

Comparative Forensic Psychiatry: II. The *Perizia* and the Role of the Forensic Psychiatrist in the Italian Legal System

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Understanding the work of forensic psychiatrists in other countries requires a knowledge of the role of the forensic psychiatrist in that country's legal system. It is useful to know the wording of the relevant legal standards and the assumptions and reasoning used by the forensic psychiatrists of that country when applying their expertise to a particular legal issue. The Italian legal system and, derivatively, Italian forensic psychiatry have developed from traditions which have much in common with those of other European nations. The purpose of this adaptation and translation of portions of Ugo For-

nari's *Psicopatologia e Psichiatria Forense* (UTET, Milan, 1984) is to provide American forensic psychiatrists with some insight into forensic psychiatry in Italy.

The *Perizia*

Perizia is the name of the court-ordered forensic psychiatric examination and report. It may be requested both pretrial and during the trial by (1) the district attorney (*pubblico ministero*), (2) the pretrial judge; and (3) the trial judge. However, a *perizia* may be ordered only in those instances in which there are "grave and well founded indications which point to the necessity of conducting an examination of the mental state of the accused." These indications must be clearly relevant; that is, there must be indications of a true and serious mental infirmity "which may exclude or diminish imputability." In the criminal court setting in Italy, the *perizia* concerns itself with three questions.

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1. The Mental Condition of the Accused at the Time of the Crime (Criminal Responsibility) “Having examined the facts of the matter, having examined the accused, and having completed all the clinical and laboratory examinations that are required and appropriate, what is the expert’s opinion regarding the mental condition of the accused at the moment of committing the crime with which he is charged: in particular, was the accused capable of intending and willing his actions (*capace di intendere e di volere*), or were these capacities, because of illness, lacking or greatly diminished?” *Intendere* can be translated as understanding the nature and significance of and, therefore, intending one’s actions. *Volere* can be translated as being able to choose from among alternative behaviors and, therefore, being able to will one’s actions.

2. The Mental Condition of the Accused Before Pretrial and During the Trial (Competence to Stand Trial) “Following an examination of all the necessary evidence and documents (as described above), what is the expert’s opinion regarding the accused’s current mental condition and, in particular, is the accused capable of standing trial?”

3. Social Dangerousness If the expert’s opinion is that the individual is not responsible for the crime or not competent to stand trial, the judge requires the expert to answer an additional question: “Is the accused a socially dangerous person?” Another way of asking this question is “What is the probability that the accused will repeat this act in the future?”

Definition of Terms in Italian Law *Criminal Responsibility*

1. Article 88 of the Penal Code (C.P.) (*vizio totale di mente*—total mental impairment): “A person is not responsible (imputable) who, at the moment of committing the act, was, because of mental illness (*infermità*), in a state of mind that he could not have the capacity to intend or to will.”

2. Article 89 of the Penal Code (*vizio parziale di mente*—partial mental impairment): “A person who, at the moment of committing the crime, was in such a state of mind that without being excluded, the capacity to intend or to will was greatly decreased, is responsible for the crime committed but the punishment is diminished.”

Competence to Stand Trial

1. Articles 70–72 of the Procedural Penal Code (C.P.P.), *incapacità di partecipare coscientemente al processo* (incapacity of consciously participating in the trial): “When the accused finds himself in a state of mental illness that excludes the capacity to consciously participate in the trial, the judge may order, at every level or state of the penal procedure, a suspension of the procedure.” In such a case, the judge orders, whenever it is necessary and possible, that the accused be treated in the territorial psychiatric services (Articles 284 and 286 C.P.P.). The judge may also order a *perizia* in order to accomplish the necessary examinations. When the accused regains the above mentioned capacity to stand trial, the judge may order the procedure or trial to resume. Suspension of the procedure does not impede the

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judge from completing the other tasks necessary to gather information about the crime. If the accused is part of a number of people who have been accused, and this accused individual is not competent to stand trial, the trial of this individual is separated so that the other individuals might go forward with the judicial procedures while the person who is incompetent is treated appropriately for the restoration of incompetence.

2. Article 508 C.P.P., *perizia nel dibattimento* (expert examination during the trial): "If, during the trial, serious and well founded indications are found which require an inquiry upon the mental state of the accused, the tribunal or the *pretore* may appoint an expert." When this occurs, the judge, even without a report from the expert, may act according to Article 70 C.P.P. and suspend the procedure and require an examination of the accused.

The Role of the Judge in Ordering an Expert Examination

Article 220 C.P.P., *facoltà del giudice* (the role of the judge in ordering an expert examination): Whenever an expert examination is required, the judge may order a *perizia*. A *perizia*, or expert examination, is not permitted to establish the habitual or professional nature of the crime, the tendency toward delinquency, the character and personality of the accused, and in general, the psychological features of the accused which are not part of psychic pathology.

The *perizia* may occur even if the judge (either pretrial or during the trial) has not *sui spontae* ordered a *perizia*; the public

minister (district attorney) or the defense attorney may name a "technical consultant" (forensic psychiatric) or request that the judge order a *perizia*. The forensic psychiatric expert is selected by the judge from individuals who are properly qualified. When necessary, the judge may appoint one or more experts. When the expert is nominated by the public minister, the expert is obliged to perform the examination (359, 360 C.P.P.).

The interaction between the judge and the court-appointed expert is governed by Articles 220 and 233 and related sections of the C.P.P. They may be summarized as follows:

1. The order to conduct an expert examination may be initiated by the judge or at the request of either attorney.

2. The *perizia* is always and only psychiatric; it is always aimed at determining the existence of mental pathology which is relevant to the penal issue.

3. In cases of examining the imputability of the accused, this examination only makes reference to the specific crime; it is not permitted to use the same psychiatric examination to evaluate the imputability of the accused with respect to successive crimes "since the investigation of the mental state of the accused must be done at the same time as the penal procedure."

4. A forensic psychiatric examination is not permitted in order to establish the habitual or professional or delinquent tendencies of the accused as well as his character and personality independent of psychological pathology.

5. The prosecution and the defense may nominate, at the point of the judge's choosing the expert, or at any point dur-

ing the trial, their own technical consultant (forensic psychiatrist) who participates with the official expert at all the necessary expert examinations; the defense has the obligation to pay for their own expert evaluation and the judge-appointed expert has the obligation of communicating to the appointing judge the date the expert examination is begun.

6. Pretrial imprisonment for the purpose of psychiatric examination is credited to the convicted as part of his sentence. The penal procedural code fixes the maximum time of pretrial imprisonment. This article also states that "the durations prescribed in the current article are suspended throughout the time in which the accused is under psychiatric evaluation." This suspension of the maximum amount of time that can be spent in jail prior to a trial does not occur when an expert forensic psychiatric examination is conducted at the request of someone other than the judge.

7. The judge may attend the forensic psychiatric evaluation.

8. The judge may request the forensic psychiatrist be present at the questioning of the accused or at the questioning of witnesses with the exclusion of the questioning of the independent consultant.

9. The expert is required to maintain confidentiality during all the phases of the expert examination (Article 226 C.P.P.).

10. The judge asks the expert if the accused is socially dangerous (*se l'imputato sia persona socialmente pericolosa*), that is, what is the probability of the accused performing the act in the future (Article 203 C.P.)?

11. The expert must respond with a

report within 90 days of the pretrial judge's order of a psychiatric examination. The Court of Appeals may extend the deadline for one month, but only if absolutely necessary and for special reasons. In addition, the report must be in writing and have the approval of the judge who appointed the expert (Article 227 C.P.P.). If the report is late, it is still valid, but the expert's pay is diminished by 25 percent. Article 231 C.P.P. states that if the expert does not give his opinion or provide a reason for the delay, the expert may be fined between approximately \$250 and \$2,500.

12. The evaluation may be assigned to a group of experts (*perizia collegiale*) (Article 221 C.P.P.).

13. If the accused is in a pretrial jail (*custodia cautelare*), the forensic psychiatric evaluation is done in jail. If necessary, the forensic psychiatric evaluation may be conducted in a territorial psychiatric service (forensic hospital). The evaluation of minors detained in jails for minors are conducted in the jail whenever possible; otherwise, once again, in a territorial psychiatric service. The judge can order that the examination be completed in a public mental hospital or in a psychiatric outpatient clinic of a university.

The elimination of the civil psychiatric hospitals (Law 180 passed in 1978) makes it impossible to transfer the accused to a civil psychiatric hospital for examination. The accused may be examined at the psychiatric clinics of universities or the psychiatric sections of general hospitals (Article 73, 284, and 286 C.P.P.), or in *case di cura* (halfway houses for those who are chronically and

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persistently ill) in private clinics, or in a judicial psychiatric hospital (Article 312 C.P.P.).

14. The “technical consultant” (the forensic psychiatrist hired by either the prosecution or the defense) may observe the examinations conducted by the *perito* (the court-appointed, official forensic psychiatrist). The technical consultant may provide a report to the judge; if the forensic psychiatrist is appointed after the *perizia* is either undertaken or completed, the technical consultant has the right to examine the *perito*'s reports. The technical consultant, with permission from the judge, may examine those individuals who were examined by the *perito*. This examination must occur in the presence of the judge; the judge may have the assistance, if necessary, of the *cancelliere* (clerk of the court) and the *perito*. The new C.P.P. (1988) established that the preferred form of the expert's (official or technical) report is oral (i.e., testimony is to be given at the trial (Article 227 C.P.P.)).

Discretionary Powers of the Magistrate

In all cases, the judge is considered *peritus peritorum* (expert among experts) and is not obliged to follow or agree with the opinions of the experts. The decision to order an examination is under the discretion of the judge. The judge may disagree with the *perito*'s report and may order a second expert to examine the accused.

When the judge does not agree with the conclusions of the court-appointed expert, the judge must provide the reasons

for this disagreement. On the other hand, the judge is not required to provide reasons why the court disagrees with forensic psychiatric experts who are appointed by either the prosecution or the defense.

Mental Illness, Imputability, and Social Dangerousness

Two questions are posed to the forensic psychiatric expert: (1) Is the accused imputable (blameworthy, punishable)?; and (2) Is the accused socially dangerous (likely to commit further crimes)?

The expert may provide one of three answers to the judge: the defendant is imputable (responsible), in which case the second question (above) is not answered; the defendant has a partial mental illness, in which case the second question, regarding social dangerousness, must be answered; or the defendant has a total mental illness and the second question must be answered.

Only the claim that there is a persistent social psychiatric danger at the moment will trigger the application of the measures of psychiatric security. In the case of partial mental problems, after serving a jail sentence which has been reduced by one-third, the accused is transferred to a House of Treatment and Custody (*casa di cura e custodia*). In the case of “total” mental illness, the individual is ordered to a judicial psychiatric hospital (*ospedale psichiatrico giudiziario*) and remains there until he is no longer judged socially dangerous.

If an offender becomes mentally ill after committing a crime, the offender may be ordered to a judicial psychiatric hospital for treatment; after hospitalization,

the offender is returned to prison for the duration of his sentence. A *perizia* must be completed in order to transfer a mentally ill prisoner to a judicial hospital.

Criminal Responsibility

The penal code requires the assessment of the person's criminal responsibility, Article 85 states: "No one can be punished for committing a crime if, at the moment of committing the crime, he was not imputable (responsible)." The person is responsible, or imputable, who has the capacity of intending or of willing. In any case, the responsibility or imputability must refer to the moment in which the crime was committed.

Those who are over 18 years old are responsible for their conduct, unless they commit the crime in a state of mental infirmity to such an extent that it excludes or diminishes their capacity to intend or to will.

In Italian legal codes, with their roots in the Napoleonic Code, the capacity to intend (*capacità di intendere*) is defined as the ability that the individual has to understand the value and therefore the negative social value of that action or omission (the capacity to understand the nature and significance of one's actions); and the capacity to will (*capacità di volere*) is the ability to have control of oneself to reach or avoid the deed that constitutes the crime (the capacity to act on one's free will). Imputability, from which follows punishability for having committed the crime, requires the presence of both these capacities; if, at the moment a crime is committed, one of the two is lacking or greatly diminished

as a result of mental illness, one has either total or partial impairment of the mind.

A state of mental infirmity constitutes a serious mental impairment (*vizio di mente*), which eliminates or diminishes responsibility for the person who has committed the criminal act. In Italian law, there is a difference between imputability and responsibility. Imputability has, as part of its condition, that the person is punishable for his or her act, whereas responsibility simply means that the person has, in fact, committed an act that is usually a crime, but there may be reasons why he should not be punished; for example, the accused is of a very young age or for other reasons.

Situations Decreasing Imputability

The Italian penal code, after describing the concept of imputability as having the capacity to intend and to will (Article 85), lists the situations (physiologic, pathologic) that may decrease imputability.

1. Mental impairment (*vizio di mente*), present at the moment of committing the crime, excludes (if total) or diminishes (if partial) the imputability of the individual who committed the crime (Articles 88 and 89, C.P.P.).

2. If these conditions of mental incapacity are caused by other individuals, then these other individuals will be held responsible for the crime and, of course, they are also responsible for their actions, which led to the incapacity of the person who committed the crime. (Article 86 C.P.—causing mental incapacity in other individuals with the aim of having them commit a crime: "If someone puts others

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in the state of incapacity of intending or willing, at the aim of having him commit a crime, the person who has caused the state of incapacity is responsible for the crime committed by the individual who is in an incapacitated state." Article 111 C.P.—causing an individual who is not responsible to commit a crime: "The person who induces an individual, who is not imputable or not punishable because of a condition or quality of the person (*condizione o qualità personale*) to commit the crime, is responsible for the crime committed by the not-responsible person, and the sentence for such an individual is increased." Article 613 C.P.—the state of incapacity produced through violence: "Whoever, through hypnotic suggestion or in a wakened state, either through the administration of alcoholic substances or hypnotics or by any other means, without the person's consent, puts that person in the state of incapacity to intend or to will is punished." Article 728 C.P.—treatment that suppresses the conscience or will or another: "Whoever puts someone, with his consent, in a state of narcotic or hypnotic altered state of consciousness, or does something to suppress his conscience or will, is punishable if, from this fact, danger to the personal security of the person arises.")

3. The capacity to intend or to will is not excluded for the individual who "puts himself in such a state of incapacity to intend or to will for the purpose of committing a crime or to create an excuse" (Article 87 C.P.). This derives from the principle of *actiones liberae in causa*.

4. Emotional and passional states are

irrelevant regarding imputability (Article 90 C.P.).

5. Intoxication by alcohol or drugs (Articles 91–95 C.P.):

a. Imputability is excluded only if the intoxication is complete and happened either accidentally or as the result of an external force. (Article 91 C.P.—accidental drunkenness or drunkenness caused by an external force: "Individual is not imputable if, at the moment of having committed the crime, he did not have the capacity to intend or to will as a result of the drunkenness derived either accidentally or due to an external force. If the drunkenness was not complete, but was to an extent of decreasing greatly this capacity, the punishment is diminished.")

b. If the intoxication is premeditated, the penalty is increased. If *dolosa* (acting with the specific intention of committing the crime) or *colposa* (events, even if foreseeable, that are not wanted by the individual and that occur as a result of negligence, imprudence, or lack of observation of the law, regulation, or ordinance), the person responds either as a *dolo* (responsible), or *culpa* (responsible but with diminished responsibility). (Article 92 C.P.—voluntary or imprudent drunkenness: "A drunkenness which is not derived from an accidental event or external force does not exclude or diminish imputability. If the drunkenness was premeditated with the purpose of committing the crime or preparing an excuse, the punishment is augmented." Article 93 C.P.—deeds committed under the actions of drugs: "The disposition of the two preceding articles apply even when the act

was committed under the influence of drugs.”)

c. If the drunkenness or drug abuse is habitual, not only does it not decrease imputability, but augments the punishment and calls into play the administration of security measures (at the very least, the recovery in a *casa di cura e di custodia*). (Article 94 C.P.—habitual drunkenness: “When the crime is committed in the state of drunkenness and this is habitual, the punishment is augmented. The penal law defines habitual drunkenness as that of a person who uses alcoholic beverages and is in a state of frequent drunkenness. The augmentation of the punishment described in the first part of this article applies even when the crime is committed under the influence of drugs by an accused who is addicted to such drugs.”)

6. Chronic alcohol or substance abuse, which results in organic mental damage, may be relevant to the issue of partial or total lack of responsibility (Article 95 C.P.).

7. The fact that the individual may be a deaf mute does not decrease responsibility (Article 96 C.P.).

8. Responsibility of minors:

a. From 0 to 14 years of age, the person is not considered responsible as a matter of law (Article 97 C.P.).

b. From 14 to 18 years of age, on a case-by-case basis, on the basis of psychosocial development, the court will decide whether the person has reached such a point as to be found responsible. Otherwise, responsibility is excluded. This problem is considered resolved in a binary fashion. Either the individual is

judged to be a minor and therefore is not responsible, or the individual is an adult, has imputability, and will be judged as such. From imputability derives punishability. Imputability should not be confused with the Italian word, *responsabilità*, or responsibility, which is the generic condition that says that the individual has committed the crime.

Another distinction must be drawn between consciousness and will, in the sense that the individual must be found conscious and willing to commit the particular crime. In other words, the action to be the basis of a crime must be voluntary (in the sense of expressing the free will of the individual) (Article 42 C.P.).

Now the laws dealing with responsibility, which would be for *dolo* (purposeful) or *colpa* (as a result of negligence of imprudence) or *preterintenzione* (the crime is more serious than the crime intended by the actor).

Objective responsibility: “No one may be punished for committing a crime which is not the result of it being conscious and the result of the individual’s free will. No one may be punished for committing a crime if he has not committed it with intention, except in those instances where the crime exceeds what was intended by the individual (*preterintenzionale*), or the individual, as a result of negligence or imprudence, commits the crime. The law determines in each case. In the case of violations, everyone is going to be found responsible, even if they were *dolosa* or *colposa*” (Article 42 C.P.).

The Significance of Mental Illness in a Forensic Psychiatric Context

With this issue, we have arrived at the central issue of the forensic psychiatric evaluation: what does it mean and what should one understand by infirmity?* The current penal code speaks of the “state of mind due to infirmity” (*stato di mente per infermità*), which is a broader formulation than the one that existed in the previous penal code, which spoke of a state of mental infirmity (*stato di infermità di mente*).

There are many definitions of mental illness available in forensic psychiatric books, in the law, and in criminology. All lack or suffer from the uncertainty of and gaps in the available literature on mental illness and on the study of the etiology and in the framing of complex syndromes that are not always clear, in the interpretation of particular symptoms. To date, the definition or the classification of mental illnesses is a problem that has not been solved.

For some, neuroses and psychoses are included in a group of unitary diseases. For others, the term “mental illness” is reserved only for the psychoses. Infirmities have been kept distinct from illnesses. The infirmities are defined as states, where illnesses are considered to be dynamic changes with a beginning, a course, and a conclusion. The abnormal variations of the psychic state or of the psychic anomalies can be distinguished

from true mental illness. The psychic anomalies are seen as expressions, pure and simple, of deviations from a debatable and not well defined notion of normal.

Others have denied the existence of mental illness and recently there has been some suggestion that the notion of mental disturbance should be replaced by the DSM-IV definitions of mental disorders.

At the moment, none of the widely used psychiatric manuals and none of the four editions of the DSM of the American Psychiatric Association give a universally agreed upon definition of mental illness. It is possible to identify two basic approaches to the problem—one broad and one narrow.

In particular, those concerned with nosology seem to reserve the term mental illness for the group of psychoses. Many others, on the other hand, include neuroses, psychoses, dementia, and mental retardation in the category of mental illness.

Fornari goes on to opine that our current state of knowledge does not provide a definition of mental disease that has the characteristics of being global and unitary. He holds that with essentially practical and operational ends in mind, we can give a definition of mental illness as: “a syndrome which impairs the mind and the body with a multiple and circular causality which has as its typical feature a dynamic evolutionary quality, and which requires medical or social intervention.”

- The related phenomena of arrested, regressive, or destructive disorganizational characteristics have some objective features (a set of symptoms

*Fornari's views on this important issue are shared by an increasing number of Italian forensic psychiatrists. His text was published in 1984 and, where appropriate, we have inserted references to DSM-IV.

to which the physician confers the term disease), and subjective features (which the patient considers a disease).

- This illness is characterized by the acute or chronic disturbances that manifest themselves in either transient or persistent interruption of the capacity to interact between the ego and other people and that impair the social skills of the individual.
- The pathologic disturbances are configured as dates or moments of temporary compromise of the functioning of the ego.
- Such states that generate a mental infirmity constitute either autonomous pathologic entities, such as acute psychosis, or just moments of the disease, which are more or less diluted or concentrated over time.
- In both cases, all or part of the functions of the ego are blocked or distorted in their autonomous and free expression.

The pathologic disturbances, when not treated adequately, may manifest themselves through "symptom behaviors," which express themselves in a criminologic ambience in criminal acts.

From the clinical point of view, it may be difficult to understand in what way a psychiatric problem, be it defined narrowly or broadly, may compromise the capacity to intend or to will, *a priori*. In fact, this is not an easy matter. There is a controversial and arguable connection between psychopathologic categories and judicial aspects (psychopathologic-normative criteria); such a link was ignored

by the positive school. In the cases in which a crime is committed during a delirious episode or an acute confusional state, it is clear that the capacity to intend and to will was compromised. In these instances, the state of consciousness of the individual is more or less gravely compromised and the entire personality is disorganized. In this state, automatic behavior may be induced, which may be completely separate from understanding, planning, or analysis, and whose destructiveness, either against self or others, is beyond the possibility of control and integration with conscience and understanding.

On the other hand, it is very difficult to argue that the person in a delirious state who offends or harms the person whom he believes to be his persecutor does not realize that what he is doing brings a real harm to the victim; in fact, what he wants to do is to cause damage to that person or those persons who for a long time have caused him, according to his pathologic way of decoding reality, to suffer humiliation and offense, by poking fun at him, betraying him, and through other additional public and private derisions or damages in many other ways.

In these cases, the ill individual states that his actions have been actions of liberation, and he is prepared to do them again even if he loses his liberty; he did not have the capacity to act otherwise, as he himself says when questioned that no alternative actions were available to him.

It is evident that when the depressed individual kills someone he cares for as a gesture of altruistic murder, with the aim of preventing prolonged suffering, he

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knows he deprives him of life and with such a plan in mind, a plan which has been long considered, the depressed individual tries to reach the desired end. The reasoning of these ill individuals is always the same: "How could I leave that person alone?"

In addition, the mentally retarded and the organically mentally ill (setting aside extreme or terminal cases) can, more or less, maintain their capacity to understand the meaning of their actions or omissions; they know, although in a different way, that stealing or harming others means triggering social reactions that are not favorable to them.

What many of the mentally ill are not capable of and do not know how to do, if the functioning of the ego is compromised in an acute or persistent manner, is operate to make responsible and autonomous choices, attributing a negative social value to their actions. This happens because their behavior is just a symptom or an epiphenomena of their mental pathology; if this pathology were absent, none of these acts would have happened in that same way, and if they had happened, they would have been able to justify it in a completely different way.

Obviously we want to refer only to those cases where the crime can be ascribed, with good reason, to the mental pathology of the ill individual and can be regarded as a symptom of the mental disturbance; when such a causal relationship is lacking, even the mentally ill individual may be considered as imputable for the crime that he has committed.

A psychodynamic formulation, in and of itself, is inadequate to prove the pres-

ence of a significant infirmity. In addition, there must be a clear link between the signs and symptoms of the mental disturbance and the performed act. Therefore, writing sentences like "Since the individual acted as a result of motivation which derives directly from the pathologic organization of his personality, his criminal behavior may be regarded as a direct cause of either total or partial mental impairment (*vizio di mente*)" is not appropriate. The principle affirmed and supported by the positive school that there is an equivalence, never demonstrated, between madness and absence of imputability has been completely superseded and lacks any scientific validity.

The forensic psychiatric evaluation goes in a completely different direction when, on the other hand, due to the loss or the grave pathologic compromise of the integrative functions of the ego, an individual loses the ability to adequately analyze external stimuli and respond appropriately (as opposed to responding with criminal behaviors). The mentally ill individual, in other words, acts because, at the time of committing the act, he could not formulate an alternative cognitive hypothesis and was not able to act differently. The mental pathology of the individual manifests itself in psychopathologic symptoms (clinical evaluation) and/or in a particular way of intending and willing that criminal behavior (normative evaluation). It is in the latter cases that the capacity of analysis, criticism, or choice may be lacking or gravely impaired, since the autonomous functioning of the ego has been pathologically com-

promised with respect to the specific crime (forensic evaluation).

The significance of the illness (*valore di malattia*) does not emerge from the fact that the individual does not know that he has killed his presumed enemy (setting aside those crimes that occur during a complete confusional state), but from the fact that the ill individual finds the acts that he has committed completely legitimate, dutiful, liberating, and unavoidable: for example, in a persecutory delusion or in a major depressive episode; another example, not in not knowing that he has signed a general affidavit, but in not realizing as a result of the pathologic defect of the functions of analysis, criticism, and judgment, that he has signed something important and that this has resulted in the loss of the possibility of managing his own money. It is the autonomous and fundamental functions of the ego that are pathologically distorted. These functions, whose integrity, in so-called normality, permits the individual to analyze with sufficient precision, criticize with substantial objectivity, and make judgments that are consistent with reality, give valid consent, formulate hypotheses that are verifiable, and having the capacity to distinguish prejudice and preconceived ideas and data from reality, using experience acquired to correct impressions or convictions that are founded on emotional factors, give answers that can be seen as expressions of the functioning of intelligence, and are integrated and coherent with the socially approved models of behavior, and at least not directly against the legal norms; finally, to provide an adequate response to the attempts on the

part of others to influence, threaten, pressure the individual. To this point, the discussion has involved extreme examples of mental pathology. Between the extremes of the gravely pathologically mentally ill or those individuals who suffer from acute psychopathology, and the individuals who are considered normal, there is a great difference and a number of gradations, which are the most frequently found. It is in this large area, this gray area, that the requests for expert forensic psychiatric evaluations usually occur.

Even in the area of normality, there may be important differences. There are individuals who have a strong emotional response to life and these people may also have some difficulty in interpersonal relationships. They organize their environment with an "as-if quality" and, of course, they have some impairment in their capacity to objectively analyze their circumstances and to arrive at their decisions in conduct. Consider crimes committed, for instance, in an emotional, passionate state. We know how important emotions are in a subjective vision of the world. But on the other hand we have to constantly relate these subjective experiences to the objective facts. When the incapacity to adequately analyze and deal with reality occurs as a result of mental pathology, the interior life of the individual becomes progressively disorganized and the individual winds up in a world populated by fear, fantasy, and anxieties. It is clear that to have this view of reality does not mean that the individual is necessarily mentally ill: it is sufficient to have a certain attitude toward life that has been created through distortion of emo-

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tional and intellectual development during the first years of life, that is being reinforced and maintained with minor and major objective suffering, having negative reinforcement in instances where the individual tries new ways of dealing with the world, and is therefore stressed or traumatized. The psychodynamic theory and the anthropologic-phenomenologic theories on one side, and the sociocriminologic theories on the other side, have made contributions to the elucidation of this problem.

In all these cases, however, a behavior that is the result of psychological, socio-cultural, conflictual, economic causes that interrupted harmonious development of the self has nothing to do, or should have nothing to do (within our penal code), with mental impairment, or we have the risk of hyperpsychiatrization of all behaviors that are different from the concept of normality, which becomes more and more difficult to define and circumscribe. In a legal context, the concern of the psychiatrist must be circumscribed and limited to those cases in which it can be demonstrated that the psychiatric disturbance is the result of a precise clinical entity, and in this circumstance one might diagnose "significant mental illness," relevant in the forensic psychiatric examination: in the sense that that disturbance had a role in the commission of the act, which the individual would not have done, with any reasonable likelihood (*con ragionevole probabilità*), if he were free to act without the effect of the "significant mental illness."

The individual is acting freely and autonomously if the functions of the ego are

not compromised by pathologic psychic causes (e.g., the American concept of irresistible impulse). The Napoleonic Code stated: "There is no crime whenever, at the moment of committing the crime, the individual finds himself in a state of dementia, or he has been moved to the crime by an irresistible force." In Fornari's opinion, the irresistible impulse decreases the imputability of the individual only when it is part of and a symptom of a mental disease or, at any rate, a result of a psychopathologic problem that has the significance of mental illness; not when it is part of a lifestyle of an individual and, aside from the impulsive nature of the crime, the individual turns out to be healthy.

In its historical evolution, the problem of the "irresistible impulse" has been faced using four descriptive interpretations: (1) monomania, (2) moral insanity, (3) homicidal dyscontrol, and (4) marginal syndromes. The last two represent more modern views, not clearly usable by the forensic psychiatrist, which attempt to understand the impulsive conduct of the individual, should it not fall within the known categories of mental illness, that is: endogenous psychosis (cyclic, schizophrenic, cycloids, mixed, and paraphrenics); organic psychoses (traumatic, toxic infective, toxic tumors, degenerative vascular and epileptic); and mental retardation (grave and mild).

In other words, each individual who breaks the law must be considered healthy and responsible unless the contrary is proved. In the context of the forensic psychiatric evaluation, in my opinion, the disturbances that create a mental

impairment (partial or total) are only those that involve pathologic alterations of the functions of the ego, which express themselves symptomatically in the criminal act and, for that reason, take on the significance of a mental illness. Without this, an individual who is mentally ill may be found responsible. It should be clear that mental illness and illness value are two concepts that are not identical. Here the notion of imputability, which is not clinically clear and is susceptible to controversy in its interpretation and application, may be better substituted for by the notion of responsibility, which may be full, or decreased, or excluded, depending on the absence or presence of certain psychiatric pathology, which affects the criminal act. This shift in perspective might be justified on a different dynamic structural concept: the functional autonomy of the ego. The ego is that infrastructure of the personality that is defined by its functions: (1) cognitive; (2) organizational; (3) provisional (ability to plan, evaluate consequences, and predict outcomes); (4) decisional; and (5) executive (triggering the behavior that leads to the intended goal).

This notion of the ego with all these functions does not fit in well with the legal requirement of describing, intending, and willing because there are many more functions to the ego, and this is another reason why the concept of imputability should be replaced by the concept of person responsible, intended as the capability and possibility of the individual

to act in a socially and culturally acceptable way, autonomously and freely. It is clear at this point that there can be different uses of the concepts of "mental illness" and "significance of mental illness" by clinical psychiatry and forensic psychiatry. Clinical psychiatry is the evaluation of the symptoms and the therapy. Forensic psychiatry involves the evaluation of the responsibility regarding the criminal actions of the individual. Therefore, there is a difference between "mental illness," which is clinical, and the "significance of the mental illness," which is forensic. DSM-IV, using a multiaxial diagnosis, increases the number of issues that must be kept in mind when formulating a psychiatric diagnosis. DSM-IV creates the possibility of considering non-psychiatric existential phenomena as psychiatric. DSM-IV amplifies the semantic and operational concepts of mental illness, reinforcing, maintaining, or creating (particularly when used in criminology or forensic psychiatry) a pathological frame that should be more and more circumscribed. Therefore, Fornari proposes to regard as relevant mental pathology, for forensic purposes, only those psychopathologic systems that are contexts in which the crime, for quality or quantity of expression, may assume a clear and convincing "significance of mental illness."

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