



E1 **Sanity and Insanity in a Criminal Trial: The European Experience Seeks the American Experience**

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After attending this presentation, attendees will learn from the data presented in this thorough and comprehensive examination the legal and scientific definition of “sanity” and “mental instability” to be evaluated within the criminal process, both during the investigation phase and in a courtroom.

This presentation will impact the forensic science community by providing an easy examination of the different categories of sanity and mental instability, in order to use them during their studies and professional practice.

A correlation between the existing Italian system between liability and social dangerousness intended to understand the authentic predisposition of the suspect/defendant to commit a crime is observed. The notion of insanity in our legal system is correlated with the legal institution of imputability: an essential condition for an offender to be punishable (Articles 88 (total defect of mind) and 89 (partial defect of mind) of the Italian Criminal Code). The concept of “crime” as a criminal act will be explained, and therefore what typical action is perpetrated with criminal intent and perceived as such by the community that suffers. Following, the guilt of a crime as a key element connected to the psychic sphere of the subject in the form of malice, misconduct, or involuntary act will, be defined on a level very different from liability, where a non-indictable (a minor) has acted with intent.

Otherwise, liability is correlated to the ability to be in full possession of one’s faculties given that Article 85 in the Italian Criminal Code stating that no one can be punished for an act seen by law as a crime “if, at the moment of the act, was not liable” and that “is liable those who are in full possession of their faculties.”

The ability to be in full possession of one’s faculties is linked in the Italian penal system, like those in Europe, to the concept of criminal responsibility, recognizing that the offender is capable of understanding and self-determining their actions, performing them “with consciousness and will.” Thus it is necessary to distinguish the ability to understand (perceive the external reality and understand the worthlessness of their actions/omissions) from will (to control the impulse to act). Italian legislators have introduced two presumptions of capacity: an absolute (relative to an adult capable of understanding) and the other relative (the minor who is over fourteen years of age, whose capacity will be evaluated case by case). The scientific aspect of liability and guilt is then determined, being able to distinguish between consciousness and the will to act on the ability to understand what is accomplished.

The Law, in line with science, has created a concept of insanity associated to the medical criteria of a mental disease. In Italy, magnetic resonance imaging is used in the forensic field to highlight structural changes in the cerebrum of the brain that can lead to crime. From the ethological point of view, it has been observed that primates are able to recognize subjects with mental and physical impairments and therefore are not addressed with the same punitive attitudes in response to behavioral deficiencies. Moreover, “the partial defect of mind” as understood by the Cassazione Penale (Italian Supreme Court) will be examined, a vice compatible with the existence of intent (consciousness, will and prediction of the act). In this context the “reactions to short-circuit” can also be induced by particular emotional or passionate and pathological states (Art. 90 of the Italian Criminal Code) which can predispose the individual to perform acts of brutal violence. The criminal is evaluated as such via the application of three benchmarks: the first related to the biology of the brain (area where the study of genes as potential source of violent behavior is essential); the second associated with the personality of the offender (sector in which psychology and forensic psychiatry are already active); the third is identified with the environment in which the criminal lives or has lived (under jurisdiction of behavioral sciences and judiciary bench).

The data obtained are compared with the American penal system. Finally, it examines the conscious participation of the accused at the trial in an Italian context, also in light of “neuroscience,” and then is compared to the American system.

Criminals, Biology, Criminal Law