

Comparative Forensic Psychiatry: I. Commentary on the Italian System

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In a world that is becoming more interconnected, forensic psychiatrists can learn a great deal from the study of comparative forensic psychiatry. Comparative forensic psychiatry is difficult because we are separated not only by different legal systems and forensic concepts but often by language. Comparative forensic psychiatry has the potential not only to inform discussion between forensic psychiatrists from different nations but also to help each of us better understand the system within which we work. This is encouraged because the dialogue requires that we explain what we do and why we do it. Of further help is the perspective that is provided by reviewing a system in another nation and asking questions in that context. These same questions may travel successfully when we return to considering our own medicolegal sys-

tem and, therefore, provide us a broader perspective whereby we can study and understand ourselves more fully.

Both the legal and forensic psychiatry systems in many European nations have been influenced significantly by the work of Cesare Beccaria (1738–1794) and Cesare Lombroso (1836–1909). In 1764, Beccaria¹ published *Dei Delitti e Delle Pene (Crimes and Punishments)*, which provided the first criminologic treatise on punishment. In Beccaria's view, criminal acts were the result of the exercise of free will, and required punishment or penal sanctions. He favored penalties aimed at fostering public safety. However, he opposed many of the punishments given those convicted of crime. He described many of them as barbaric, especially capital punishment. Beccaria argued that effectiveness of punishment to deter crime depended not on its severity but on its certainty. His book was translated into many languages. He influenced the utilitarians, including Jeremy Bentham, and encouraged the death penalty opponents in Great Britain.

Lombroso, the father of criminal an-

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thropology, may be viewed as the forerunner of modern neuroanatomical, behavioral genetic studies. Lombroso identified physical features that he believed were characteristic of criminal man, and he established the positive school of criminology, which was characterized by the assumption of determinism. This determinism stated that the offender should not be punished for his offense because he could not have done otherwise; that is, the offense resulted from his genetic predisposition. Therefore, justice required that security measures be taken that would prevent the individual from committing other crimes. The offenders could be released when treatment had effectively diminished their social dangerousness; however, Lombroso was not optimistic about achieving remission and release. The positive school of criminology of Lombroso and Ferri² opposed the classical school of criminology, founded by Beccaria, which viewed criminal acts as resulting exclusively from free will and requiring punishment or penal sanctions.

This tension and dialectic between the classical school of Beccaria and the positivistic school of Lombroso resulted in the establishment in Italy of Rocco's Penal Code in 1931. In an attempt at compromise, this code combined the two schools; it created a role for both free will and determinism. The courts were to judge to what extent an act was the result of free will and required punishment, or was the result of some predetermined disposition that required "incapacitation" and treatment for social dangerousness.

Italian forensic psychiatry, influenced strongly by Lombroso, became the province of those specialists who had an interest in psychiatry or psychiatrists who studied criminal anthropology. In academic centers, forensic psychiatry was taught by professors of Legal Medicine or professors of Criminal Anthropology.

In the late 1970's Italian forensic psychiatrists asked whether there should be a change in the name of their discipline to reflect more closely their training and practice. Fornari's text represents an effort by a forensic psychiatrist to assist in the transition from the tradition of criminal anthropology to modern forensic psychiatry. While Italian forensic psychiatry seeks to move from its roots in criminal anthropology, it may have something to say to American forensic psychiatrists about the value of criminology, sociology, and anthropology and to our understanding of criminal behavior and the role of mental illness in that behavior.

Ugo Fornari, MD, is a prominent, well respected Italian forensic psychiatrist who is Professor of Forensic Psychopathology at the University of Turin School of Medicine (Turin, Italy). We undertook the translation of a chapter from Professor Fornari's text, *Compendium of Forensic Psychiatry*,³ to make it available to an English-speaking audience and to encourage efforts in comparative forensic psychiatry.

In the first part of the chapter, Fornari describes the court-ordered psychiatric examination in Italy, which is known as the *perizia*. The *perizia* asks the forensic psychiatrist to provide answers to these three questions: (1) is the accused com-

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petent to stand trial?; (2) is the accused criminally responsible?; and (3) is the accused socially dangerous (dangerously mentally ill)? It is of interest to see how the Italian legal system has dealt with issues of responsibility, the effects of intoxication, being a minor, and mental retardation. If called to testify on the issue of criminal responsibility, the forensic psychiatrist in Italy is also asked to testify about the individual's social dangerousness.

In the last part of the chapter, Fornari wrestles with the issue of the significance of mental illness in the context of forensic psychiatry. He seeks to distinguish "abnormal variations of the psychic state" from true mental illnesses, leaving the latter for consideration in a forensic setting. He concedes that there are those psychiatrists who consider the full range of psychiatric difficulties as forensically relevant. He then offers a definition of mental illness and seeks to apply it to forensic settings, providing case examples. He points out that between the extremes of the gravely mentally ill and those individuals who are considered normal, there are gradations in which the forensic psychiatrist's psychiatric evaluations often occur, in Italy as in America. Given the tradition of Lombroso and Ferri, it is not surprising that Fornari looks to anthropologic and phenomenologic theories, along with psychodynamic and sociocriminologic theories, in an effort to understand criminal behavior and the role of mental illness in these criminal acts.

Fornari concludes by drawing a distinction between mental illness, which he

considers a clinical determination, and the "significance of the mental illness" in a legal context, which he considers the focus of forensic psychiatric evaluation. In his view, the American Psychiatric Association's DSM-III⁴ (now DSM-IV) amplifies the semantic and operational concepts of mental illness and argues that psychiatric diagnoses should be limited to, for forensic purposes, only those circumstances in which the psychopathology results in a "significance of mental illness." We can see from this chapter that Fornari is trying to adapt advances in the diagnosis and understanding of psychiatric disorders to a sometimes vague legal criterion, and seeking to operationalize the work of the forensic psychiatrist. In doing so, he challenges some of our assumptions and forces us to examine our own procedures. The Italian approach appears to avoid the spectacle of the district attorney and the defense attorney arguing one position at the trial to determine criminal responsibility and, if the accused is found not guilty by reason of insanity, arguing the opposite position at the hearing to determine if the individual is dangerously mentally ill. The Italian forensic psychiatrist testifies fully regarding the findings of the forensic psychiatric examination and the opinions that flow from that examination—both as to criminal responsibility and dangerous mental illness—at the same trial.

We hope that this beginning attempt at comparative forensic psychiatry will be taken up by others. We think that this effort will lead us to better understand ourselves as well as others, and it has the potential to improve our field.

References

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