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CRIME AND MADNESS AT THE OPPOSITE SHORES OF THE ADRIATIC: MORAL INSANITY IN ITALIAN AND CROATIAN PSYCHIATRIC DISCOURSES

ZLOČIN I MENTALNI POREMEĆAJ NA SUPROTNIM OBALAMA JADRANA: MORALNO LUDILO (MORAL INSANITY) U TALIJANSKIM I HRVATSKIM PSIHIJATRIJSKIM DISKURSIMA

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SUMMARY

In the 19th century, fervid debates arose in the young psychiatric science about how to deal with and to scientifically categorize human behaviour which was perceived as dangerous to society, and as criminal. There were two concepts that stood out in these transnationally held discussions; namely moral insanity and later on, psychopathy. Following recent approaches in the cultural and social history of psychiatry, we understand moral insanity and psychopathy as social constructs, which are determined by the evolution in psychiatric knowledge, and also by laws, codes and social norms of particular historical timeframes. Our task is to discuss the evolution and adoption of these concepts in two linguistically

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different, but still historically profoundly entangled regions, namely in Italian and Croatian psychiatric discourses at the turn from the 19th to the 20th century. Our analysis of two of the most important medical and psychiatric journals of the time shows that psychiatric debates on antisocial and criminal behaviour were in numerous ways entangled and shaped by the way the two societies scientifically, legally, and institutionally struggled over the question of how to detect and control the mentally incapacitated criminal offender.

Keywords: moral insanity, psychopathy, *Liječnički vjesnik*, *La rivista sperimentale di freniatria*, degeneration, history of psychiatry.

INTRODUCTION¹

Since the formation of psychiatry as a science at the beginning of the 19th century, psychiatric categorisations have been fluid. The changes that occurred in the novel science of psychiatry were rapid and sometimes radical, which is particularly evident in the case of mental deficiencies linked to antisocial and criminal behaviour. In a time of radical economic, political and social mutations, when well-being came to be understood in terms of the health of society the relation between crime, madness and ‘normal’ behaviour was seen as crucial. Moreover, as soon as it entered psychiatric and jurist debates, this relationship and the way in which it was interpreted changed and developed. More than other debates in psychiatry, the question of moral insanity shaped the profile of ‘a medical science’ which was ‘clenched between the choice of criminalisation and that of pathologisation.’² The concepts linked to what has been considered a ‘moral’ disorder, degeneration, psychopathic constitution, or personality, have been even more susceptible than other ‘deficiencies’ of multifaceted interpretations, categorisations and applications.

In our analysis, we understand both moral insanity and psychopathy not merely as fixed psychiatric and medical entities, but as social constructs that were fluid over time. Thereby, their social constructedness was determined by evolutions in psychiatric knowledge, but also through processes of categorisation and of differentiation of mental disorders, which have not been exempt from specific historical circumstances, development of codes, laws,

¹ The Croatian Science Foundation (HRZZ) funds our research that is a part of the project: Classification and explanations of antisocial personality disorder and moral and legal responsibility in the context of the Croatian mental health and care law (CEASCRO), grant n. 8071. The authors would like to thank the leader of this project Luca Malatesti, John Ashbrook and the anonymous reviewers for their comments on the previous version of the text.

² Babini 1982: 168.

institutions, and social norms. This was particularly true for conditions linked to an assessment or consideration of what ‘morality’ meant.

Our intention is to engage in the discussion of moral insanity and concepts related to it and about the psychiatric discourses on how transgressors of social norms had to be treated and handled. We analyse how these concepts were shaped and negotiated in scientific debates and were intended to be applied on both sides of the Adriatic Sea from the middle of the 19th to the early 20th century. We hope to contribute to the debate on the history of antisocial disorders, from moral insanity to psychopathy, which is particularly relevant today.³

Our working hypothesis is that the two sides of the Adriatic shared a common cultural and scientific basis. Influences from France, Germany, the Habsburg Empire, and Britain shaped 19th century developments of psychiatric concepts and medical practises across Europe. The beginnings of the Italian and Croatian psychiatric discourses were imbedded in a flux of scientific knowledge that was, therefore, transnational. Italian psychiatry moved its first steps in Habsburg Lombardy, with the mid 19th century Milan being the epicentre, although it was in Italian state that this discipline fully grew. Both Italy and the Habsburg Empire, of which Croatia-Slavonia, with other Croatian and Italian speaking territories, was part until 1918, produced, absorbed and exported knowledge in psychiatric science. Although the flow of ideas and new knowledge was strong from the very beginning, the adoption of these ideas in local settings was also restrained and shaped by local circumstances, laws and institutions regulating how to deal with psychiatric patients and individuals who displayed abnormal social or criminal behaviour. Therefore, in our analysis we will focus not only on the evolution and development of the concept of moral insanity in the 19th century, but on how the Italian and Croatian speaking psychiatric communities took part in shaping and adopting these debates to suit their local and nationalising psychiatric environments. It becomes obvious that psychiatric debates were (and are) very much entangled and shaped by the way societies debate, and legally and institutionally solve questions on how to deal with criminal offenders.

We begin with a discussion of moral insanity and psychopathy as they evolved as psychiatric concepts in Europe of the 19th century. We then move into an analysis of the developments of these concepts, in particular moral

³ For a recent discussion with the case studies of England and France see Jones 2017.

insanity, in the psychiatric discourse on the two sides of the Adriatic, following the steps of the leading Croatian and Italian journals dealing with topics regarding psychiatry: *Liječnički vjesnik* for the Kingdom of Croatia and Slavonia, and *La rivista sperimentale di freniatria e di medicina legale* in Italy.

MORAL INSANITY, DEGENERATES, AND CRIMINALS

Phillipe Pinel's *Medico-philosophical treatise on mental derangement* (1801) is usually considered as the beginning of the scientific study of psychopathy as a personality disorder.⁴ His nosological system included the concept of a *manie sans delire* (mania without delirium), a disorder in which an individual is engaged in impulsive dissocial violent behaviour that he cannot control while his intellectual capacities remain undisturbed. In this instance his comprehension of his acts is intact. This concept marked a break with tradition that considered insanity to mean, by definition, a loss of reason.⁵ It is interesting to note that Pinel was morally neutral regarding the social condemnation of these individuals⁶, an attitude that sharply changed in the upcoming decades.

Benjamin Rush introduced the concept of 'moral derangement' (1812), a hereditary condition that should be treated in medical institutions. With this term he indicated

'a state of mind in which the passions act involuntarily through the instrumentality of the will, without any disease in the understanding'.⁷

The concept was akin to Pinel's in the sense that it represented an unmotivated, involuntary and at the same time unscrupulous and aggressive act, but included an important twist; it was value laden as he considered the moral faculty to be a part of the human constitution.⁸ This was the reason why he called such acts 'perversions of the moral faculties' and 'moral alienations of the mind'. Because of this he is considered one of the first that made a step towards a long-standing practice of social condemnation.⁹

The French school of *aliénistes* followed Pinel's path and popularized the idea that acts of violence might be carried out by people who had the

⁴ See for example: Sass, Felthous 2014; Arrigo, Shipley 2001; Jalava, Griffiths, Maraun 2015 disagree.

⁵ Jalava, Griffiths, Maraun 2015: 21.

⁶ Arrigo, Shipley 2001: 328.

⁷ Jalava, Griffiths, Maraun 2015: 24.

⁸ Jalava, Griffiths, Maraun 2015: 24.

⁹ Arrigo, Shipley 2001.

outward signs of normality, but were driven by some flawed belief or impulse.¹⁰ Among them, Jean-Etienne Esquirol developed the concept of monomanias, disorders of the non-cognitive side of personality. Various kinds of monomanias were introduced, among which the affective monomanias designated emotional breakthroughs, which could not be controlled. Esquirol introduced various sub-forms of monomanias: kleptomania, pyromania, erotic mania, homicidal mania, etc.

In 1835 J. C. Prichard expanded the concept of monomania, which he considered to be a partial insanity, and introduced the concept of moral insanity which he defined as a

'...madness, consisting in a morbid perversion of the natural feelings, affections, inclinations, temper, habits, moral dispositions, and natural impulses, without any remarkable disorder or defect of the interest or knowing and reasoning faculties, and particularly without any insane illusion or hallucinations'.¹¹

According to some scholars he disagreed with the morally neutral position of Pinel and opted for a social castigation for those affected by such a defect in personality.¹² However, one should be careful not to overextend the application of the word 'moral' as used by Prichard and other 19th century scholars. Namely, the word bore several meanings and Prichard's 'moral insanity' essentially denoted the affective and volitional part of an individual and it was not synonymous with 'ethical insanity'.¹³

It was Bénédict Morel, in 1857, who introduced degeneration into psychiatric discourse, more from a philosophical and religious viewpoint rather than a 'scientific' one. His theory was based on the three cornerstones: (1) degenerative alterations are pathological deviations from normality; (2) mental diseases are mostly hereditary; and (3) degeneration occurs not only quantitatively, but also qualitatively, resulting in completely new disorders.¹⁴ His nosology of mental diseases encompassed various grades of degeneration, among which we find *folie morale*, a derivate of moral insanity. The whole idea of degeneration was grounded in evolutionary theory, with a twist; degeneration was a manifestation of atavistic traits, heritable and cumulative.

¹⁰ Jones 2016: 55.

¹¹ Sass, Felthous 2014: 46.

¹² Arrigo, Shipley 2001: 331.

¹³ Sass, Felthous 2014: 46; Jones 2016: 51.

¹⁴ Sass, Felthous 2014: 44.

Therefore, it represented a danger, a potential disequilibrium, to the evolution of humankind.

The concept of moral insanity was further promoted by Maudsley (1874), who redubbed it as moral imbecility and argued for an alteration within the legal-juridical framework contending for diminished criminal responsibility of its sufferers. The argument relied on the idea that only those who voluntarily disobeyed the law should be punished. This was not the case for those affected by moral imbecility; they were unable to control their own behaviour, thus they could not be held accountable for their actions. This condition could only be diagnosed by experienced physicians.¹⁵

Degeneration theory gained further recognition and popular acclaim thanks to the work of the Italian criminologist and physician Cesare Lombroso. Relying on the groundwork by Esquirol, Morel, Maudsley, and others, he discussed a biologically determined atavistic life form - an evolutionary throwback characterized by physiological abnormalities of the head, brain, face, limbs and moral aberrations - as prone to crime, aggressiveness, and the lack of remorse or guilt.¹⁶ Lombroso challenged the prevailing 'classical school' of criminological theory, focusing on the individual and replacing the practice of punishment grounded on retributivist premises, with more humane, therapeutic incarceration. To him 'antisocial tendencies' were the result of their 'physical and psychic organisation', essentially different from that of 'normal individuals'.¹⁷ Drawing from Darwin's theory concerning animal evolution and the social reality in human relations, Lombroso linked the criminal to an atavistic creature, characterized by hereditary codes of

¹⁵ Ward 2010: 3.

¹⁶ In 1876 Lombroso published *Luomo delinquente* (The Criminal Man). This book was reissued several times and it underwent substantial changes especially in the 1884 and in the 1886 edition.

¹⁷ In the schematic words of his daughter, 'The Modern, or Positive, School of Penal Jurisprudence' that Lombroso sponsored in Italy, maintained that the antisocial tendencies of criminals are the result of their physical and psychic organisation, which differs essentially from that of normal individuals; and it aimed at studying the morphology and various functional phenomena of the criminal with the object of curing, instead of punishing him. The Modern School was therefore founded on a new science, Criminal Anthropology, which may be defined as the Natural History of the Criminal, because it embraced his organic and psychic constitution and social life, just as anthropology does in the case of normal human beings and the different races. (Lombroso-Ferrero, Lombroso 1911: 5.) The classical school rested on an idea that the criminal act is a product of a rational deliberative process of the individual based on his capacity of free will. Lombroso challenged that view and argued that the born criminal couldn't help himself, his dispositions for crime would trigger in specific circumstances and therefore he should not be held responsible for his wrongdoings.

arrested development in the evolutionary line or to a process of degeneration and regression to a primitive mental state.¹⁸ Like many others in the fields of medicine and anthropology of that time, Lombroso thought of specific human traits as instances of delinquency, believing that ‘physical traits constituted visible signs of interior psychological and moral states’.¹⁹ The atavistic characteristics imprinted in the individual made him impervious to reform. Society, therefore, had the right to defend itself from the most atrocious criminals by using capital punishment.

Lombroso and his school, which represented the criminological branch of degeneration theory, influenced not only criminalists, but also scholars studying the relationship between mental illnesses and social safety, a topic that gained interest in expanding urban societies, since the deviant, the maladjusted, and the abnormal were associated with danger for the ‘normal’ individual and society. The connected development of the legal, medical, and social sciences reflected the sensitivities of the upper social strata, who felt increasing social pressures from below. Regardless of the criticisms of Lombroso’s work, which appeared already at the end of the 19th century, the 1911 English edition of the *Born Criminal* (a summary of his ideas by his daughter) was generally well received, especially in law journals.²⁰ He had a continuous appearance in Italian media, as habitual scientific commentator of the leading Italian newspapers, such as *Corriere della Sera*, *La Stampa*, and *Gazzetta del Popolo*, but also on *L’Adige*, *La Riforma*, *Il Giorno*, *Il Progresso*, and *l’Avanti*.²¹ His work continued to influence criminologists until World War II, and his ideas transcended academia, with a significant impact on popular culture and literature.²² Not only banalisation, but also radicalization of his ideas, well fit in the interwar intellectual and academic discourse. According to Nicole Hahn Rafter, Lombroso wrote of heredity as ‘*the principal organic causes of criminal tendencies*, but he hesitated to predict that born criminals would invariably produce criminalistic children’, and his research ‘gave rise to a new social control speciality, that of criminologist’.²³

After a critical examination, the Italian psychiatrists and psychologists who followed his footsteps, as well as Lombroso himself, added social and

¹⁸ On this see Mazzarello 2011.

¹⁹ Lombroso consequently promoted the studies of anthropometry and physiognomy, of which, nonetheless, he was not the only advocate. Gibson, Rafter 2006: 9.

²⁰ Lombroso-Ferrero, Lombroso 1911.

²¹ Forno 2010: 207.

²² Covey 2009: 1386. See also Rodler 2012, and the introduction Gibson, Rafter 2006.

²³ Rafter 1997: 11.

environmental elements to the notion of the born criminal. However it must be stressed that the atavistic, regressive and degenerative traits still prevailed in the theory of the born criminal. Lombroso, a humanitarian socialist, and a number of other social reformers and philanthropists,²⁴ were preoccupied by the 'dangerous classes', the marginalized vagabonds, criminals, beggars, homeless and prostitutes, who could provide full force to radical and uncontrollable revolutionary momentum.²⁵ Interestingly, Lombroso had a benign view of anarchists because of their ideals, but he still considered them mentally ill.²⁶

Lombroso adopted Krafft-Ebing's theory on moral insanity, and while he was preparing the new edition of *L'uomo criminale*, he debated this topic in the journal he founded in 1880: *L'archivio di psichiatria e antropologia criminale*.²⁷

DEBATING MORAL INSANITY IN ITALY AND IN CROATIA-SLAVONIA

THE ITALIAN DEBATE ON MORAL INSANITY: THE CASE OF *LA RIVISTA SPERIMENTALE DI FRENIATRIA E MEDICINA LEGALE*.

Debates on moral insanity had already appeared in the first Italian journal that specifically addressed psychiatric issues, the *Archivio italiano per le malattie nervose e più particolarmente per le alienazioni mentali*, established in 1864.²⁸ Nevertheless, it was the establishment of *La rivista sperimentale di freniatria e medicina legale, in relazione con l'antropologia e le scienze giuridiche e sociali*, in 1875 that marked the beginning of a new era for Italian psychiatry, offering a much needed space for the discussion on moral insanity.

Although it was not the first publication on psychiatry, *La rivista sperimentale di freniatria* became the official journal of the Italian association of psychiatrists, established in 1873 as *Associazione italiana di freniatria*. The new founded journal and the association were the outcomes of a long

²⁴ Such as Charles Brace or the Presbyterian minister Howard Crosby.

²⁵ Brace 1872; Crosby 1883; Chevalier 2000.

²⁶ Ferrarotti 2002: 137; Ferrarotti 1972.

²⁷ The journal appeared originally as *Archivio di Psichiatria, antropologia criminale e scienze penali per servire allo studio dell'uomo alienato e delinquente* (Archive of psychiatry, criminal anthropology and criminal sciences to serve the study of the alienated and the criminal). It started with 68 collaborators but in ten years reached more than a hundred, among which were many foreign scholars. See Gibson, Rafter 2006: 3. On the links between the concepts of born criminal and moral insane in Lombroso see Palano, 2002: 93-97. For Lombroso's writings on moral insanity see Lombroso 1882, 1884, and 1886.

²⁸ See, for instance, Verga 1880: 161-169.

struggle of the Italian alienists which aimed for a social, scientific and juridical recognition of the discipline of psychiatry within the new founded state.²⁹ The first efforts can be traced back to the Habsburg Milanese circles of alienists which, since 1852 started to publish in the *Appendice psichiatrica*, a supplement of the local medical journal *Gazzetta medica*.³⁰ Only after the unification of Italy (1861), such a project could be fully set in motion. It consisted of several different steps, which would come to life in the following decades: the introduction of a legislation that would protect the mentally ill, the adoption of a uniform classification of mental illnesses to be used by the practitioners, a creation of a system of statistical records of the mentally ill of the new kingdom, and the establishment of a specialized scientific association.³¹

While the law that regulated the asylums and the mentally ill was to be introduced only in 1904, the *Società freniatria Italiana*, its congresses and its journal *La rivista sperimentale di freniatria*, provided the arena for a discussion of the above mentioned issues and a platform for the full recognition and legitimization of the young science.

From the name of the newly established journal the general direction of Italian psychiatry can be reconstructed. The terms ‘freniatria’ and ‘freniatria’, used as the name of the association and of the journal, indicate the general scientific worldview adopted by the Italian alienists: instead of dealing with the ‘psyche’, a term that bore a heavy philosophical burden because it related to the concept of the platonic soul, they preferred to use a term that would relate to the complexity of the dynamical forces of the organism and therefore would underline a materialistic and organicistic approach.³² The term ‘sperimentale’ had the same purpose to underline the experimental method as used in science. The term ‘medicina legale’ reflected the ambition to be recognized as an interlocutor in matters of criminal affairs related to the realm of insanity. The usage of the word ‘anthropology’ in the title indicated a connection with the Lombrosian school of criminal anthropology.

Lombroso himself as well as Golgi, Verga and countless other relevant Italian and foreign authors published in it, making it a meeting point of Italian and European psychiatry.

²⁹ Muniz 1982: 28.

³⁰ De Peri 1984: 1083.

³¹ Muniz 1982: 29-30.

³² See Fiorino 2002: 65-66 and Tagliavini 1982: 83.

From its very beginning *La rivista sperimentale di freniatria* offered a vivid discussion on moral insanity, a concept that was sometimes dubbed as 'so obscure in arguments that it was so natural that many conclusions remained unclear'.³³ In the period between 1875 and 1900 almost forty scientific articles, book reviews, congress presentations, and medico-legal expertise were published on this topic. The debate on moral insanity was particularly intense in the first twelve years of the journal. Some of the most prominent Italian psychiatrists of that time, such as De Sanctis, Tanzi, Verga, and Tamburini published here their articles on this topic, and the journal hosted also contributions from notable European psychiatrists, such as Krafft-Ebing.³⁴

La rivista sperimentale di freniatria dedicated much space to the question of the definition of moral insanity, its ramifications, subcategories and other related questions. Basically, it reflected one of the main interests of Italian psychiatrists at that time. For example, during the *Fifth Italian Freniatic Congress* held in Siena in 1886 four presentations that discussed the notion of moral insanity were covered. A short summation of these presentations was presented in number XII of *La rivista sperimentale di freniatria*. Here, Andrea Verga (1811-1895), a psychiatrist from Milano, described the basic characteristics of the disturbance and discerned two kinds: one in which the individual recognizes the crimes that he commits, and one in which he does not. In his exposition he also presented the results of the four censuses done in Italian hospitals for the mentally deranged and concluded that moral insanity presents itself more frequently among males.³⁵ At the same congress further refinements of the concept were suggested. Brajon presented a case of moral insanity and argued for the adoption of a novel nosological entity: consecutive moral insanity 'follia morale consecutiva'.³⁶

In the third and fifth volumes of *La rivista sperimentale di freniatria*, Clodomiro Bonfigli (1838-1919)³⁷ questioned the basic essentials of the definition and the relationship between uncompromised intelligence and moral insanity. To be more precise, he asked whether it is possible for moral insanity to limit itself only to moral sentiments without compromising the intelligence of the subject. Bonfigli wanted to introduce the term partial imbecility 'imbecillità parziale' due to the fact that if what he suggested turned out to be true, then moral insanity would have to be an aspect of dementia and/or

³³ Tanzi 1884: 266.

³⁴ Krafft-Ebing 1876: 101-106.

³⁵ Verga A. 1886: 226.

³⁶ Brajon 1886: 227-228.

³⁷ Bonfigli 1877: 551. Bonfigli 1879: 41.

imbecility. In the same volume this notion was criticized by Arrigo Tamassia (1848-1917).³⁸ The whole discussion on this issue was judged by Eugenio Tanzi (1856-1934) as 'a model of chivalric courtesy and dialectical vigour but without palpable results'.³⁹ A definition of moral insanity was given by the first editor of the journal and the director of the Reggio Emilia asylum Carlo Livi (1823-1877), who thought of it as:

'a morbid, true, real, palpable fact in the mental asylums, a chronic brain disease, determined by the primitive, basic damage of one of the faculties of the human intellect [...] is born with the unhappy person who leads and does not ever heal; the moral insane was born willing, and naturally molded to wrongdoing, an inherited germ, a crazy vein in these individuals, who pay, without knowing it, the retribution of the infirmities or the sins of the parents; Moral insanity has special morbid causes, among which the poor hereditary disposition prevails'.⁴⁰

Livi's evaluation was a consequence of his experience as director in Reggio Emilia, which was to become the third Italian criminal asylum in 1892, after Aversa, near Naples (1876), and Montelupo Fiorentino, near Florence (1886).⁴¹ It is important to stress out that the majority of the members of the Italian freniatric association, which often were the authors that appeared in *La rivista*, were directors and/or psychiatrists working in mental asylums or criminal asylums. The asylum as an institution thus provided the material, infrastructural and scientific base of the new founded science.⁴²

The problems of a precisely defined concept had negative consequences not only for the efforts of classification but also for the diagnostic practices. At congresses and in articles 'errors' in diagnoses were discussed, such as the confusion between moral insanity and other mental illnesses. At the fourth Italian Freniatric Congress Paolo Funaioli (1848-1911) presented a case of a wrongly established diagnosis of moral insanity, which had been mistaken for paranoia.⁴³ According to Funaioli, the mistake was due to a failure of a younger colleague in detecting the essential characteristics of the diagnosis of moral insanity. Funaioli's younger colleague had failed to notice that one of the essential characteristics of moral insanity was missing: the presence

³⁸ Tamassia 1877: 158.

³⁹ Tanzi 1884: 269.

⁴⁰ Fornari, Coda 2000: 193.

⁴¹ On criminal asylums see Borzacchiello 2005.

⁴² See the list of the members of the Italian freniatric association. *La rivista di freniatria* 1894: 85-92.

⁴³ Funaioli 1886: 79.

of a deficiency of the moral sense. In the same issue of *La Rivista* Andrea Verga also reported on the problems one could encounter while diagnosing moral insanity.⁴⁴ These problems were partly due to the inexistence of a universally adopted classification of mental illnesses, a problem that troubled the psychiatrists. They believed that a stable classification would help the practitioners to homogenize diagnoses, therapies and restraining methods, would offer a more solid institutional base for financial support from the state and for a legitimization of the young science in search of scientific and social equivalence with other medical disciplines.

A need for a revision of the classification system was therefore frequently addressed. In 1886 Italian psychiatrists were also invited to an international debate meant to produce a new classification of mental disorders, and moral insanity was included as a category *per se* along with eight other mental disorders or groups of disorders.⁴⁵ Nevertheless, the uncertainties regarding the usage and definition of moral insanity were apparent: in 1874, i.e. only a year after the establishment of the *Società freniatria italiana*, Andrea Verga had suggested a classification of mental disorders for statistical purposes, in which *folia morale* was among the ‘acquired’ diseases (*acquisite o frenosi*).⁴⁶ In 1901, when Sante De Sanctis (1862-1935) proposed a new classification of mental illnesses, in a long celebrated contribution at the eleventh congress of the association in Ancona, moral insanity appeared under the rubric of ‘congenital’ (and not the ‘acquired’) psychoses.⁴⁷

Another issue that characterized the debates of Italian psychiatrists was the relation between moral insanity and Lombroso’s theories. Eugenio Tanzi, a Trieste born psychiatrist, building on Lombroso’s work argued that

*‘there is nothing that can separate this constitutional anomaly from the psychic state of the born and habitual criminal’.*⁴⁸

This argument, which was later shared by Augusto Tamburini (1848-1919)⁴⁹ and others, was grounded on the idea that ethical degradation is a constitutional fact of the same type as colour blindness (daltonism), deafness, dumbness, inversion of the sexual instinct, and others.⁵⁰ Giovanni Battista Verga (1840-1922) at the aforementioned fifth congress of Italian psychiatrists

⁴⁴ Verga A. 1886a: 226.

⁴⁵ Verga A. 1886b: 241.

⁴⁶ Salomone, Arrone 2009: 81.

⁴⁷ De Sanctis 1902.

⁴⁸ Tanzi 1884: 272.

⁴⁹ Tamburini 1886a: 81.

⁵⁰ *Ibid.*: 89.

also spoke about the nature of the relationship between moral insanity and inborn delinquency. He examined six different cases of moral insanity and presented an argument, which relied on Verga's and Lombroso's findings in favour of the idea of an existing relationship between moral insanity, congenital delinquency, and epilepsy.⁵¹ At the same congress Lombroso argued in much the same vein as Verga, adding that he spoke about the morphological characteristics of the individuals affected by such a mental disorder.⁵²

La rivista sperimentale di freniatria had a rubric entitled 'contributions to criminal psychopathy' in which a contribution was given by Tamburini who wrote a lengthy article 'Moral imbecility and congenital delinquency'.⁵³ In the article he discusses Lombroso's identification of congenital delinquency with moral insanity, a notion that Tamburini and Giuseppe Seppilli want to replace with a better one: moral imbecility. This is a replacement of concepts for which Tamburini and his colleague Sepilli had already argued elsewhere.⁵⁴ Regarding the identification of moral imbecility/insanity with congenital delinquency Tamburini writes:

*'But if one enters the dominion of facts, if one runs through the most typical cases of moral insanity, or if one analyzes the clinical findings made by the best scholars (Krafft-Ebing, Solbrig, Stolz), we will immediately notice that everything that has been said regarding moral insanity or imbecility can be perfectly applied to congenital delinquency.'*⁵⁵

In order to provide further proof for that case Tamburini exposes the case of Z., a 26 years old criminal. The anamnesis of his family has been given in order to establish whether there is a hereditary influence, which is confirmed as there are several criminals and mentally deranged persons in his family. Then an accurate description of the crime was given, as well as of his upbringing and past sentences and incarcerations. This is followed by observations given by the medical staff at the mental hospital to which he was secluded and studied. A morphological study of his cranium and face ('esame craniometrico') is performed as well as other bodily measurements and 'objective examinations'. A detailed interlocutory with the patient is presented as well as a psychic examination. In rough outlines this was the standard medical procedure, which was performed at that time, and it can be found

⁵¹ Verga G. B. 1886: 227.

⁵² Lombroso 1886: 228.

⁵³ Tamburini 1886a: 81.

⁵⁴ Ibid.: 81.

⁵⁵ Ibid.: 82.

in various patient files as well. It is interesting to note that the director of the medical facility, in which the patient has been secluded before, gave the diagnosis of acute mania and mania with excesses in fury on the bases of which he was not held responsible for some of his earlier crimes.⁵⁶ On the basis of the above mentioned findings Tamburini offers the following conclusion:

*'This is, in short, the life, the character, the nature of the defendant. What then is this man? Is he an alienated man [a mental patient] or a refined criminal? We do not hesitate to say it: he is both.'*⁵⁷

Finally a diagnosis is given: congenital delinquency or moral insanity. In conclusion it might be said that Tamburini is in full accord with Lombroso⁵⁸ and others regarding the idea that constitutional (congenital) delinquency and moral insanity are one and the same.

The question of moral responsibility of the morally insane was discussed in *La rivista sperimentale di freniatria*. Regarding this issue, Tamburini argues that if for full responsibility for a committed act a normal constitution of the mind is a necessary prerequisite, then a morally insane individual cannot be held fully responsible. However, Tamburini wonders about the safety of society and concludes:

*'it [the morally insane] is to be considered an absolutely dangerous being, predestined for crime and therefore fatally attracted by an impulse to offend the social order and to lesion the integrity of things and persons (...) it is a being which has to be held in permanent seclusion since his cerebral anomaly, which drives him towards crime is permanent, he is to be secluded from society and kept in one of those criminal asylums.'*⁵⁹

Tanzi will also clarify why we cannot say that a person suffering from mental insanity can be held morally responsible. He argues against the 'metaphysicians', which hold that the human spirit can be guided from an internal force, which is immune to all external causal influences, and rather suggests that these external causal influences must affect us and connect us to the external world. Then he reminds us that defects in his constitution prevent the morally insane from regulating various stimuli and thus force him to act on the strongest ones. He cannot choose what to do. In a specific moment he will necessarily act on the basis of an impulse, without any

⁵⁶ Ibid.: 115-116.

⁵⁷ Ibid.: 119.

⁵⁸ Lombroso 1885: 226.

⁵⁹ Tamburini 1886a: 122.

possibility to choose differently and therefore he lacks free will. He knows what he is doing, his intelligence is intact, but he is unfree and consequently not responsible for the deed.⁶⁰

Andrea Verga also argued for the seclusion of the morally insane in the criminal asylums until a proof of their recovery may be given, if that is even possible.⁶¹ As exemplified by Fornari⁶², Verga argued against the detention of the morally insane in the ordinary prisons and suggested the seclusion in specialized institutions as well as the abolition of death penalty for these offenders.

Exactly because of the argumentation given above, a need for criminal asylums has been suggested in the Italian discourse. Since the morally insane are dangerous and a protection of the members of a society is a given fact, then from this follows that secluding the morally insane in a special institution is justified. From a retributivist system in which the criminal was penalized with a punishment that would match his deed, perhaps even a death sentence in the most grievous cases, a need for a change was signalled. This is a change grounded in a consequentialist rationale, a rationale that would prevent further harm to the society by putting aside the potential evildoer without unjustly punishing him for something that he did, something that he could not have avoided doing. The criminal that can be rehabilitated, that could have decided to act in another way, should be held responsible and put into prison, the morally insane unresponsive to this demand would have to be put in a specialized institution. This is the cornerstone of the Italian criminal psychiatry and positivistic criminology. This is an argument that was present in the German discussion as well, in which Julius Ludwig Koch (1841-1908) argued that a new special facility for the psychopathic degenerates should be installed, not a prison or an asylum but rather a completely novel

*'custodial, detention and rehabilitative facility, in which those affected would be housed, not for a specific length of time, but rather as long as their own interest and public security, morality, and order demanded.'*⁶³

This sort of argument opened the doors to the introduction of criminal asylums. From this a further conclusion may be drawn: the logic behind the

⁶⁰ Tanzi 1884: 274-275.

⁶¹ Verga A. 1886a: 226.

⁶² Fornari 1888: 1257.

⁶³ Koch 1891: 139. According to Eghigian 2015: 287.

punitive system correlated with moral insanity was based on a utilitarian rationale: ameliorate the consequences.

In *La rivista sperimentale di freniatria* as well as in the *Liječnički vjesnik* numerous medico-legal reports were printed. The analyses of numerous criminal cases were given by a psychiatrist who had the task to establish whether the offender was responsible for the committed crime. Both in Italy and in Croatia-Slavonia, the report was usually requested by the court in order to have the expert's opinion on the matter. Augusto Tamburini, the psychiatric and director of the mental asylum of Reggio Emilia, in the 1886 volume of *La rivista sperimentale di freniatria* analyzed a woman diagnosed as suffering from lipemania of prosecution with hallucinations, delirium and ideas of demonical content with suicidal and homicidal tendencies who committed a murder. According to Tamburini the woman was not responsible for her crime as the delirium obscured her reason and caused the homicide. Seclusion in a mental health hospital for an indefinite period of time was what Tamburini recommended. The court acted as suggested and a note on that is present at the end of this 24 pages long report.⁶⁴ This was the standard form used in that period. Similar reports regarding moral insanity, moral folly (*follia morale*), monomania or criminal psychopathy can be found in *La rivista sperimentale di freniatria*.⁶⁵ These samples show the vivacity of the discussion regarding moral insanity that was going on in the Italian journals in the second part of the 19th century, particularly between 1875 and 1886. In the following period the debate on this topic was not as intense, and the interest of *La rivista* and of other Italian journals drifted towards other questions, although as a diagnosis *follia morale* was still present in the practice at the beginning of the 20th century.⁶⁶

MORAL INSANITY IN CROATIA-SLAVONIA

In Croatia-Slavonia, the first and until the end of World War One the only mental asylum and later psychiatric hospital opened in 1879 as the 'Royal Regional Asylum for the Mentally Ill in Stenjevec' (*Kraljevski Zemaljski Zavod za Umobolne u Stenjevcu*).⁶⁷ Given that Stenjevec was the only psychiatric asylum and later hospital for Croatia-Slavonia up to until the end of

⁶⁴ Tamburini 1886b.

⁶⁵ See for example: Tamburini 1875; Toselli, Zavattaro 1878; Tamburini, Seppilli 1883, and numerous others.

⁶⁶ Fiorino 2002: 142.

⁶⁷ On the foundation of the hospital see Jukić 2015: 5-15. Stenjevec, as we will briefly call the asylum here, changed names several times, in 1932 it finally became a hospital: 'Hospital for Mental Diseases Stenjevec', in Croatian *Bolnica za duševne bolesti Stenjevec*.

the First World War, had certain implications for the number of psychiatric experts engaged not only in the hospital, but also in psychiatric discussions. Compared to other parts of the Empire and of Europe, the number was quite low. Whereas in France Pinel started at the turn between the 18th and the 19th century to argue for the moral treatment of the insane, and while psychiatry started then to engage with its own professionalization and the 'scientification of the social'⁶⁸ by developing psychiatric concepts for criminal offenders such as moral insanity, in all of Croatia-Slavonia up until the turn to the 20th century there were not even a handful of trained psychiatrists.

Psychiatric discussions on the concepts and understanding of moral insanity, degeneration and psychopathy, were on the ascent twenty years after the discussions had already started in Italian speaking medical journals, namely from the 1890s and well into the first decennium of the 20th century. These discussions were not only conditioned by the circulation of narrower psychiatric knowledge within and outside the Empire. The more legal enactments played a role here, when Croatia-Slavonia enacted in 1874 the first Croatian sanitary law⁶⁹, this law introduced the municipality and district doctors as part of the public health sector.

All these public health physicians were from then on obliged to take over forensic physicians-psychiatric tasks, that is, to provide, when necessary, professional medical and psychiatric expertise to courts and the police.⁷⁰ However, at a time when there were no educated psychiatrists in the country, psychiatric expertise was less than sparse. Ivo Žirovčić (1855-1925) wrote that during the 1870s and 1880s, judges believed that any medical expert was also trained in psychiatry.⁷¹ This was of course not the case, given the fact that in the Habsburg lands psychiatry became a mandatory subject for the final doctor's examination as late as 1903.⁷² Žirovčić continued with a telling example, a case of a psychiatric expert opinion for the court written by two respected doctors without any substantiation or explanation of the diagnosis given (the diagnosis was 'mania varanja', which would be 'fraud mania'); one was specialized in obstetrics, and the other was a surgeon.⁷³ This situation was to change only in 1894 with the installation of the Croatian-Slavonian Sanitary

⁶⁸ Lutz 1996: 165-193.

⁶⁹ *Zakon o uredjenju zdravstvene službe.*

⁷⁰ Žirovčić 1900: 12.

⁷¹ Žirovčić 1933: 3.

⁷² Ledebur 2015.

⁷³ Žirovčić 1933: 3.

Council ('Landessanitätsrat'), which from then on presented the highest authority in the region to provide psychiatric expertise for the court.⁷⁴

Žirovčić was a member of this Sanitary Council while he served on the post as the longterm director of the Stenjevec mental asylum from 1894-1919, with a brief interruption in the years 1896-1900. Žirovčić is regarded as the one who 'established the foundations of Croatian psychiatric terminology and classification of diagnostic categories'.⁷⁵ And he was also one of the leading figures responsible for the writing of psychiatric expertise reports to criminal courts. It is therefore of great interest to see, how, at the end of the 19th century, Žirovčić and his early colleague at Stenjevec, Karlo Forenbacher (1850-1895), started to discuss the relationship between crime and psychopathology, or between the (suspected) criminal and his state of mind.

The writings of Forenbacher and Žirovčić reveal first of all their obvious store of professional knowledge, and their familiarity with both previous and then contemporary psychiatric discussions elsewhere. The first discussion of 'moral insanity' was provided by Karlo Forenbacher, at this time a house doctor in Stenjevec, who defined the concept in a lengthy article in *Liječnički Vjesnik* in 1893 in the following way:

'We understand moral insanity as a kind of mental degeneration, which encompasses that part of the psyche, which we call the emotional, the feelings, and it presents itself as the total or partial ignorance of the ethical and aesthetic terms and opinions. These harried people are numb for everything that is nice, good, noble and sublime. They can't comprehend nor evaluate ethical terms. Since they do not know anything about nobility, they don't have a heart for brothers or parents, and they also wouldn't know what love for the homeland (domovina) means or feel empathy for a close sufferer'.⁷⁶

His definition of moral insanity not only highlights close proximity to the early definition of the same diagnostic term used by Prichard since 1835, but also reminds the notion on degeneration introduced by Morel, later transferred by Lombroso into the realm of criminology and also used by Krafft-Ebing while discussing aberrant sexuality.⁷⁷ In his discussion, Forenbacher comes to the conclusion that moral insanity is a mental illness, 'which is already hereditary or acquired in the first years of life, and is characterized

⁷⁴ Žirovčić 1900: 19.

⁷⁵ Ibid.: 110.

⁷⁶ Forenbacher 1893a: 49-50.

⁷⁷ Ibid.: 50.

by imbecility, combined with a pathological inclination towards immoral acts.⁷⁸

Here, the close proximity between moral insanity and its upcoming replacement by the concept of psychopathy becomes clearer, resembling each other in their focus on the pathological compulsion towards immoral acts, and also on degeneration as the main cause for this kind of psychopathological behaviour. Forenbacher, however, saw moral insanity as a true mental illness. This becomes especially evident in the second part of his article where he discusses 'psychopathia sexualis', a term drafted by Krafft-Ebing. He was acquainted with the ideas put forward in the 1886 book *Psychopathia sexualis* in which, and in other works as well, 'the genial and sober German', as Forenbacher calls him, argued for a direct connection between mental disorders and what was at that time considered aberrant sexuality - masturbation, pederasty, sodomy and others. Forenbacher's conclusion reads:

*'What a vexatious field for the doctor! If these people would be of sound mind, this would be the biggest shame and harm for the world. Therefore, I say again, we can settle ourselves stating that almost all of these unfortunate ones are not of sound mind.'*⁷⁹

With this reasoning, Forenbacher echoes Krafft-Ebing by talking of the shameful mind of such persons and then concludes by stressing the ideas that have been from the very beginning in the debate on moral insanity: the difference between the criminal and the morally insane:

*'I am of the opinion that a criminal knows that he commits a crime, he knows the difference between good and evil, between the legal and the illegal, but still, he doesn't amend. With the morally insane it is different. He is lacking understanding of the good and the beautiful, about the noble and the sublime, this is all terra incognita to him. If he commits a crime he doesn't know that this is a crime, even if he is aware of the paragraphs and laws against crimes, but he doesn't comprehend all this, because he is lacking the appropriate feelings.'*⁸⁰

Forenbacher's reasoning thus implied that the morally insane was truly suffering from some form of mental illness. And this reasoning had quite practical consequences: at his time, that is until Žirovčić became the asylum's director in 1894, the morally insane criminal, because he was regarded

⁷⁸ Ibid.: 51.

⁷⁹ Forenbacher 1893b: 68.

⁸⁰ Forenbacher 1893a: 52.

to suffer from a mental illness, was kept in the mental asylum. For psychiatric statistics, this reasoning, however, was of no consequence, moral insanity was, although so strongly argued by Forenbacher to be a mental disease, not part of psychiatric diagnosing in Stenjevec. But this was probably nothing special at this time, since also other psychiatric concepts were not immediately applied in psychiatric clinics elsewhere after their introduction in psychiatric discourse.⁸¹ Before Žirovčić's time as a director, the classifications of diagnosed mental illnesses were rather elementary. Rohacek, the first director in Stenjevec and Žirovčić's predecessor, did not list more than up to seven different diagnoses that were applied in Stenjevec during the 1880s.⁸² 'Moral insanity', which was at this time already debated by the then active house doctor in Stenjevec, Karlo Forenbacher, was not yet among these diagnoses. A few years later, however, the reports list the categories 'morbus dubious' or '*dvojbene duševne bolesti*', which might have been placeholders at this time for something that included the morally insane.⁸³

When Žirovčić became director in Stenjevec in 1894, he immediately started to work on a new and modern psychiatric classification scheme. He presented this scheme, which was valid until the early interwar period, in an article series published between 1895 and 1897 in *Liječnički vjesnik*.⁸⁴ The scheme was based on the then widely discussed classification scheme developed by the psychiatrist and director of the Vienna psychiatric hospital, Theodor Meynert (1833-1892), and just as the former did so too, Žirovčić differentiated between 'mental illnesses' and 'mental weaknesses'.⁸⁵ Accordingly, he divided mental illnesses into functional, degenerative and symptomatic psychoses. Interesting, here are the degenerative psychoses, which included such different concepts such as periodical psychosis, paranoia, (constitutional) neurasthenia, epilepsy,

⁸¹ Parhi, Pietikainen 2017: 6.

⁸² In the report for the year 1879/80, the author lists mania, madness ('*ludosti*'), imbecilities ('*benavosti*'), melancholia ('*umobole uz klenitavost*'), insanity with epilepsy ('*umobole uz padvicu*'), and alcoholism. See: Dnevne bilježke, 1880: 29. For the year 1887 and 1888, the report lists 'permanent or temporary maniacs and furious' ('*mahnitih i biesnih trajno ili prolazno*'), active and passive melancholics, lunatics of the first and second degree and with hallucinations ('*ludih u prvom i drugom stupnju i sa halucinacijami*'), idiots ('*budala*'), the mentally deranged, the paralyzed ('*sa uzmom*'), paralytics ('*poremećena uma bolestnika sa uzmom (paralitičnih)*'), the mentally deranged sick with falling sickness (epileptics), and disputable mental diseases ('*dvojbene duševne bolesti*'). See Rohacek, Ivan (1889): Kr. zemaljski zavod za umobolne u Stenjevcu godine 1887. i 1888. In: *Liječnički Vjesnik* 11 (9), 133–137.

⁸³ See Rohacek (1889): Kr. zemaljski zavod, 135.

⁸⁴ Žirovčić, Ivan (1895-1897): O nazivlju i razdielbi duševnih bolesti. In: *Liječnički Vjesnik*. The article series was published in a number of the following issues of the same journal.

⁸⁵ Žirovčić 1895: 93-94.

hysteria, and dementia paralytica. Some of these concepts, as we will discuss later, exhibited close proximity to the concept of moral insanity. But moral insanity itself was placed in the other main category, the mental weaknesses, which included idiocy, secondary imbecility, imbecility caused by organic changes of the nerves, and imbecility of the elderly. It is in the first sub-category, idiocy, where one finds, besides intellectual idiocy and cretinism, moral idiocy respectively insanity.⁸⁶ Žirovčić defined the term as follows:

'Moral idiocy or moral insanity is made up of the fact that an individual, despite intact intelligence, despite the best education and efforts for (his) mental, ethical and moral development, is totally susceptible to mystical ideas, meaning, despite (his) entirely preserved formal logics, often coupled with high intelligence, a special ability for certain professions, for music, calculation, handcraft, perhaps with partial ingeniousness, he can however never comprehend and understand moral and social laws, and will therefore never respect them, but instead, because of this moral blindness, he is always in collision with human society, in which he can't stay, but will finish his life either in jail or in the asylum.'

Here, the term 'moral' bears the sole and single meaning of 'ethical', implying at the same time the closeness of the morally insane towards criminal or at least asocial behaviour. This was quite a different position than the earlier one of Forenbacher, who died in the same year when Žirovčić's article series was published. While Forenbacher still made a clear distinction between the criminal and the moral insane, Žirovčić nearly equated the two. Here, Žirovčić was very much in line with the before mentioned and at that time relevant Italian discourse dominated by Lombroso's positions.

Žirovčić substantiated this reasoning in his following publications. In an article which followed a year later, Žirovčić again reflected in detail on the mental state of criminal offenders.⁸⁷ Admitting that the borders between the healthy and the sick state were often blurred, he argued that this was most often the case when dealing with 'moral wickedness' (*moralna iskvarnost*) of a certain offender.⁸⁸ According to him, moral wickedness could originate in two different afflictions of the mental state of a criminal: on the one hand, there were the alcoholics, paralytics and epileptics, who could, because of

⁸⁶ Žirovčić used moral idiocy, the latter term, as Žirovčić states, being a simple translation of the term 'moral insanity'. See: *Ibid.*: 92.

⁸⁷ Žirovčić 1896: 201-206.

⁸⁸ *Ibid.*: 202.

their mental illness, never be held accountable for what they did.⁸⁹ However, on the other hand, there were the ‘immorals by birth’ (*porijeklom nemoralni*), and these were people ready to commit any crime, these were the ‘parasites of society’.⁹⁰ These are, as Žirovčić declares, the ‘born criminals’ (*rođeni zločinci*)⁹¹. Here, the Lombrosian concept of the born criminal entered Croatian-Slavonian psychiatry with full force, but it was peppered with the same elements so familiar to the degeneration theory that will become part of the various, subsequently, used concepts of psychopathy. Underlying heredity (‘in general, these people descend from abnormal parents suffering from psychoses and neuroses, they are hereditary predisposed’) as well as inferiority (‘they represent an individual of minor value’), and degeneration (‘they are abnormal, degenerated’).⁹²

It is important to note that Žirovčić is using novel terms that were recently introduced in the psychiatric discourse, ‘inferiority’ and ‘psychopathy’. The German psychiatrist Julius Ludwig Koch introduced the notion of ‘psychopathic inferiority’ that by settling itself between normality and illness would indicate abnormal behaviours due to heredity and replace the, until then conventional terms. The notion of psychopathic inferiority introduced in 1891 provided the rubric under which could be contained those thoughts, feelings, and actions that neither met the criteria for the normal nor crossed the threshold of the pathological, a placeholder for what one might call the unclassifiable ‘runoff’ clinicians encountered.⁹³ From the aforementioned quotes it is obvious that Žirovčić is not adopting the notion of inferiority as Koch meant for it to be understood. Koch introduced the novel term because he wanted to get rid of the value laden terms used by his predecessors and made some attempts to alleviate the social condemnation that was present at the time regarding such individuals.⁹⁴ By contrast, Žirovčić is rather harsh and judgemental regarding such individuals. As noted before he calls them parasites, beings of lower value, degenerates as if he was following Krafft-Ebing’s or the later dominant Emil Kraepelin line of thoughts.

A couple of years later Žirovčić discussed a criminal case report from 1908 which dealt with the case of a convicted murderer who simulated mental illness. For Žirovčić, the man ‘without a doubt belongs ... to the so-called

⁸⁹ Ibid.: 203.

⁹⁰ Ibid.: 204.

⁹¹ Ibid.: 203-204.

⁹² Ibid.: 203.

⁹³ Eghigian 2015: 288.

⁹⁴ Arrigo, Shipley 2001: 331.

pathological personalities or psychopaths⁹⁵ because of hereditary reasons (his parents were alcoholics and epileptics), because of his crimes (already in the age of 21 he was sentenced for 14 years because of thefts), because of his notorious impulse towards theft also after he left prison, and his simulation of mental illness in prison.

Žirovčić is here adopting the notion of ‘personality’, a term implemented by the German psychiatrist Emil Kraepelin (1856-1926) in his influential psychiatry textbook. In 1896 he developed the concept of psychopathic personalities under whose rubric he placed born criminals, the unstable, pathological liars and swindlers, and so-called pseudo-troublemakers.⁹⁶ A concept that would be used by Kurt Schneider when describing ‘those abnormal personalities whose abnormality makes either themselves or their society suffer.’⁹⁷ Kraepelin reintroduced moral judgement and social condemnation into psychiatric nosology.⁹⁸ Moreover according to Eghigian

*‘crime, he [Kraepelin] contended, represented a form of disease at social level, one whose cause was, in most cases, a congenitally inferior predisposition.’*⁹⁹

Furthermore, Žirovčić proves to be familiar with professional-psychiatric discussions of different schools when stating:

*‘One school in modern anthropology proposes to deal with these pathological criminals as if they are sick, and to not penalise them by applying standard practice’.*¹⁰⁰

However his verdict on the juridical accountability of such a criminal offender is different:

*‘Therefore, it is absolutely justified that these morally ‘sick’ persons get punished for their crimes, with the exception of those cases where the cause of the crime originates from a real mental illness’.*¹⁰¹

Žirovčić’s reasoning was probably not only a reflection of his position as a psychiatrist, but as well a reflection of the existing penal law, which stated in the second paragraph: ‘The law exculpates a criminal if he is fully without his sound mind’.¹⁰² This meant that those not in possession of

⁹⁵ Žirovčić 1908b: 144.

⁹⁶ Eghigian 2015: 289.

⁹⁷ Ibid.: 296.

⁹⁸ Arrigo, Shipley 2001: 333.

⁹⁹ Eghigian 2015:289.

¹⁰⁰ Žirovčić 1908b: 145.

¹⁰¹ Žirovčić 1896: 205.

¹⁰² Žirovčić1908a: 46.

their intellectual capacities for the time of the offense could not be held accountable. For Žirovčić and his interpretation and understanding of the morally insane - who started to be conceptually replaced at this time by the psychopath - this law implied, however, that the morally insane had to be convicted, since he was always with his sound mind, since he was, in the eyes of Žirovčić, not sick. Insisting on the interpretation of the morally insane as somebody who could not be regarded as mentally ill might well have been a reflection of the fact that - unlike in Italy - there existed no special institutions for keeping safe from society both the 'insane criminal' as well as the 'criminal insane'.¹⁰³ Whereas Žirovčić anyway had to accept the hospitalisation of the 'insane criminal' to Stenjevec, the hospitalisation of the 'criminal insane' was a matter of psychiatric interpretation and definition of the term 'sound mind'. Regarding the morally insane or psychopathic 'criminal insane' as of sound mind would thus, in fact, aim at a reduction of the category as defined in the second paragraph of the penal law, that is, at a reduction of the number of those persons who committed a crime and were, because of mental illness, not held accountable for their deeds.

In his articles, Žirovčić argued again and again that the mental hospital was not the right place for these persons - even though they were suffering from one of the mental weaknesses, which he outlined in his classification scheme. The main reason, however, for Žirovčić to argue against keeping them in the mental asylum was that they posed a danger to other patients. Furthermore, as Žirovčić added, their detainment in a mental hospital was too expensive (a burden to society: 'na teret društvu'), and they would continue committing crimes after their release from the hospital.¹⁰⁴ For Žirovčić being a psychiatric practitioner, the non-existence of criminal asylums in Croatia-Slavonia determined him to argue for the same method of punishment that was applied on 'normal' criminals - to send the morally insane or the psychopathic to jail.

Around the turn of the century, the morally insane was replaced in Žirovčić's writings, as elsewhere in Europe, by the concept of the psychopath. This process was not the same everywhere, though. For some, the concept of the psychopath was not identical with that of the morally insane. But for

¹⁰³ Historian Christian Müller introduces these terms to distinguish the convicted criminal who got mentally ill in jail (the insane criminal) from the criminal whose court case included the evidence that the respective person was suffering from mental illness and therefore could not be held accountable for his or her deeds (the criminal insane). See Müller 2006: 104.

¹⁰⁴ See for instance for the year 1903: *Književne vesti* 1904: 238.

Žirovčić, it was. Žirovčić, thus, after the turn of the century, simply replaced the morally insane with the psychopath, thereby keeping the closeness of both related concepts to the criminal mind, and thus, of the Lombrosian tradition.¹⁰⁵

Apart from this psychiatric discourse, one might also take a brief look into psychiatric statistics to see what the role and place of the morally insane / the psychopath was in the only psychiatric hospital in the country then, in Stenjevec. Gundrum's analyses of Žirovčić's published annual reports do only list the 14 main categories of Žirovčić's classification scheme, but not the respective subtypes. Therefore, it is hard to establish if and how many morally insane (or psychopaths, a category not yet officially registered in Croatia-Slavonia at this time) were sent to Stenjevec for psychiatric observation.¹⁰⁶ However, one of the reports, namely that of 1908, states, that of the seven people who were sent to Stenjevec as pre-trial detainees or as prisoners, four were mentally ill, and three were 'without psychosis'.¹⁰⁷ Were there among the four mentally ill also morally insane? We can argue with certainty that they were, since Žirovčić made moral insanity part of his official classification scheme. So, according to him, the morally insane was mentally sick, but the criminal morally insane was not to be kept in the mental hospital. And this was actually the crux of it, since the ostensible clarity of this scheme was accompanied by never ending confusion and conflicts about the question of how to deal with the criminal offender.

For Žirovčić, the question of where to keep the criminal morally insane was actually much more important than how to define him. But unlike in Italy, where special institutions existed for the confinement of the mentally sick criminal offender, in Croatia-Slavonia this question was not solved in the Habsburg times, and it was also not solved in the following interwar period.

Moral insanity and psychopathy were without doubt the main psychiatric concepts discussed in relation to asocial, criminal and immoral behaviour but they were never the only ones. According to Katariina Parhi and Petteri Pietikainen at the beginning of the 20th century, psychopathy would be just one among other options for dealing with offenders of social norms.¹⁰⁸

¹⁰⁵ Žirovčić 1896: 204.

¹⁰⁶ See for instance for the year 1903 in *Književne vijesti* 1904: 238.

¹⁰⁷ *Književne vijesti* 1910: 154.

¹⁰⁸ For example, whereas in Finland so-called dangerous individuals were diagnosed as psychopaths, in Norway they were given diagnoses such as *insania degenerativa*, which

Looking at Žirovčić's discussion of some of the other diagnostic and psychiatric subcategories in his article series of 1895-97, one is impressed by the elasticity of some of these and their proximity to the concept which was to become psychopathy, or which was then, moral insanity. While discussing 'paranoia', which he regarded to be a type of 'degenerative psychosis', he for instance mentions one of its subtypes, which was characterized by the fact that here, 'not the mind got mad, but the emotions' and which was called by French psychiatrists *folie raisonnée*.¹⁰⁹ This was, according to Žirovčić, a kind of paranoia insofar as the sick, 'because of lasting nervousness', would find himself in a permanent fight with the outside world, but it was at the same time distinct from paranoia because of the lack of hallucinations and crazy ideas. This, however, was so close to the concept of the morally insane that other psychiatrists of the time, such as German psychiatrist Rudolf Arndt in his psychiatric textbook subsumed *folie raisonnée* under moral insanity.¹¹⁰

Finally, there was, in our opinion, one further concept that showed at least proximity to the Croatian discussions on the concepts of psychopathy and of moral insanity. In our reading, Žirovčić's interpretation of neurasthenia, a diagnosis, at its peak before the turn of the century, was very close to some of the features that were also discussed in relation to moral insanity and psychopathy. Žirovčić thus postulated in 1896 that neurasthenia is a mental weakness, which often results from mental enumeration and exhaustion, but still more often from hereditary degeneration, and which is characterized by timidity, and compulsive thinking, but also especially by weakness of the will which results in affections (such as 'obsessions and monomanias'):¹¹¹

'A whole calvacade of euphonic Greek names is known for these monomanias, who push the individual to utter horrible, obscene words, curses, to uncover his genitals, to steal, to set fire, to buy, to travel, to drink heavily, to tramp, to love, etc., but many times these beautiful names serve the purpose of masking and excuse the deeds of the moral lunatic and therefore one needs to be wary of these'.¹¹²

was terminologically different from, but conceptually similar to, psychopathy. Parhi, Pietikainen 2017: 3.

¹⁰⁹ Žirovčić 1895: 65.

¹¹⁰ Arndt 1883: 530. The term *folie raisonnée* was already used in this meaning by Pinel. The term would translate into English as 'sane insanity'. See *ibid.*: 140.

¹¹¹ He put as examples here the 'kleptomani, the pyromani, the onomatoman, the dipsoman, and the erotoman'. Žirovčić 1896: 291.

¹¹² *Ibid.*: 291.

What distinguished the neurasthenic, however, from the morally insane and the psychopath was that he was ashamed of his obsessions and compulsions. However, this difference did not necessarily result in different psychiatric assessments before the courtroom, as we finally see in the then famous and widely discussed case of the psychiatric expertise, which Žirovčić gave in the criminal case against Luka Jukić, the assassin against the former ban Slavko Cuvaj in the summer of 1912. Although political authorities demanded from Žirovčić to declare Jukić unaccountable because of mental illness, Žirovčić instead wrote in his report that Jukić - although diagnosed as a neurasthenic with a hereditary predisposition - was a person who could be held accountable for his deeds.¹¹³

Historian Hans-Georg Hofer in his study on neurasthenia in Austrian psychiatry reminds us that there was no one and unique understanding of neurasthenia, but always a multitude of existing interpretations.¹¹⁴ The same actually holds true for moral insanity and psychopathy.¹¹⁵ The vagueness of moral insanity and its successor concept of psychopathy did not end with the end of the Habsburg Empire. But in the interwar period, psychopathy had found its firm place in civil psychiatry via the official Yugoslav psychiatric diagnostic scheme.¹¹⁶ In all the period looked at here and in the interwar period, it was to remain a marginal diagnosis, with no more than up to 1-2% of institutionalized patients in the Kingdom of Yugoslavia's psychiatric hospitals.¹¹⁷ Thereby, it continued to be a diagnosis primarily for the criminal male patient.¹¹⁸ During the whole interwar period and extending even as far as to the first years after WWII, discussions of psychopathy centered on a number of recurrent aspects. These included first of all, that psychopathy was located at the intersection between mental health and sickness, that it, secondly, constituted an aberration from the average (be it in the form of social, moral, or ethical maladjustment), and, finally, that psychopathy was acquired hereditarily. Psychiatrist Pisteljić summarized in 1960 that in psychiatric discourse have always been numerous and very different opinions on what a psychopath really was or is. The only common denominator was always, according to him, the placement of the psychopath on the border

¹¹³ Matijaca 1999: 110.

¹¹⁴ Hofer 2004: 18.

¹¹⁵ In order to prove their point when talking about the difficulty of defining psychopathy, William and Joan McCord quote a psychiatrist who said 'I know an elephant when I see one, but damned if I can define one!' in Jalava, Griffiths, Maraun 2015: 28.

¹¹⁶ Kulženko 1931.

¹¹⁷ Kulženko 1940: 664.

¹¹⁸ For the interwar period covering the years 1921 to 1931 see Lopašić 1933.

between the sick and the healthy.¹¹⁹ Our finding would suggest a further common denominator here for the Croatian case study - namely quite a lot of uncertainty where to put him in the real world - in jail or in hospital.

CONCLUSIONS

Although the debates regarding moral insanity in Croatia and Italy took place in different times and circumstances, they both happened in times in which the psychiatric discipline was establishing itself in the respective countries. Most importantly, they were focused on several common issues. They both dealt with questions regarding categorization of mental illnesses and the elucidation of the concept of moral insanity which were relevant for diagnostical and other practical purposes.

A further issue was the question on how to deal with a mentally ill criminal offender, whether he should be internalized in a specialized institution or sent to jail. The Italian discussion included subtle arguments regarding questions of moral responsibility, the status of such a person, punitive policies and specialized institutions in which he could be secluded. While the Croatian one mainly focused on issues concerning the handling of such a criminal which were of high practical importance due to the lack of criminal asylums in which such offenders might be secluded. Such institutions, as seen, were present in Italy since the last quarter of the 19th century.

Nevertheless, and regardless the different time span in which the Italian and Croatian discussions took place, they both were influenced by the degeneration theory. In Italy this was particularly evident in the writings of Lombroso and his ongoing influence. He participated in the foundation of Italian psychiatry and in the early debates on moral insanity, although he was not among the main contributors of the *Rivista sperimentale di freniatria*. Even though, with years, Lombroso's aura started to fade away, towards the end of the century the influence of Lombroso was still noticeable in Croatia, where the notion of the born criminal was present.

These findings indicate that the Italian and Croatian psychiatrists shared very similar worries, were influenced by the same tradition and fought for the same purpose: for the recognition and acceptance of the novel science.

¹¹⁹ Pišteljić 1960.

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SAŽETAK

Unutar devetnaestostoljetne, novoosnovane psihijatrijske znanosti nastaju gorljive rasprave o tome kako se skrbiti i znanstveno kategorizirati ljudsko ponašanje koje se percipiralo kao opasno za društvo i/ili kao kriminalno. Dva su se koncepta isticala u tim međunacionalnim raspravama: moralna ludost i, u kasnijem razdoblju, psihopatija. U skladu sa suvremenim pristupima u kulturnoj i društvenoj povijesti psihijatrije, moralno ludilo i psihopatiju tumačimo kao društvene konstrukte onoga vremena određene razvojem psihijatrijskog znanja, ali i zakonima, propisima i društvenim normama toga povijesnog okvira. Osnovni je zadatak ovoga rada analiza evolucije i usvajanja navedenih pojmova u dva jezično različita, ali još uvijek povijesno duboko isprepletana prostora: talijanski i hrvatski psihijatrijski diskurs na prijelazu iz 19. u 20. stoljeće. Naša analiza dvaju najvažnijih medicinskih i psihijatrijskih časopisa toga vremena pokazuje da su psihijatrijske rasprave o antisocijalnom i kriminalnom ponašanju na različite načine bile oblikovane prema tome kako su se dva društva znanstveno, pravno i institucionalno odnosila prema pitanju otkrivanja i kontroliranja mentalno onesposobljenih počinitelja.

Ključne riječi: moralno ludilo; psihopatija; Liječnički vjesnik; Rivista sperimentale di freniatria; degeneracija; povijest psihijatrije.