. In nineteenth and twentieth-century Canada, for example, as Moran elaborates, there were continuing tensions between lay and professional understandings of criminal insanity as well as persistent controversies between and among psychiatrists, lawyers, prison-authorities and government officials over questions about who belonged to the elusive category of mentally ill offenders, whether they were for the most part criminal or mentally disturbed, where they should be detained (in penal institutions or medical facilities), how they should be treated, and whether public safety or the individual interests of mentally deranged offenders and their reintegration into society should be prioritized. This held good for most other countries as well. In their contribution to this volume on Britain, Loughnan and Ward emphasize that forensic psychiatry has continued to be controversial and contested to this day.

Several historical interpretations of the development of forensic psychiatry are informed by the sociology of professions (Abbot, 1988; Donnelly, 1991; Dowbiggin, 1991; Eigen, 1995; Engstrom, 2003; Freidson, 1988; Goldstein, 1987, 1998; Harris, 1989; Kaufmann, 1993, 1995; Oosterhuis, 2000, 2003; Oosterhuis & Slijkhuis, 2012; Robinson, 1996; Roelcke, 1999; Smith, 1981; cf. Shortt, 1983; Scull, 1975, 1976; Watson, 2011; Weindling, 1991). From this perspective, the claims and ambitions of psychiatrists in the legal domain are explained as part of their quest for an expansion of their sphere of action beyond the confines of the isolated and stigmatized lunatic asylums — for a monopolistic domain of expertise, for public esteem, for influence in society, and for an alliance with the state. This viewpoint also centers on the continuous professional rivalry and ongoing boundary disputes between lawyers and physicians. Professional friction and competition as well as public controversies about the demarcation of the criminal justice arena and the medical field are returning themes in the history of forensic psychiatry. As a new player in the established legal domain, the psychiatric profession is pictured as the offensive party, while lawyers were put on the defensive. Lawyers feared that a conflation of the legal categories of free will, responsibility and guilt and the psychiatric diagnosis of mental illness would result in medical imperialism, with physicians usurping the seat of the judge. When psychiatrists began to argue that some forms of insanity were not visible to the layman's eye, lawyers began to resist such arguments, because they viewed such explanations as an unjustified denial of fundamental legal principles and a violation of their jurisdiction. Behind their theories and practices and their disputes, thus the professionalization argument runs, jurists and psychiatrists were motivated by more mundane interests.

However, as Loughnan and Ward, Moran, Skalevag, Oosterhuis, Germann, Engstrom and Caroline Protais suggest in their contributions to this volume, there are good reasons to put explanations in terms of professionalization and the associated notions of medical imperialism and boundary-conflict in perspective (see also Skalevag, 2006). The assumption of a fundamental antagonism between lawyers and physicians ignores the reality that there were also differences and changes of opinion within these professions as well as overlapping views between them. These professions were not monolithic entities and neither jurists nor physicians spoke with one voice. While there has been and continues to be a fundamental gap between on the hand a voluntarist and teleological understanding of human behavior, in which legal thinking is grounded, and, on the other hand, deterministic and naturalist explanations in the biomedical sciences, this does not alter the fact that in practice the views of lawyers as well as of psychiatrists were mixed.

Although the view of human beings as natural creatures subject to causally determinative laws found support among many psychiatrists (including prominent members of the profession such as Prosper Lucas, Bénédict-Augustin Morel, James Cowles Prichard, Cesare Lombroso, Henri Maudsley, and Emil Kraepelin), there was anything but a consensus in the medical world about the fundamental issues of voluntarism and idealism versus determinism and materialism, nor did psychiatrists agree on the boundary between sanity and insanity; on the criteria for establishing a causal relation between linking a defendant's mental disorder and his or her criminal acts; on how to determine the mental state of the offender at the moment when he or she committed the crime; on whether and how they should translate the diagnosis of some mental disorder in the legal category of non-responsibility; and on whether they should have the task to answer the question of a defendant's degree of responsibility for his or her crime instead of restricting themselves to a medical diagnosis and leaving the decision about responsibility to judges on the basis of their medical advice. When, in France, the monomania diagnosis attracted greater and greater criticism in courts and in newspapers, it also became controversial among psychiatrists themselves and they eventually abandoned it.

It is not self-evident that psychiatrists' professional interests and social prestige were always served by their forensic involvement with serious crimes like homicide and the publicity which such cases aroused. Although some of them also welcomed publicity in order to advertise their expertise, their performance and diagnostic claims in the semi-public forum of the court might expose the weaknesses of their claims, in particular when greater numbers of medical experts were involved and disagreed among each other. Their testimonies, in particular in sensationalist trials, were often covered by the popular press and stirred public protest and indignation, generating animosity, ridicule and distrust towards psychiatrists instead of public esteem (see the articles by Engstrom, Oosterhuis, Gibson, and Dan Healey to this volume).

Further unintended consequences of forensic practice surfaced. It was questionable whether the hospitalization of dangerous and violent criminals in mental institutions was in line with the professional ambitions of asylum doctors. Before the nineteenth century, there were no formal legal provisions to confine insane defendants who were not convicted because of unsoundness of mind, but who at the same time were considered to be dangerous. In general, according to legal principles, there were only two options: conviction and punishment or acquittal and release. In practice, such individuals were subject to a variety of ad hoc measures: they were taken into custody by their family or detained in prisons, hospitals and workhouses.

Starting from around 1840, several European countries and American states adopted laws and administrative measures to regulate the institutionalization of the insane. Within the margins of the constitutional state, these regulations served to protect citizens against random

deprivation of freedom and allowed for effective admission procedures for the insane to ensure the security of public order as well as their timely medical treatment. Admission to a mental asylum required medical and judicial or administrative certification and, once within this institution, the insane fell under special jurisdiction and state supervision, meaning that their civic rights were suspended. Such laws also facilitated compulsory admissions of mentally disturbed offenders in asylums. In general, lawyers and physicians agreed that such criminals should be either temporarily or permanently removed from society, but not all of them believed that involuntary hospitalization in lunatic asylums was an effective solution. These institutions were often overcrowded and, in general, lacked the strict security measures which were needed to control forensic patients and prevent their escape. These individuals were difficult to treat, as their disruptive behavior could cause problems of order and exert a harmful influence on the atmosphere in the asylum, and the need to guard them interfered with the care and treatment of other patients. Delinquent inmates undermined the ambition of psychiatrists to promote their field as a medical specialty, to organize lunatic asylums, like hospitals in general, as therapeutic institutions and thereby to dispel the association between mental institutions and houses of correction, detention centers, and prisons (see the articles by Moran, Engstrom, Germann, Oosterhuis, and Gibson to this volume).

Against this background, psychiatrists' forensic aspirations were contradictory because, since the early nineteenth century, they had sought to establish psychiatry as a medical field by dissociating themselves from traditional religious and moral views of mental illness as sin and crime, by rejecting the use of restraints and force, by recommending kindness, compassion and patience as the proper way to approach the insane, and by promoting moral treatment as cure. Therefore, many psychiatrists favored the separation of insane criminals from other mental patients. Whereas in some countries (Germany, Switzerland, France, and also the United States) those in the first category continued to be detained in either prisons or distinct wards of asylums, in Ireland (Dundrum Central Criminal Asylum, 1850), Canada (Rockwood Criminal Lunatic Asylum in 1855), England (Broadmoor Criminal Lunatic Asylum, 1863), Italy (the criminal asylum at Aversa near Naples, 1876), The Netherlands (the state asylum of Medemblik, 1884), and Norway (the criminal lunatic asylum of Trondheim, 1895) separate asylums for the criminally insane were built (see articles by Moran, Loughnan and Ward, Gibson, Christian De Vito, Oosterhuis, and Skalevag in this volume). Many criminal insane asylums not only admitted defendants who had been discharged on the grounds of insanity, but also offenders who had become mad in prison and detained suspects who showed symptoms of mental illness while awaiting trial.

In some of these countries, like Canada, criminal insane asylums were controversial from the outset and, soon after these were established, they were abolished again (see Moran, in this volume). Apart from observation stations connected to asylums where psychiatrists could examine offenders, in Germany, as Engstrom explains, most forensic facilities were organized as wards in prisons and separate criminal asylums were not constructed. The result was that penitentiary institutions increasingly served as the sites for criminological research and psychiatric experience with disturbed criminals (a development which also occurred to some extent in other countries as Skalevag and Oosterhuis illustrate), but, at the same time, the control over this patient group and the authority of psychiatrists in such wards was continuously contested. In Switzerland in the mid-twentieth century, asylum doctors' strategy to keep criminal 'psychopaths' out of mental institutions – characterized by Germann as a 'depenalization' of psychiatry – resulted in ever-increasing numbers of mentally disturbed offenders being kept in prisons, houses of detention, and reformatories. This in its turn led to a 'psychiatrization' of penitentiaries, a penetration of psychiatric and psychological expertise into these institutions. Swiss psychiatrists discussed the need to establish alternative clinical institutions for mentally disturbed offenders, but it was not until 1960 that the first, modestly equipped psychiatric ward for 'dangerous' inmates was opened in Switzerland, which was only transformed into a modern forensic clinic in 2007. In France, separate forensic units in psychiatric hospitals were only realized in 2002 (see Protais, in this volume). In Italy and The Netherlands, on the other hand, criminal insane asylums lasted from the late nineteenth century until today (see articles by Gibson, De Vito and Oosterhuis). Whereas the Dutch asylums were more or less transformed into therapeutic institutions and were part of the mental health care system, the Italian forensic institutions hardly changed their character as houses of detention, in part because of their administrative embedment in the juridical and penal system and their separation from psychiatric hospitals and other mental health care facilities.

Several authors in this volume, in particular Loughnan and Ward, Engstrom and Germann, criticize the professionalization perspective by following an approach that shifts the focus from legal and psychiatric theories, authoritative text books, professional journals and other writings, professional rhetoric and strategies, and public disputes between psychiatrists and lawyers to forensic practices as they took shape 'from below,' in actual jurisdiction and the encounters between defendants, judges, defense attorneys and medical experts in the court-room and penal institutions (cf. Skalevag, 2006). They also put in perspective the assumption of continual professional competition between lawyers and psychiatrists.

Focusing on court cases rather than legal and medical theory, Loughnan and Ward argue that the relationship between law and psychiatry in Britain was one of continuous interaction, negotiation, and co- and inter-dependence. Psychiatrist's claims to expertise about criminal insanity and non-responsibility gradually emerged in day-to-day practices whereby coincidental influences played a role. In their articles on Germany and Switzerland, Engstrom and Germann also highlight the importance of forensic practice, bargaining processes and changing procedures in courts, as well as the mundane interactions of psychiatrists, jurists and administrators in medical and penal institutions, where the diverse range of individuals populating the borderland between crime and mental illness might end up.

In the last decades of the nineteenth century, the frequency with which psychiatric experts were commissioned by judges to testify on the mental condition of defendants or witnesses, and the number of accused found to be non-accountable or non-responsible increased all over the Western world. The more recurrent and systematic entry of medical experts in the court-room, as Loughnan and Ward, Engstrom, Germann, Oosterhuis and Skalevag point out, would not have been possible without either the passive compliance of judges and lawyers or their active participation and growing receptiveness to psychopathological explanations of criminal behavior. Lawyers were influenced by the ideas of their own time and society, including new scientific insights about human nature. Psychiatrists did not give evidence in the court-room of their own accord, but judges and other judicial authorities often requested their testimonies when doubts were raised about the mental condition of defendants, relieving judges of a difficult and possible contested decision (at least to some extent). Integrating medical expertise into criminal procedures and evidence law bolstered the idea of a modern, scientifically up-to-date justice system.

By the end of the nineteenth century, new ways of thinking gained ground in the Continental philosophy of law tradition. The modern school of criminal law under the leadership of the Austrian–German lawyer Franz von Liszt, and supported by lawyers in Germany and other European countries, rejected classical legal principles and launched a new approach in legal thinking which, in large part, dovetailed with forensic psychiatry's objectives. The adherents of the modern school observed that the classical doctrines of criminal justice and punishment had not resulted in decreasing levels of crime. For an effective fight against crime, the focus had to shift from the criminal act and proper retribution on the basis of the seriousness of the offense, to social defense — society's right to protect itself effectively against lawbreakers and to prevent crime. In addition to the evaluation of the gravity of crimes and the degree of guilt, the personality, the motivation

and the habits of perpetrators in order to establish the level of dangerousness and the risk of recidivism each posed should be taken into account. According to this view, a combination of punishment, security measures (such as long-term isolation and even elimination) and medical treatment should be geared to the personality of criminal and the danger he or she posed for society. In 1889, together with the Dutch lawyer and liberal politician Gerard A. van Hamel and the Belgian lawyer Adolphe Prins, Von Liszt set up the International Criminological Society (*Internationale Kriminalistische Verein*) to promote these new views on fighting crime. Prins formulated the main principles of social defense in his *La défense sociale et les transformations du droit pénal* (*Social defense and the transformations of criminal law*, 1910). The social defense approach made its way around Europe in the early twentieth century and resurged in adapted form, with a focus on the criminal's psychology, after the Second World War in the transnational movement of the New Social Defense (*Défense Sociale Nouvelle*).

## 5. Criminology and the medicalization of deviance

Between 1880 and the First World War, the involvement of asylum doctors and professors of psychiatry in courts, as well as the enhanced rapprochement and collaboration between lawyers and psychiatrists, were further boosted not only by the growing impact the modern school of criminal law, but also by the medicalization of deviancy in general, and the development of criminal anthropology and other scientific approaches to crime in particular. The contributions on Britain, The Netherlands, Norway, Switzerland, France, Italy, and Germany in this volume show that these trends occurred contemporaneously, stretching beyond national borders and playing out against similar social and political backgrounds.

Industrialization and the emergence of urbanized mass society entailed new challenges and social problems: social disruption, overcrowded towns, pollution, the spread of contagious diseases and the continuous threat of turmoil and crime. In this context, social issues were addressed in part as medical problems, reflecting the growing interest in nineteenth-century bourgeois society in the improvement of health and normality. Health and normality were important liberal-bourgeois values and closely connected to norms about hygiene, self-control, social responsibility, productivity, thrift, and social progress (Foucault, 1978b, 1978c; Frey, 1997; Göckenjan, 1985; Houwaart, 1991; Labisch, 1992; Labrie, 2001; Mort, 1987; Rabinbach, 1990; Rolies, 1988; Weindling, 1991). All of this fostered the belief that the state, with the help of scientific experts, had to gain a better hold on the way the popular masses were leading their lives. In the second half of the nineteenth century, the notions of public health and hygiene were deployed as parameters of the quality and strength of modern society. Medicine not only began to acquire the status of a natural science in the modern hospital and the laboratory, but also physicians, under the banner of public health and hygiene, became involved in the development of social policies. Medicine was traditionally geared to ill individuals, but now its knowledge and its techniques were also considered useful for keeping up the health of society as a whole. Expert medical knowledge came to be bound up in the way in which both society and self, and individuals' relations with each other, came to be conceptualized. In this respect society was often compared to a living organism, in which the parts, individuals, like body-organs, were supposed to subordinate themselves to the healthy well-functioning of the whole (Berg & Cocks, 1997; Bynum, 1994; Coleman, 1982; de Swaan, 1989; Fee & Porter, 1992; Frevert, 1984; Houwaart, 1991; Labisch, 1992; Nys, de Smaele, Tollebeek, & Wils, 2002; Porter, 1994; D. Porter, 1997; R. Porter, 1997; Porter, 1999a; Weindling, 1989).

In the late nineteenth century, the social hygienic approach was also embraced by psychiatrists. It enabled them to escape the isolation of the overpopulated asylum, to cast aside embarrassment about their failure to cure the large majority of their (chronic) patients, to transfer their expertise to society, linking their professional aspirations to the increasingly interventionist state. More feasible than the attempt to cure the insane would be the effort to prevent mental and nervous disorders by detecting risk groups in society and taking appropriate hygienic measures. Some psychiatrists presented themselves as guardians of social order, as moral entrepreneurs or as popular educators.

Degeneration theory, which was elaborated by the French psychiatrist Benedict Auguste Morel in his *Traité des dégénérescences physiques, intellectuelles et morales de l'espèce humaine et des causes qui produisent ces variétés maladives* (*Treatise on the physical, mental, and moral degeneration of the human species and the causes which produce such pathologies* (1857)), offered psychiatrists a biomedical underpinning for the social–hygienic expansion of their professional domain. Morel argued that pathologies came into being through the interplay of harmful environmental influences (geographic, climatologic, and toxic factors), unhealthy and immoral patterns of behavior (materialism and luxury, excessive eating and drinking, alcoholism, sexual license, and intellectual overburdening), and the heredity of acquired characteristics. The damaging effects of hectic modern life – the fast pace of life, increased spatial and social mobility and the instability of economic conditions in capitalism – and the related bad habits would overstrain the nervous system and cause all sorts of physical and mental disorders. Such acquired ailments were, according to Morel, inheritable. Based on his clinical practice and statistical data derived from population studies, Morel posited two laws. The first posited that bad traits prevail over good ones, meaning that syndromes of one of two parents produced degenerative traits in their offspring. The second one postulated that the transfer of disorders over succeeding generations goes hand in hand with progressively more severe defects and pathologies. These deficiencies were the product of biological decline over the generations, a development from bad to worse, which was assumed to express itself in physical symptoms and, especially, in mental disorders. Degeneration was exemplified by the loss of control of the higher mental faculties over the instincts as a result of a continuous weakening of the nervous system.

In the last three decades of the nineteenth century, degeneration theory gained much influence in European and American psychiatry (Dowbiggin, 1991; Gilman & Chamberlain, 1985; Huertas, 1992, 1993a, 1993b; Pick, 1989; Tollebeek et al., 2003). Comprising both biological and social and moral aspects, and postulating a continuity between mild and serious mental disorders, the degeneration-concept enabled psychiatrists to explain a wide range of unruly, a-social and immoral behaviors as pathological, and thus include them within the definition of mental illness. In this way, psychiatrists claimed expertise over a host of social issues, such as crime, alcoholism, prostitution, sexual perversion, and suicide, but also pauperism, chronic unemployment, tramping, and recalcitrance. Degeneration theory advanced the displacement of religious and legal evaluations of deviance by the medical and evolutionary dichotomies – healthy versus diseased, and developed versus un(der)developed – as well as psychiatrists' hold on the delineation of the normal and the abnormal. The popularity of degeneration in the last three decades of the nineteenth century epitomized the gradual superseding of the optimistic Enlightenment idea of a uniform and rational human nature that could be improved through social reform and education by an emphasis on biologically rooted differences and inequalities between individuals and social groups, based on race, gender, class and the contrast between rationality and insanity. The concept of degeneration, which offered a comprehensive socio-biological explanation of a broad range of deviance, was part of a more general pattern of evolutionary thinking that took hold in the biomedical sciences as well as in social theory, and that included Social Darwinism. The assumption that nature and human society exemplified hierarchies of the developed and un(der)developed made it possible to distinguish different degrees of social maladjustment and set a scientific standard for either inclusion in or exclusion from modern society. By labeling undesirable, antisocial behavior as abnormal, pathological and un(der)developed, the need to combat or to cure it was made self-evident.

It was against the background of the medicalization of deviance that the border between crime and mental disorder became blurred, and the positivist science of criminology took shape and gained influence. Criminal anthropology (as this science was known in the late nineteenth-century) was pioneered by the Italian psychiatrist Cesare Lombroso, author of *Lúomo delinquente* (1876) and *La donna delinquente* (1893). Investigating the physical constitution, the mindset, the biography, life-worlds and habits of perpetrators, Lombroso explained crime in terms of atavism as well as degeneration: the inclination towards crime was either a remnant of a primitive stadium of aggressiveness and immorality in the development of human species, or an evolutionary deterioration and corruption of advanced civilization (see the article by Gibson, in this volume; cf. Gibson, 2002, 2006; Horn, 2003). The Lombrosian approach to crime reverberated all over Europe and the United States, not only in scientific circles, but also among a broader audience (Artières, 2006; Becker, 2002, 2006; Beirne, 1993; Gadebusch Bondio, 1995, 2006; Garland, 1985a; Hahn Rafter, 1992, 1997, 2006; Horn, 2006; Mucchielli, 1995, 2006; Nye, 1984; Velle, 2002; Watson, 2011; Wetzell, 2000). Lombroso and his followers assumed that a criminal disposition was clearly visible based on external, physical features, such as heavy eyebrows, a low forehead, pointy ears, thick lips and tattoos. Visual and graphic illustrations made publications in the field of criminal anthropology accessible and attractive to a broad readership (Caplan, 2006; Hahn Rafter, 2006; Regener, 1999).

Lombroso's criminological theory was multi-layered (and he amended it more than once over the course of his scientific career) but, as Gibson has explained in her seminal monograph on Lombroso, and as she underlines again in her contribution to this volume, he emphasized the inborn disposition of inveterate criminals, characterized by specific physical and mental features. The French psychiatrist Alexandre Lacassagne and his followers, as well as Lombroso's disciple, Enrico Ferri, also called attention to the influence of the physical and social environment on criminal conduct and suggested a more complicated interplay between biological and social factors than Lombroso had posited. At various international conferences on criminal anthropology, which were held between 1885 and 1911 in several European cities, the two schools were pitted against each other, emphasizing the differences between them that would gradually fade with time. Because criminal anthropology was in part based on the socio-biological theory of degeneration, with its emphasis on the heritability of acquired traits, it was possible to combine the biological approach with the environmental perspective to various degrees, usually by subordinating social explanations to naturalist ones. Moreover, the views the two schools had in common were as important as their differences: each disputed the main tenets of classical criminal law, the existence of free will and the principle of individual responsibility, and highlighted the determinist nature of human behavior (Gibson, 2006; Huertas, 1993b; Kaluszynski, 2006; Mucchielli, 2006; Nye, 1976; van Weringh, 1986). Furthermore, each started with a medical model: crime was not merely an ethical–legal matter, but much more a pathological phenomenon, for which it would be possible to find a remedy based on scientific knowledge. Fighting crime was not merely the competence of lawyers and prosecutors; physicians, psychiatrists, but also biologists, psychologists, anthropologists, and sociologists should also play a role in this effort.

The medical discourse about crime was inspired by an aspiration to free society from crime and deviance, something which might be achieved by detecting individuals considered prone to dangerous and immoral behavior and by taking the appropriate preventive, therapeutic and security measures. The social defense approach, the need to protect society against crime, established common ground between lawyers who followed the modern legal school and psychiatrists who sought a role in the development of social policies and public hygiene. Around 1900, forensic associations for lawyers and psychiatrists were founded in several countries, for example in Germany, The Netherlands, Norway and Switzerland (see articles by Engstrom, Oosterhuis, Skalevag and Germann in this volume), in order to promote an exchange of views and mutual understanding, and also to provide training courses in forensic psychiatry for practicing judges, lawyers, prison doctors, state physicians and administrators.

Jurists and physicians came to share in the belief that crime was a permanent threat to the stability and well-functioning of modern mass society. While, formerly, lawyers had often mistrusted the forensic involvement of psychiatrists in the administration of justice (because these forensic experts were viewed as biased advocates of offenders, seeking to reduce sentences or obtain discharges for individuals), now, more and more, psychiatrists appeared to be their allies in the effort to combat crime. Despite the influence of biomedical determinism in degeneration theory and criminal anthropology, many psychiatrists did not entirely dismiss the principle of free will and individual responsibility and, just like the lawyers of the modern school, they advocated a differentiated and personalized regime of punishment, security measures and treatment for different criminal types, such as habitual or repeat offenders and occasional offenders. Neither criminal anthropology nor the modern school of criminal law were primarily geared to more legal protection and humane treatment of criminals, since protecting society against a degenerative 'social illness', as the doyen of German academic psychiatry Emil Kraepelin described crime (Hoff, 1998), came first. Psychiatrists, in particular those in Germany and Russia (Gadebusch Bondio, 2006 and see article by Healey, in this volume), but also in Italy (see contribution by Gibson), France (see contribution by Protais, cf. Mucchielli, 2006), The Netherlands (see contribution by Oosterhuis) and Switzerland (see Germann, in this volume), showed a willingness to sacrifice individual rights for collective interests and to adopt new, more or less coercive methods of intervention, such as indefinite incarceration, eugenics, and even elimination. Although, in Italy, Lombroso and other positivist criminologists stressed their reformist and humanitarian motives (forensic psychiatry would rescue insane criminals from penitentiaries and offer them medical treatment), at the same time, as Gibson makes clear in her contribution to this volume, they presented themselves as firm guardians of social order and advocated drastic measures against habitual criminals. The Italian criminal insane asylums, which operated under the authority of the prison administration and whose population represented the most marginal sector of the working classes, was foremost an institution of social control. In Canada, as Moran argues in his contribution in this volume, psychiatrists' aversion to and harsh outlook on insane criminals, sometimes even resulted in a decreasing use of the insanity defense. In Germany, the strong affinity the medical profession had with biomedical reductionism, its absolute trust in scientific expertise, and its lack of democratic values facilitated its alliance with the authoritarian *Obrigkeitsstaat* (Weindling, 1993). In tsarist Russia, as Healey illuminates in his contribution, the psychiatric profession and its forensic branch in particular was largely subordinated to the judicial and police apparatus and forced to serve the security interests of the state.

Rejecting the perspective of the pursuit of professional interest and that of professional rivalry as too limited, Foucault and those historians following in his wake have placed these developments in the broader picture of disciplinary power and social normalization. Forensic psychiatry did not fundamentally dispute the power of law, they argue, but, particularly from the late nineteenth century onwards, it joined the legal system and supported its expansion as a disciplinary and normalizing apparatus. The legal and medical professions were engaged in the common cause of prescribing the appropriate measures in individual cases and reforming the delinquent's personality. Thus forensic psychiatry played a role in the mutual entanglement of the human sciences and social policy, the interplay of knowledge and power that aimed at the control and management of what was labeled as abnormal (Bridges & Myers, 1994; Foucault, 1978a, 1978b; cf. Garland, 1985a, 1985b, 1992, 1994; Kaluszynski, 2002; Leps, 1992).

The growing influence of the legal principle of social defense and biomedical theories of crime, and the concomitant rapprochement between lawyers and psychiatrists exemplifies the rise of, in Foucaultian

terms, a disciplinary and normalizing administration of justice. This becomes apparent when set against the background of defensive reactions of the liberal middle classes to the full development of an urbanized and industrialized mass society, in which the labor class, and also other groups such as women and homosexuals, increasingly pushed for democratization and emancipation. The growing attention paid by the bourgeoisie to the downside and dangers of modern society expressed itself in fear of social disintegration and uprooting, the undermining of civilization by what was considered as 'the primitive', something which was assumed to be embodied by the lower orders in general and criminals, sexual perverts, alcoholics, the feebleminded and the insane in particular. These groups were thought to be guided entirely by crude physical impulses and instincts and completely insensitive to spiritual and moral values. Ironically, the belief that bourgeois society was besieged by irrational and chaotic forces intensified when police apparatuses became more effective in their fight against crime, and social and moral purity movements as well as the state intervened increasingly in society in order to deal with social problems and fight asocial and indecent behavior.

In France, for example, the Paris Commune (1871) provoked among the middle class a widespread fear of violence and crime by the lower orders. Maintaining social order was an important element in the politics of the new republican government and it received support from medical circles (Mucchielli, 2006; Nye, 1984). In some countries, in particular in Italy, the debate about degeneration and the popularity of Lombrosian criminology was linked to concerns about national unification, the problem of integrating various groups lagging behind in the national community. Gibson, who points to the long-lasting influence of Lombrosian criminology on Italian forensic psychiatry, argues that the founding of modern mental asylums in general and institutions for the criminal insane in particular were part of the construction of the new Italian state and nation and the process of shaping loyal, law-abiding Italian citizens. Against this background, forensic psychiatry served two purposes: it brought Italian social policies in line with those of other developed nations and protected society against violent crime (which was recorded in higher rates in Italy than in other Western European countries). By the late nineteenth century, the concern over depopulation and biological decline, which would undermine the (military) strength of the nation, became something of an obsession affecting many nations, France in particular, but also Britain and Germany. National rivalries, for example between France and Germany, were framed in Darwinian terms of demographic battles for the survival of the fittest. In Britain, the experiences of the Boer War in South Africa led to concerns about the physical deterioration of the nation as a whole and resulted in efforts to strengthen 'national efficiency'. The ability of the nation to defend its vitality against internal weak spots became the criterion for its external security.

Liberals felt that safeguarding the principle of individual freedom was no longer the main issue in democratizing mass society: now, the stability and cohesion of the social order was considered to be the central problem. Based on an organic model of society, which stressed the functional integration and stability of the social body as a whole, liberals became increasingly attached to a controlling and disciplining model of society. Especially when they faced presumed unreasonable and asocial behavior, they also reconsidered the principle of non-intervention of the state in society, and stressed the state's task of protecting the health, strength and order of the nation. The more liberalism allied itself with nationalism and its concomitant values of moral integration and national vitality, the more the right of the state and professional experts to set the standards for collective survival took precedence over the claims of individual rights and private interests.

However, explaining the development of forensic psychiatry and criminology only in terms of social repression and control would be one-sided and overly limited. Its practices cannot be reduced to inevitable and determinist disciplinary structures; to varying degrees, forensic psychiatric practices were also partly connected to more humane and democratic visions and the pursuit of ameliorative social reform and even emancipation. In the daily practice of the administration of justice, forensic psychiatry gradually came to contribute to changes in criminal law procedures and the determination of punishment, which resulted in more differentiated and individualized judgments of defendants, and allowed for greater leniency and fairness in the application of the law (see Hett, 2004). Also, forensic psychiatry contributed to the decriminalization of particular actions and behaviors – such as suicide, infanticide, the transgression of prescribed gender roles, and sexual deviance – which in traditional society had been condemned and punished as greater or less serious infringements on religious and social norms (cf. Oosterhuis, 2000; Watson, 2011). In his study of the development of criminology in Germany between 1880 and 1945, Richard Wetzell has shown that it was varied in shape and form. German psychiatrists and criminologists fervently embraced biological explanations of crime and the precepts of eugenics, but, at the same time, they adopted social and psychological perspectives and environmental explanations, even during the Third Reich. Many of these professionals applied sophisticated research methods and argued that crime was the result of intricate interactions between heredity and a diverse range of external influences. Such views ensured that the idea that eugenics, as practical solution for the problem of crime, was contested, and contributed to the exclusion of criminals from the groups that were the object of the Nazi sterilization law enacted in 1933. Forensic psychiatry and criminology were not entirely repressive, Wetzell contends, but they were inherently ambivalent in their social and political implications (Wetzell, 2000, 2006). A more nuanced picture of forensic psychiatry and criminal science may also be generated by focusing on criminals themselves, on their life-world and their experiences with professionals. Research in this field is still embryonic. Philippe Artières (2006) has analyzed unpublished autobiographical texts written by convicted French delinquents on the request of the psychiatrist Alexandre Lacassagne in the late nineteenth century. These individuals were not undifferentiated and passive objects of medical labeling and disciplinary control. Some of them knew about criminological theories and expressed their opinion of them, either confirming or rejecting psychiatric explanations of crime for their own purposes.

## 6. The legal–therapeutic approach to crime in the twentieth century

The coming together and co-mingling of legal and criminological ways of thinking about and tackling crime and delinquency in modern society around 1900 laid the foundation for a fundamental transformation of juridical and penal systems over the course of the twentieth century. This makeover, which was related to social reform agendas and growing intervention by the state in society, and which further advanced the role of forensic psychiatry in the administration of justice, occurred throughout the Western world, although, the pace and timing, as well as the consequences, of these developments varied between countries. A more or less rigid legal system focusing on retributive and proportionate punishment was replaced with a more flexible, refined and diversified arsenal of juridical, penal, social and therapeutic measures tailored to the individual characteristics of offenders: pre- and post-trial assessment of individual offenders; punishment (prison terms), discharge or suspended sentences; early release and probation; supervision, guardianship and restriction orders; brief, prolonged or indeterminate institutionalization or hospitalization and also ambulant surveillance and treatment; medical and psychological treatments, counseling and re-education, and pedagogical treatment of juvenile offenders; and after-care, rehabilitation and re-socialization (see the contributions by Loughnan and Ward, Skalevag, Protais, Germann and Oosterhuis in particular; cf. Garland, 1985b, 1994). In this outcome-oriented legal–therapeutic system, which evolved furthest in welfare states, the more or less strict dichotomy between legal accountability or responsibility and criminal insanity was superseded by a perspective that acknowledged different degrees of mental impairment and the

possibility of diminished responsibility. In addition to lawyers and psychiatrists, other professional experts – psychologists, social workers, specialist therapists, probation officers, prison administrators and doctors, police officials and experts, criminologists, rehabilitation experts, and psychiatric nurses – who followed a variety of (penal, biomedical, eugenic, neurobiological, psychological, pedagogical and social) approaches — became involved in this expanding administrative and institutional penal–therapeutic framework. To a much greater extent than nineteenth-century criminal anthropology, twentieth-century criminal science was an amalgam of biomedical, psychological, pedagogical, and sociological ways of thinking.

The rise of penal–therapeutic systems in Western liberal democracies can be understood in the context of the broader development of 'governmentality'. This concept, which refers to the rational, scientific and technocratic management of mass society, was coined by Foucault (1979) and subsequently elaborated by sociologists seeking to explain the specific nature of social policies in modern liberal democracies (Barry et al., 1996; Burdell et al., 1991; Cruikshank, 1999; Dean, 1999; Eghigian et al., 2007; Garland, 1992; Miller & Rose, 2008; Osborne, 1993, 1997; Rose & Miller, 1992). Since liberal democracy is based on the principle that the government should respect and guarantee civil liberties, the liberal art of social policy was in general not based on direct state interference and coercion. Rather, it took the form of more indirect and subtle interventions by professional experts operating at a distance of the state apparatus. By delegating the execution of social policies to the more or less independent or state-regulated – but not completely state-controlled – helping professions and their administrative networks, the application of social policy was removed from political disputes and ideological controversy. Professionals applied putatively neutral scientific knowledge about what was normal, healthy and efficient. Using various methods – education, persuasion, disciplining, inducement, management, monitoring, incitement, motivation and encouragement – socio-political concerns about poverty, social unrest and disorder, criminality, depravity, abnormality and disease could be translated into expert language and dealt with by technical and apparently morally-neutral means. The lack of democracy associated with professionalism was compensated for by the professional ethos, which presupposed personal integrity, scientific competence, technocratic efficiency, and disinterested dedication to the public good. In this volume only Skalevag, in his overview of the modern history of forensic psychiatry in Norway, explicitly refers to Foucault's viewpoint, but implicitly it resonates in other contributions, in particular with respect to other countries that in the course of the twentieth century developed extensive welfare states, such as Britain, France, The Netherlands, Switzerland, and Sweden. However, at the same time, the contributions of Skalevag and other authors (Loughnan and Ward, Protais, Oosterhuis, Germann, and Åsa Bergenheim) suggest caution regarding the Foucaultian interpretation by showing that the disciplinary legal–therapeutic apparatus was not so much a fully realized and smoothly functioning system, but rather an incomplete project and, as such, under ongoing (re)construction.

As several authors in this volume point out, the twenty-century development of penal regimes in general, and the role of forensic psychiatry within the legal–therapeutic framework in particular, was characterized by a continuing tension and vacillation between reformist and repressive policies, which were rooted in dynamic–egalitarian and static–hierarchical perceptions of human nature respectively. On the one hand, progressive–humanitarian motives and optimism about the possibilities of treating and reforming individual delinquents entailed differentiated assessments of offenders and a more lenient penal approach, including suspended sentences, probation, and efforts aimed at the rehabilitation and re-socialization of several categories of offenders. A social reform agenda aimed at elevating the working class and the development of a more differentiated approach to deviants shifted the emphasis from social exclusion to adaptation and integration in society. On the other hand, recurrent pessimism about the possibility of improving the hard core of habitual and severely deranged criminals, and governments' willingness to respond to repeated public calls for a hardening of punishment and for the safeguarding public security reactivated a strict juridical regime and the social defense approach, which remained from the previous era.

For example, as Skalevag elucidates, after the new Norwegian law code of 1902 had cleared an enlarged space for the voices of psychiatrists to be heard in the administration of justice, the insanity defense soon came to be associated with leniency, which in turn provoked political and popular mobilization in favor of a stricter criminal law enforcement in line with social defense. Under the influence of the expanding electorate, women's emancipation and moral panics about sexual offenses, a new criminal law code, which modified the medical perspective, was enacted in the late 1920s. In the same period in The Netherlands, against a similar background, new legislation with respect to so-called 'psychopaths' was adopted. As Oosterhuis argues in his overview of the development of forensic psychiatry in The Netherlands, the goal of the Dutch legislation on 'psychopaths' and the related medical practices were ambiguous: while the law and related practices were designed to protect society against assumed dangerous criminals, at the same time these offenders were supposed to receive psychiatric treatment to enable their return to regular social life again. Whether at some point one or the other objective prevailed was largely tied to the social climate with respect to law, order and authority. As a result, discussions about collective versus individual interests, as well as about the usefulness and the effects of this legislation, kept flaring up until the present day. Also in France, Protais contends, the twentieth-century history of forensic psychiatry was characterized by the continuing friction between the classical legal principles and those of social defense, as well as between punishment and social defense, on the one hand, and treatment and re-socialization, on the other. Similar tendencies can be observed in Switzerland, where the development of forensic psychiatry, as outlined by Germann, was consolidated by a pragmatic mixture of therapeutic–rehabilitative and punitive–protective approaches. This facilitated the public recognition of psychiatrists as experts in the field of deviant behavior, not only within but also outside the courtroom.

The three decades following the Second World War saw an upsurge of reformist approaches in penal policies and a general wave of innovation and therapeutic optimism in mental health care. Facilitated by the expanding welfare state, psychologists and other mental health workers, as well as welfare officers, added to the strength of psychiatrists in the forensic field and bolstered the belief in mentally disturbed delinquents' ability to regain their responsibility and to be re-socialized. However, in the 1980s and 1990s, when the welfare state was under siege, budgets for mental health care were cut, and neo-liberalism began to set the tone for developments in several Western countries. First in Britain and the United States and later on the European continent, the pendulum swung back to a renewed emphasis on controlling risks and safeguarding public security, as well as on repressive measures such as secure custody, long-term internment or surveillance of mentally disturbed criminals considered to be dangerous. In this period, neurobiological, socio-biological and genetic research into the causes of crime revived reductionist and determinist explanations of psychopathy and subdued the optimism among mental health workers about the possibilities of treating the hard core of the criminally insane (Mednick & Moffit, 1987; Wilson & Herrnstein, 1985). The pre-occupation of the mass-media with violent crime, a widespread public fear of crime and a greater sensitivity to the victims of crime enhanced popular and political calls for a more rigid enforcement of criminal law and more severe punishments. All over the Western world, courts took a more reserved stance towards the insanity defense, the reformist and therapeutic approach by forensic experts lost ground and the number of mentally disordered delinquents in prisons increased (see contributions by Protais, De Vito, Oosterhuis; cf. Watson, 2011) The paradox of

security appears to be at work again: just as late nineteenth-century bourgeois society felt threatened by the unruly lower orders whereas at the same time the public domain was increasingly pacified and violent crime subsided, so, in modern 'risk-society,' the pre-occupation with uncertainties and contingencies in general, and with insecurity and danger in particular, appears to intensify the way various kinds of dangers are calculated and managed and the way the risk of violent crime is monitored and controlled (Beck, 1992; Castel, 1991; Christie, 1992; Garland, 1994; cf. Giddens, 1990, 1991; Sim, 2010; Wacquant, 2009).

With respect to the relation between reformist and repressive tendencies in forensic psychiatry, there is a clear contrast between, on the one hand, countries under authoritarian and totalitarian political regimes and without a solid bedrock of civil society and democratic citizenship (Russia and Germany and Italy in the first half of the twentieth century), and, on the other hand, well-established liberal democracies (Britain, Norway, Sweden, The Netherlands, Switzerland, France and Canada) with societies based on more longstanding and robust traditions of civil and political rights. The therapeutic–reformist and the repressive–punitive approaches, however, were not necessarily mutually exclusive, and the former could also be at odds with basic civil rights, not only in dictatorships, but also in democracies. These approaches sometimes coalesced, for instance, in the application of (quasi-)eugenic measures, like institutional segregation and mandatory sterilization or castration, which developed in Nazi Germany, where crime was among the social issues that were largely (although not entirely; see Finder, 2006; cf. Liang, 2006; Wetzell, 2000, 2006) defined and dealt with as biomedical problems, but also (to different degrees and with greater or less legal enforcement), in liberal democratic states in Europe as well as America (Adams, 1990; Broberg & Roll-Hansen, 1996; Dowbiggin, 1997; Kevles, 1985; Porter, 1999b; Quine, 1996; Weindling, 1989; Weingart, Kroll, & Bayertz, 1992). In this volume, Theo van der Meer's contribution on the castration of sexual offenders in The Netherlands elucidates how more or less coercive therapeutic interventions with sexual offenders in forensic institutions were at odds with civil rights. Another, much more drastic, example is provided by Healey in his contribution on the Soviet Union, where he discusses the incarceration of political dissidents in mental institutions and their treatment via compulsory medication which was designed to discredit and silence them.

The contributions by Healey on Russia and the Soviet Union and De Vito and Gibson on Italy shed light on the impact authoritarian and totalitarian political regimes had on forensic psychiatry. The development of forensic psychiatry in tsarist and communist Russia was inseparable from the authoritarian and subsequently totalitarian state and, consequently, in these contexts, repressive tendencies overshadowed reformist ones. Under the tsarist regime, mental asylums were used by government officials and the police to detain deviant individuals, troublemakers and political opponents. To a large extent, the government's concern about social order dictated the approach of mentally disordered offenders. The communist regime increasingly offered psychiatric forensic experts and criminologists employment opportunities and institutional location in its legal and bureaucratic apparatus, and even positioned psychiatry as a key discipline explaining and reshaping human behavior. But the price psychiatric forensic experts had to pay was the curtailment of their medical autonomy, subjection to tight state-control, conscription into the continuous political distortion of justice, and loss of ethical integrity. Although drawing on the scientific trends in the liberal Western world and sharing the regime's utopian and technocratic ambition to modernize the country, as state-employed professionals, Russian psychiatrists were generally made to serve the objectives of the police, security forces and the courts. As state-employed professionals, they continuously faced the choice between allegiance to their disciplines and their dependence on the government. Psychiatry's close proximity to the police and the judiciary under Stalin's regime left its stamp on the forensic field in a way that is apparent in the current era. After the collapse of Communist rule in 1991, Healey concludes, the judicial and administrative structures instituted during the Stalin era continued to trouble forensic psychiatry in Russia.

Also, in late twentieth century democratic Italy, as Christian De Vito's contribution makes it clear, forensic psychiatry remained still burdened with the political past, in this case the fascist era, when psychiatry was made to serve Mussolini's regime and social order and safety was prioritized. In post-war Italy, asylums for mentally disordered delinquents resembled prisons rather than psychiatric hospitals, and psychiatrists and other health care professionals played only a minor role in these institutions. According to De Vito, the stagnation and isolation of the Italian forensic institutions was the result of a number of facts — the long-term practice of giving precedence to social defense over treatment and rehabilitation, the administration of the institutions by judicial and prison authorities, their separation from regular mental health care, and, consequently, the gap between theoretical debates and reformist aspirations among psychiatrists and the reality on the ground in these institutions. The majority of Italian psychiatrists, including advocates of radical reform, were barely interested in the fate of mentally disordered offenders.

De Vito highlights the sharp contrast between the standstill which characterized the forensic field in the post-war era and the far-reaching reforms in Italian psychiatry and mental health care during the 1970s and 1980s. Reforms in mental health care were realized to a large extent as part of a more general transformation of the health care system, which left the forensic institutions largely untouched. Although the movement for 'democratic' psychiatry, as part of its aim of de-institutionalization and community care, questioned and delegitimized forensic asylums, reform of these institutions was very low on the mental health care agenda. It is only in recent years that the debate about the forensic asylums appears to be heading towards a substantial transformation of these institutions and shifting from social defense to a more medical approach. In France, as Protais points out, similar dynamics have been at work: recent reforms in mental health care such as de-institutionalization and the provision of more outpatient care, were not geared to dangerous mentally disordered offenders, which hampered their inclusion as patients and their therapeutic treatment in psychiatric institutions.

The contributions by Åsa Bergenheim and Theo van der Meer on the forensic approach of sexual delinquency in Sweden and The Netherlands, respectively, reveal remarkable contrast in the forensic approach to such offenders between two liberal–democratic countries, which both evolved into highly developed welfare states after the Second World War. In both Sweden and The Netherlands, the number of forensic examinations of sexual offenders increased in the period 1930–1950, the period in which mental health care expanded and in which the interest in psychology among mental health professionals grew. It is remarkable that around two thirds of the Swedish men – most of them of a working class background – who were accused of sexual abuse and rape of women, youths and children, were considered not to be fully responsible for their offenses. Sexual abuse of children in particular was attributed to mental pathology, and most defendants had a very good chance of either being discharged or being convicted but receiving a mitigated sentence.

Van der Meer's contribution focuses on Dutch sex offenders who, by order of courts and the Minister of Justice, were incarcerated in asylums for the criminally insane and who underwent 'therapeutic' castration between 1938 and 1968. Most of them had been convicted for (hetero- and homo) sexual abuse of minors. By contrast with other countries, such as in Germany and Denmark, in which castration of sexual offenders could be enforced by law, in The Netherlands, it was regulated by a more informal protocol that was covered by the political accountability of the Minister of Justice. According to Van der Meer, the medical grounds for therapeutic castration were shaky: it never became entirely clear whether castration was meant to curb or remove the individual's libido, or to guard against so-called inferior progeny. He also argues that the line between voluntariness – consent by the convict–patient

was officially required – and coercion was thin, and elucidates the ways in which the state was involved in the turbid procedures surrounding castration.

In providing this extended Introduction to this collection, we have sought to provide some general historical background to forensic psychiatry and to canvass the main issues and questions that have served as a guide for the authors providing the national overviews contained in this collection. This special issue of the *International Journal of Law and Psychiatry* sets the national developments in a number of major Western countries side by side, demonstrating the relevance of key themes that transcend national boundaries. Taken as a whole, the collection offers an enhanced understanding of the history of forensic psychiatry, as discourse as well as practice, in its institutional, wider socio-political and international settings. We hope that the collection provides a valuable resource for a range of scholars working in and around forensic psychiatry, and thus makes a contribution to the advancement of our disciplines.

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