

Perversion or perversity? Genealogy of a medical-legal debate¹

Perversão ou perversidade? Genealogia de um debate médico-jurídico

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Abstract

The article analyzes the conditions of formation of the psychiatric concept of “perversion” and, more specifically, the way in which, from the 1820s, a fundamental structuring opposition between “perversion” and “perversity” in juridical and medical-legal fields was constructed. Understanding this game of opposition and power between both concepts allows assimilating some professional conflicts between doctors and jurists, as well as some political disputes.

Keywords: Perversion; Perversity; Medical-legal; Genealogy; Politics; France.

Resumo

O artigo analisa as condições de formação do conceito psiquiátrico de “perversão” e mais especificamente a maneira como, a partir dos anos 1820, se constrói uma oposição fundamental e estruturante entre “perversão” e “perversidade” que se evidencia tanto no campo jurídico como no médico-legal. Compreender esse jogo de oposição e de poder entre ambos os conceitos permite entender alguns conflitos profissionais entre médicos e juristas, mas também algumas disputas políticas.

Palavras-chave: Perversão; Perversidade; Médico-Legal; Genealogia; Política; França.

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Introduction

This article aims at revisiting the conditions of formation of the psychiatric concept of “perversion.” A concept is only defined through the game of relationships that are established between it and other notions: relationships that may be of opposition, interception or implication, and which are gradually systematized. As a consequence, the history of formation of a concept should deal with the progressive stabilization of those relationships and their functioning conditions. In the case of the conception of “perversion,” it is necessary to insist upon two points. On the one hand, in opposition to a recurrent vulgate in the psychiatric and psychoanalytic literature, from the beginning the concept of “perversion” does not have much in common with the theological-moral concept of “perversion.” It is possible to delineate a properly medical history of the conception of “perversion,” which inscribes it in the most general field of conceptions of “alteration”: the notion of “perversion” will qualify a qualitative alteration of vital forces, in opposition to a quantitative conception of the normal/pathological relationship. It is possible, then, to create an internalist history of the conception of “perversion,” a history which is internal to the medical and psychiatric knowing.²

On the other hand, however, there is no certainty that this internal history is enough if one wants to understand how the concept of “perversion” imposes itself when competing with other concepts (deviance, aberration), and how a fundamental structuring opposition is constructed between “perversion” and “perversity” from the 1820s. Part of the definition of the conception of “perversion” depends on the game that this notion allows establishing with another concept, that is, the concept of “perversity,” which is inscribed in the “legal-moral” domain instead of in the “moral-theological” domain (and they can be completely distinguished in the 21st Century). It is necessary to analyze this last game of opposition between the concepts of “perversion”

and “perversity” as a strategic game that is inscribed in a field of confrontations and power.

Here, the notion of “genealogy”, used in the title of this article, has a precise meaning: it is understood in the strict Foucauldian meaning, that is, as the study of power games, strategic confrontations that originate willingness to learn, in addition to determined discursive practices. In this genealogical side of the history of the concept of “perversion”, it is necessary to insist upon a point in particular. Several analyzes highlighted the fact that the medical-legal field, at the center of which the perversion/perversity opposition develops in the first half of the 19th Century, was a place of confrontation between professions under development and those already established: alienists *versus* general practitioners; alienists *versus* legal power etc. (Goldstein, 1987; Guignard, 2010). In fact, this opposition between “perversity” and “perversion” has to be analyzed in relation to these professional confrontations. Nevertheless, there has not yet been enough emphasis on how this opposition has a common point of origin as fundamental condition: the focus of the right to punish and punitive practices, from 1820 to 1830 in France, both on the problem of the moral element and on the anthropological question of the moral relationship between an agent and his act. This focus was the *sine qua non* condition for the formation of knowing and medical-legal practice in psychiatry, and for the development of the concept of “perversion” in the medical-legal field. In other words, the construction of this concept in legal field supposes the focus of punitive practices on the issue of the agent’s “perversity”. And this focus was profoundly political: it participated of a strategy through which several liberal publicists opposed the use, by the Ultras of the Restoration, of the utilitarian doctrine of the penalty on behalf of the defense of a society. Saying in another way, one of the conditions for the rising of forensic psychiatry expertise in general, and of the perversion/perversity confrontation in particular, is found in political struggles during the Restoration in France.

2 To deepen the understanding of this part of the concept of “perversion” history, see Doron (2012).

An internal history of the concept of “perversion”

It is necessary to begin with the internal history of formation of the concept of “perversion.” It would be erroneous to search for its origin in the notion of “perverse” as defined from the theological point of view. It does not mean that a whole set of relationships between the psychiatric notion of perversion and the moral-theological field cannot be found, but if one wants to be rigorous, it seems that one should search for its root mainly in the notion of “perversion” (*perversio*), as it has been defined in the medical domain at least since the 17th Century. Perversion qualifies specifically an alteration, in particular in the moods that lose their normal qualities and become pathological, acidifying or fermenting.

In Quesnay (1761, p. 101), for example, one finds an analysis of the several ways of mood vitiation, among them “perversion”. The notion of “perversion” refers to the most general field of the alteration in the Aristotelian meaning (*aloiôsis*), that is, it defines an alteration of quality (*katabolê kata poion*) that differs both from a quantitative alteration (*Kata poson*) and from the addition of another element (*genesis*). It is this definition, little determined, which can still be found in the Panckouke dictionary in 1820: “this name is given to the harmful alterations that occur in liquids and solids. As it is also said of the perversion of moods, so that to indicate their alteration” (Perversion, 1820, p. 45).

The processes of formation of the concept of “perversion” in psychiatry, from that moment on, follow a series of relatively complex steps, which are not linear and can be summarized as follows:

(1) On the one hand, a sort of analysis of “madness” is developed from phrenology, relatively different from analyzes that prevailed during the years 1800-1820. This new analysis is based on the marked distinction between intellectual order and affective and moral order. It supposes a relative independence of these two orders, which allows thinking that they may be affected by distinct pathologies. In affective and moral order, this analysis distinguishes different natural inclinations of the subject (amorous,

destructive, sociable...), relatively distinct, correlated (in phrenology) with particular organs, and also susceptible to be affected by specific diseases. This typical phrenologist analysis framework is also found in other discourses, without the strict organic correlation that phrenology implied. In 1853, for example, this style of analysis is still used by Delasiauve against the several opponents of the monomania doctrine (Delasiauve, 1853, p. 358).

Therefore, in this style of analysis it is possible, on the one hand, to establish a global distinction between the pathologies that affect the intellectual sphere, marked by the disturbances of ideas, and the pathologies that affect the affective and instinctive sphere, marked by aberrations of inclinations and lesions of will. On the other hand, it is possible to identify specific aberrations in a specific location, related to any inclination. As Delasiauve (1853, p. 360-362) said, there is a “functional particularization” in the affective sphere, and “every feeling may thus become object of a special aberration”. The same idea is found, for example, in Broussais or Andral. Broussais proposes a classification of “monomanias” from “the point of view of phrenology,” which distinguishes between instinctual needs and intellectual phenomena. There are then several types of monomanias, that is, of well localized diseases: intellectual monomanias, related to certain ideas; and affective and instinctive monomanias, related to certain inclinations. Affective and instinctive monomanias are called “perversions” by Broussais, who distinguishes different “perversions or monomanias of instinctive faculties and feelings” (Broussais, 1934, p. 408). “Perversion” here must be understood as the strict equivalent of “monomanias” applied to a given affective sphere inclination. Broussais thus distinguishes the “perversions” of the different instincts (genital instinct, instinct of nourishment, conservation...), which are translated into aberrant behaviors (Broussais, 1834, p. 408). In the same way, Andral (1836, p. 187) affirms that “there are in human organization different instincts and needs to which humans obey. These instincts may be exalted or perverted, from which the diverse monomanias result.” Moreover, Andral distinguishes between “perversion of needs of nourishment life”

and “perversions of genital functions” etc. (Andral, 1836, p. 187). Georget (1825, p. 69), who shall be discussed later, clearly distinguishes between two different types of madness: those characterized by “lesions of intelligence”, which “denote a state of aberration of ideas and disturbance in intellectual combinations, manifestation of bizarre ideas and wrong judgments”; and others characterized by “lesions of will”, which relate to “a state of perversion of inclinations, affections, passions, natural feelings”. Consequently, this first dimension of the formation process of the psychiatric concept of perversion can be summarized in four main moments: (1) distinction between intellectual order and affective order; (2) particularization of these orders into different inclinations and feelings; (3) inclinations and feelings are susceptible to being affected by their own pathologies; and (4) transposition of the Esquirolian concept of “monomania” in order to qualify these particular diseases, besides using the concept of “perversion” as synonymous with “monomania” in the affective sphere.

(2) But what precisely can be understood by “perversion” in all these cases? Firstly, it is necessary to highlight one point: perversion systematically designates a radical disorder, a total disturbance of natural inclinations or feelings. For example, according to Broussais (1828), eating earth or excrement characterizes the perversion of the instinctive need for nutrition; as for the instinctive need for association, one can experience “a perversion in the opposite direction [ending in] cruelty, pleasure in destroying, irrational impulses - which are condemned even by whom experiences them - to hurt or kill the people this person loves most” (p. 655). There are innumerable texts that qualify “moral monstrosity” as a perversion of the affective faculties. Moral monstrosity was a problem of great interest to 18th-century philosophers, such as Shaftesbury, Hutcheson and Diderot. Its positive place of conceptualization is found in these analyzes: it becomes perversion of the affective faculties.

But, what does this concept encompass? Two lines should be clearly distinguished here. The phrenological solution, which is also the solution of Broussais and Andral: “perversion,” even

qualifying a radical disorder, can be finally explained by a quantitative disturbance. This solution seems irrelevant, but, in fact, it has fundamental implications: it means, in particular, that moral monstrosity is an exaggeration - or inhibition - of man’s natural and normal tendencies. According to Gall e Spurzheim (1812, p. 180), for example: “there is a tendency in man that is gradual, from the simple indifference to seeing animals suffer, and from the simple pleasure in seeing to kill to the urge to kill”. This phrenological position is scandalous to many authors and the notion of “perversion” will, somehow, avoid this scandal.

Thus, in fact, “perversion” qualifies a radical alteration which, definitively, is reduced to a quantitative disturbance. But during the same years, a three-term conceptual framework was gradually defined, and it plays a decisive role in the definitive formulation of the concept of “perversion.” This style of analysis firmly distinguishes between “perversion” and increase and decrease, that is, quantitative differences. “Perversion” will then designate qualitative disorders as opposed to quantitative disorders. Besides, it is possible to affirm that this conceptual framework is directly confronted with Broussais’ position and phrenology. The concept of “perversion” is placed this time in violent debate, which has to be made explicit.

In 1826, the entry “perversion” of the Béchét Jeune dictionary affirms, for example:

This word has been used [...] in a very difficult acceptance to determine when there is no intention to be satisfied with a vague idea [...] Under the name of perversion of forces, vital properties, and sensitivity, one designates the state in which such forces [...] as well as the organic phenomena which are related to them, neither increased nor diminished in their intensity, are manifested differently from their normal state [...] according to this way of understanding, senses of taste and smell are perverted when we perceive other flavors and odors different from those that should be naturally perceived. [...] these examples show the lack of precision of the acceptance to which the word perversion refers. It is about relying on a term instead of returning to the organic condition

of the phenomenon which one wishes to express. It is the inherent defect of theories based on vital properties. (Perversion, 1826, p. 353-354)

Certainly, there is a deeper debate in which the notion of “perversion” is amplified. But if there is any doubt about that, we refer to Risueño d’Amador’s (1936) long article “on organic alteration,” in which he, after mentioning the different stages of anatomopathology history, criticizes the Broussais School and emphasizes “that it is necessary to admit [...] not a single cause, variable simply in intensity, but multiple causes, variable in nature, and recognize in the action of vitality not only more or less degrees, but real perversions” (p. 469). The debate therefore opposes on the one side a clinic of vital forces, which focuses on the radical alterations of functions, without necessarily seeking the focus of the anatomical lesion; and, on the other side, an anatomico-clinic that is responsible for relating these alterations to the quantitative variations, and for identifying an anatomical lesion.

It is within this first line - clinic of vital forces - that the notion of “perversion” assumes a clearly distinct meaning, as opposed to quantitative variations, within the conceptual system already mentioned: “increase/decrease/perversion.” The authors mentioned in Béchet Jeune’s article are clearly identifiable: Landré-Beauvais and Chomel. In his *Séméiotique, ou traité des signes des maladies* (Semiotics, or treatise on disease signs), Landré-Beauvais (1809, p. 322) distinguishes between several alterations in vital forces: (1) increase or exaltation; (2) decrease; (3) oppression; (4) depravation or perversion; (5) suspension of forces. With regard to this classification, Chomel retains increase, decrease and perversion: “the power which determines the various acts that constitute life [...] may be increased or decreased [...] but the forces are also susceptible to being altered in another way: they may be perverted and this perversion may appear in infinite forms” (Forces, 1821, p. 767). This conceptual triptych is found in several authors.

It is necessary to understand that it is a semiology classification, which is interested in the clinic of forces, so that to determine the diagnosis, adapt the therapeutics and the prognosis. When forces are

increased or decreased, the following treatment is easy; in the case of perversion, on the contrary, the signs are always disordered, and there is a radical disturbance of forces: perversion therefore defines a radical qualitative disturbance of forces which, according to Chomel, is translated into “perversion of functions” (Forces, 1821, p. 768).

This conceptual triptych (increase/decrease/perversion) is essential for the formation of the concept of “perversion.” The concept of “perversion” thus becomes that which designates a vital force qualitative deviation. From that moment, it is a concept that allows defining more specifically the deviations of the instincts, which are translated into radical functional disturbances, sometimes totally monstrous: “disorder of all natural laws” as Scipion Pinel (1844, p. 315) affirms on that “irresistible force, [this] impetus that cannot be overcome, [this] unreflective determination, without interest, without loss, and even without real premeditation” that the monomaniac criminal has. Or this “perversion of the genesis instinct”, which Brière de Boismont (1849) attributes to the soldier Bertrand, also relating it to other perversions of genesis of the same order (present in Sade), and other instinctive perversions (perversion of the sense of taste, in particular). “It is therefore unquestionable that there are perversions of the different instincts, and those who experience them must be classified among the monomaniacs, since their will is incapable of stopping acts that may bring them painful consequences” (Boismont, 1849, p. 88).

There are, then, true aberrations of primary instincts, which are characterized by a “delusion of acts” or an “instinctual delusion”; strange notions, but appropriate to designate a disturbance of the acts usually attributed to certain functions to the point that they appear to be wrong or errant, which confuse objects, which adopt a counternatural and monstrous end. The “perversion” of the instincts is inscribed here in continuity with the “perversion” of senses, considered a type of hallucination or instinctive error, which is opposed to increase or decrease. In the same way, for example, several alterations of the sense of touch can be distinguished in the pathological state: “The sense of touch may be, as a consequence of the disease, either increased,

or destroyed, or otherwise perverted, from which it results that objects acting on the outer surface of the skin produce a more or less strong impression than it should be, or even a wrong impression; then, when transmitted to the brain, it produces a sensation, either very strong, or very weak, or perverted” (Frank, 1839, p. 375).

Similarly, instinct or inclination, understood as a tendency within the organism, may be altered in the disease following the same triptych: it may be increased or decreased, but it may also deviate and make mistakes.

Before becoming an autonomous clinical entity, the “perversion of the sexual instinct” appeared initially as a deviation associated with an instinctive monomania characterized by inclination to destruction. In the case of Bertrand, it is the definition adopted by Lunier (1849, p. 376), who sees an associated deviation in the “perversion of the venereal appetite,” “an epiphenomenon of the disease [...] analogous to the appetites common to the alienated patients”. In other words, the perversion of the genesis instinct does not have the value of a separate clinical entity; it is an associated symptom, compared with the depravation of the alienated patients’ sense of taste (which consists of swallowing charcoal, earth etc.). The position adopted by Brière de Boismont (1849) is different, since, according to him, the perversion of the sexual instinct constitutes an independent entity, not as “surprising as suicidal, homicidal or incendiary monomanias, etc.” (p. 87-88). It is a “partial delirium characterized by the perversion of the genesis instinct,” which is at the same level as satyriasis or nymphomania (Boismont, 1849, p. 87-88). This position is even more marked in Michéa (1850), who, still recognizing the existence of a destructive monomania, considers it is erotic monomania that “constitutes the bottom of this monstrous madness.” By erotic monomania, he understands not a disorder of the intellectual faculties, but an “aberration [which] is localized exclusively in the moral or affective faculties” (Michéa, 1850, p. 116) and, in this case, leads to a radical disturbance of the object of the venereal appetite. This is what he calls “sick deviations of the venereal appetite”, which differ radically from the quantitative disorders of

this appetite as much as from a disorder of ideas (as found in erotomania). His classification clearly rests on the object of this “innate taste,” of this “instinctive passion”: Greek love, or individual’s love for his sex; bestiality; venereal attraction for an insensitive object; attraction for a human corpse. It is, therefore, a same instinct, susceptible to multiple perversions (Michéa, 1850).

Perversion or perversity?

A problem has been mentioned several times throughout this article, and it has to be confronted. This concept of “perversion,” understood as a radical qualitative alteration of natural inclinations, is tied to a field of concepts (“instinctive monomania,” “aberrations of instinctive and moral faculties” etc.), which are at the meeting point of the medical and the moral, or, more precisely, the “legal-moral.” This is the case in the Broussais’ and Georget’s texts, as well as in Brière de Boismont’s, Lunier’s, or Michéa’s works. This notion of “perversion” is connected to a set of synonyms (“deviations,” “aberrations,” etc.) which will remain until the late 19th Century. But it has a specificity that explains, in part, the origin of its success.

One of the gains of the notion of “perversion” is that it permits wordplay, confrontation, and distinctions from the notion of “perversity.” We cannot make the history of the concept of “perversion” without studying these games of opposition between the concepts of “perversion” and “perversity”, established from 1820 to 1850. Most of the studies on the history of the concept of “perversion” that generally emphasize the importance of this opposition are characterized by a certain disregard of the historical conditions of formulation of this opposition. Instead of analyzing in detail the functioning of this distinction between “perversion” and “perversity” since its establishment (Doron, 2012), the proposal here is to examine the conditions for instituting this opposition.

The concept of “perversion” played a strategic role in the establishment of forensic psychiatry, especially with the publication of Georget’s classic texts in 1825. These texts theorize a new notion of “homicidal monomania,” which Georget (1825)

relates to a type of madness characterized only by “lesions of will,” “a state of perversion of inclinations, affections, passions, natural feelings”. When Georget examines, for example, the case of Léger, he identifies “an astonishing accidental moral perversion, a manifested mental alienation” (Georget, 1825, p. 11). Another founder of forensic psychiatry, Dr. Marc (1840), when responsible for the medical examination of Henriette Cornier, also notes that “there is a homicidal monomania, sometimes with aberration of the understanding, sometimes with perversion of affective faculties” and, according to him, the case of Cornier derives from this last perversion: “recognize at least that the will is perverted and subdued. Would such perversion be a normal or a natural state?” (p. 69-71). It is necessary to distinguish, according to Marc, this “perversion” from the criminals’ “moral perversity”.

This same set of distinctions is also found in England or the United States: Prichard (1837, p. 16), for example, defines moral insanity as “the morbid perversion of the natural feelings, affections, inclinations [etc.]” and Isaac Ray (1839, p. 166) emphasizes: “A common feature of moral mania is a deep perversion of social affections”. Therefore, all the early authors who theorize these fundamental notions of forensic psychiatry which are “homicidal monomania,” “instinctive monomania,” and “moral insanity” coincide in using the concept of “perversion” to define a radical alteration of inclinations or affections, connected to a lesion of will.

In the strategy initiated by Georget, the concept is particularly important because it allows relating homicidal monomania to a disease: perversion implies a radical rupture, a disorder related to the natural laws and the rest of the individual’s life. Thus, the famous “principle of Georget” is defined as follows: “a horrible act, a murder, a fire, afflicted without cause, without purpose or interest, by an individual who has been honest up to that moment, can only be the result of mental alienation”.³ Perversion allows qualifying this radical rupture within the individual’s life,

emphasizing its pathological dimension. In doing so, Georget distinguishes between his position and the position of the phrenologists, who insisted more on the continuity of a normal inclination, present in all men, simply exaggerated. Georget opposes this position and insists on the character “accidentally and completely opposed to the patient’s natural dispositions” of homicidal monomania (Georget, 1825, p. 97-98). In this sense, his position is in accordance with the defenders of the moral sense, who did not accept the natural character of the inclination to homicide claimed by phrenologists. But this also allows Georget (and Marc) to associate homicidal monomania with a disease, distinguishing it from the notion of state in Esquirolian meaning, precisely because perversion marks a rupture in the individual. And this allows him to distinguish, at the same time, the homicidal monomania of the simple exaltation of subject’s passions. This last point is even more essential because, on the one hand, it confronts Esquirol’s analyzes, and, on the other hand, it opposes the arguments developed by jurists.

In fact, the notion of “perversion” is also confronted with another notion that became fundamental for the exercise of the right to punish, in the same era: “perversity.” In 1864, Legrand du Saulle perfectly summarizes the debates that were progressively structured from the 1830s: he says that it is not possible in any case to confound perversity with “perversion, [which] is for perversity as madness is for crime. The first results from a defective organization, from a pathological state, and must be object of medical treatment; the second comes from an immorality that does not deserve the clemency of the law” (Legrand du Saulle, 1864, p. 104-105).

Renaudin, director of the asylum at Fains, devoted in 1844 an article to this difficult distinction between the criminal and the alienated patient, affirming that: “no doubt there is in many alienated patients a more or less complete perversion of several feelings, but it is wrong to confuse this perversion with perversity” (Renaudin, 1845, p. 29). Michéa (1852, p. 440) devotes a full text to establish

3 This “principle” was elaborated from Georget’s texts by Raige-Delorme in his critique of Elijah Regnault’s (1828) book.

“the characteristics that distinguish sick perversion from moral perversity,” “the alienated patient from the vicious man”. The structure of the debate is clear: on the one hand, moral perversity, characterized by a perverse intention, premeditated and thought will to prejudice, an immoral and depraved state in which the act is in continuity with the subject, prolongs his passions and intentions. Moral perversity is the sign of a moral bond that exists between the subject and his act, the sign of the fact that the subject was fully in his act. On the other hand, unhealthy perversion, in which will is subjugated and wounded, in which a disordered instinct appears and breaks with the subject, which alienates him in the strictest meaning of the term, and leads him to madness.

One case may illustrate this complicated opposition. This is the case of Roch Ferré, a primary school teacher who is accused of having taught his students the pleasures of reciprocal masturbation. The case seems to be simple. Ferré recognizes the facts and they are proven, but he adopts an unusual, scandalous defense system. He declares that he is accused of “facts that seem natural to him,” that onanism is a natural thing and has nothing repressible; and that by teaching it he did nothing but fulfill his duty as teacher. This “cynicism” (the word appears systematically in the medical examination, without the alienists realizing the ironic pertinence of that term) provokes astonishment and disturbance. Would he be witnessing a “deep demoralization” or a “state of mental alienation”? The answer of Brière de Boismont, Ferrus and Foville, responsible for examining him, is clear: “the present perversion of his moral faculties is only one example of these transformations that may usually characterize alienation,” Ferré cannot “understand the perversity of his actions,” he “had acted under the influence of perversion of his faculties”.⁴

It is the progressive elaboration of an opposition game between “perversion” and “perversity.” This game is far from being accepted by most jurists and magistrates. Adolphe Chauveau and Faustin Hélie (1836), liberal publicists who are the first

to recognize certain specificities of homicidal monomania, admit, against Regnault’s arguments, that he rejects monomania as an excess of passions, that “passions do not produce this moral perversion which leads the alienated patient to immolate the being he loves most without reason” (p. 227). But Molinier (1854), another very important neoclassical jurist at the time, denies all specificity of “perversion” in relation to “perversity,” and affirms that “if the perversion of the affective faculties were sufficient to acquit human actions, justice would have condemned without reason almost all those culprits” (p. 67).

This position, which derives directly from Pellegrino Rossi, is in distinguishing between “perversion” and “moral depravation,” “vicious inclinations,” or “disordered desires.”

Before concluding on the arguments of these jurists, it is necessary to point out that we are dealing here with jurists who were not supporters of the utilitarian system and social defense, and who were not supporters of the Restoration: they were all liberals in the political meaning of the term. It is wrong to refer to the jurists of the time as a whole, as it is done, for example, by Jan Goldstein (1987), neglecting a fundamental fact: publicists or jurists were radically divided into those who wished to found the right to punish on the system of interest and the principle of social defense, and those who, for political reasons, prioritized the moral element of crime and the perversity of the agent (or act). The latter were also divided into several opinions. In Rossi’s view, for example, the argument of the “perversion of affective functions” that would lead to an insane act is not pertinent because, according to him, to establish the “moral perversity” of an agent (which is, for Rossi, the basis of the right to punish), one has only to determine whether he was aware of the immoral value of his act and of himself at the time of the act. This same principle also appears in Molinier.

The alienists operated distinctions between will (power) and knowing, as follows: the agent knows that his act is evil, he tries at times to resist, but he

⁴ See *Attentat...* (1843).

cannot deprive himself of committing it because of an injury of his will. That is why there is no moral bond between the agent and his act. Rossi and Molinier totally reject this distinction:

All these monomaniacs were aware of the duty they had violated, knew that they offended the laws and ceded to their inclinations only after internal struggle. The alteration of affective faculties was manifested in them; but it was also evident that they had retained the discernment and understood that the laws forbade murder. (Molinier, 1854, p. 67)

The same in Rossi (1829, p. 277-278): “they know from the beginning the immorality of their inclinations; they are aware of themselves and of the evil they are going to do [...] they are terrified at the crime they have committed; they know that they have done evil.” In the acts of the monomaniac, “the agent knows their nature and desires them despite his knowledge of evil” (Rossi, 1829, p. 277-278).

Certainly, the alienists would object that the acts committed by these people were not truly desired, because of lesion of their will. But Rossi and Molinier were able to respond with a new objection: nothing distinguishes this perversion from any criminal’s moral perversity. The alleged lesion of will is nothing more than the result of progressive depravation and slow deterioration of moral sense. While the alienists stress the discontinuity within the subject, jurists emphasize this subject’s continual and progressive depravation. According to Rossi, the fact that the criminal act is a monomaniacal act, in which the subject is not controlled or cannot be controlled, is not characteristic; it is a subject who has allowed himself to be invaded by vice little by little, for a long time. When the idea of crime comes to his mind,

the moral and firm man repels it with horror [...] the immoral and weak man does not repels it without first having given a furtive glance [...] in this manner this fever of crime begins, this ardent, precipitous and unthinking persecution that frightens and confuses human reason. The crime is committed [...] the defender says that

this unfortunate is nothing more than a madman. And, he was indeed ... He was linked to crime as a slave chained to a fierce beast. But this partial suffocation of human reason is imputable to him, because he is the result of his whole life, of a life full of freedom and moral responsibility. (Rossi, 1829, p. 276)

It gives rise to Rossi’s famous systematically repeated analogy between monomania and the drunk who, little by little, acquires a taste for wine. There is an intimate relationship between this position and Rossi’s political-economic liberalism: the insistence on freedom and moral responsibility as constitutive elements of man. The same argument is found in Molinier (1854, p. 71): little by little, the criminal, monomaniacal or not, cedes to evil temptations, “his faculties are perverted and it comes to the point where the culpable inclinations for which he was swayed acquire such a strong power to which it becomes difficult to resist. These are facts which are produced both in monomaniacs and in all criminals”. Therefore, nothing distinguishes perversion from perversity: perversion is nothing more than the result of progressive perversity.

For a political genealogy of the perverse

It could be a mistake to think that this quarrel between perversion and perversity repeats precisely the traditional disputes over issues of irresponsibility and responsibility, or madness and crime. But, believing in this idea would be to neglect the actual historical conditions within which this debate acquires its meaning and becomes relevant. Clearly, the quarrel between perversion and perversity is intimately connected to a more general dispute on irresponsibility, but it also has its specificity. It is certainly not by chance that this debate appeared in the 1820s, more than fifteen years after the drafting of article 64 of the French Penal Code of 1810, which discusses the question of criminal irresponsibility. In fact, if this debate became so relevant in the late 1820s, it was because it was directly linked to a deeper debate on the foundations of the right to punish that

happened during those years, with very marked political dimensions.

In other words, in order to understand the appearing of the perversion/perversity opposition and understand more comprehensively the origin of forensic psychiatry in France, it is necessary to understand how the right to punish can be transformed to such a point that it was necessary to establish, for its functioning, this distinction between perversion and perversity, invoking a knowing which is susceptible to claiming the monopoly of this distinction. This transformation has as *sine qua non* condition the idea that the right to punish is based on the moral element and, more precisely, on the issue of the agent's moral perversity, of his moral relationship with his act and the natural perversity of that act. This claim to ground the penalty on the crucial problem of the agent's moral perversity and the offensive act was intimately connected to a political struggle that opposed, on the one hand, those in favor of the so-called "interest" system and the utility and defense of society, that is, the tradition that goes from Beccaria to Bentham, which are used by the Ultras of the Restoration to legitimize political repression; and, on the other hand, the partisans of the adjustment of the penalties to the subject's moral reality (to his degree of perversity), where the penalty has to retribute and correct a perverse will and the moral quality of the transgression.

In other words, the quality of a transgression does not depend simply on the positive law of a particular society, but also on a deeper right, based on Goodness, Righteousness and Truth. The jurists and publicists in favor of this view are well-known: they are liberals, "doctrinaires" or not, and philanthropists sometimes inspired in phrenology. We can mention Guizot, Chauveau, Hélie, and Rossi, for example, but also evoke all those who are in favor of penitentiary reform, designed to develop penitentiary practices adjusted to the delinquents' perversity degree, such as Charles Lucas, Ferrus, Appert or Felix Voisin.⁵

From the 1820s, liberals - in the political meaning of the term - invest heavily in justice, through the

issue of jurors and mitigating circumstances, and consider it a strategic place to combat the repression of the Ultras. It is in this context that works such as Guizot's (1822) text on *Death penalty in political matters* are published. In this context, the issue of homicidal monomania is initially addressed by liberal opposition newspapers, generally as a means of confronting the doctrine of social defense advocated by the Ultras and part of the judicial apparatus. One of the first important laws of the July Monarchy, during which some of the old liberal opponents came to power, was the law of April 28, 1832, which reformed the Penal Code and instituted a "progressive penal code," in Chauveau's (1836) terms, aimed at better adjusting penalties to the offenders' morality, also taking into account the extent of mitigating circumstances. In my view, it is irrelevant to make the history of forensic psychiatry in general, and of a notion such as "perversion" in particular, neglecting the importance of these debates that approach the question of evaluating the agent's perversity and the need for taking it into account for a better application of the penalty.

This criticism, in the first place, is directed to Foucault (2001a), because the ignorance of this point made him to neglect an essential aspect in the genesis of abnormalities and forensic expertise. To better understand the problem, it is necessary to go back to some points in this debate. In the legal system defined by the Penal Code of 1810, an offense exists only through the following three elements: (1) a legal element, that is, the transgression is an infraction to a written and well-defined law; (2) a material element, that is, the transgression has occurred, has become real; and (3) a moral element, which is central for us, that is, the transgression implies certain intentionality, has been conducted voluntarily and with consideration, so that it implies the subject's responsibility. It should be noted that this last element presupposes a distinction between material fact and offense, which has taken time to be formulated and explicitly integrated into the Penal Code. It is a question of affirming that "it is the intention to

5 For more information, see Doron (2011, p. 1253-1286) and, on the case of Voisin in particular, Doron (2015).

prejudice what constitutes the transgression” (Guignard, 2010, p. 55),⁶ since “it is the intention that constitutes morality of action” (Locré, 1831, p. 7). We need to understand the resistance from certain jurists that this principle provoked: on the one hand, this principle seemed to be evidence, and in the case of madness or minority, it was already admitted in other forms; and, on the other hand, it radically confronted one of the most important principles proposed by Beccaria, used by the utilitarian school with which some of the writers of the Penal Code interacted: “The true and only measure of the transgressions is the harm done to the nation and not, as some mistakenly think, the intent of the culprit” (Beccaria, 1991, p. 75).

The moral element, on the contrary, will be quickly invoked to evaluate this culprit’s intention. Tension is thus present from the beginning, and for political reasons will increase, from 1820, between those who emphasize the material element in a utilitarian calculation aiming at defending the general interest, and those who emphasize the moral element, in the perspective of a retributive justice that takes into account the agent’s morality and the intrinsic morality of his act.

In order to better understand the importance of this tension, it must be realized that, in a strictly utilitarian perspective, such as that claimed by Beccaria or assumed by Bentham, the right to punish is founded on the need for preserving the general interest to the detriment of certain particular interests. The penalty is justified to the extent that it is necessary. This necessity is grounded on its social utility, and its usefulness consists in its deterrent effect: punishment must counterbalance in the subjects’ minds by representing punishment and torture pain, certain motives for violating the law in the name of their personal interest. This conception of the right to punish is not much interested in the intrinsic morality of repressed actions. It is irrelevant the reference to a transcendent law that would serve as a measure for assessing the legitimacy of legality. There is little concern about the relationship of the subject with his act or on

whether he is “profoundly perverse,” whether his acts are marked by deep guilt or not: what matters is the act in its positivity, its material effects, and its relation to the general interest.

This is what Target (1831, p. 8) exemplifies in his position: “The severity of the crimes is measured not so much by the perversity that they evoke, but by the dangers that they provoke. Rather than being measured by its rigor, the efficiency of the penalty is assessed by the fear it inspires”. In Beccaria’s case, a very important point should be added: introducing an evaluation of the agent’s “perversity” in the administration of the sentence would take the risk of multiplying the possibilities of arbitrariness, getting out of the system of automatic correspondence between transgressions and penalties of which he dreams.

Thus, contrary to what Foucault affirmed, it is not within a punitive economy based on interest and *homo oeconomicus* that moral monsters, those who commit horrible crimes without reason, become a problem. The forensic expertise does not develop to answer the confusion of justice before the lack of interest of certain crimes. According to Foucault, forensic psychiatry developed according as the punitive system encountered, in the 1820s, a series of aberrant cases of criminals that were rational but acted without any interest, and even absurdly from the point of view of their interests, as they exposed themselves to death penalty without any benefit. The interest, Foucault (2001a, p. 137-211) explains, was both what gave intelligibility to the crime - “a kind of internal rationale of crime” - and what made it punishable, as punishment aims at all the mechanisms of interest that made this crime to arise in the criminal, and may provoke similar crimes in others. Consequently, the absence of interest paralyzed the economy of punishment established in the early 19th Century (Foucault, 2001a).

But, in fact, what became a problem for magistrates and doctors was not lack of interest, but lack of reason, something that Foucault describes very well, but without taking into account the difference that existed between interest and reason.

6 Arrêt de la Cour de cassation du 21 pluviôse an VIII (1801).

This difference may seem of little importance, but it is fundamental because both notions do not refer to the same issue and are not related to the same punitive rationalities. It is a central debate which, in the early 19th Century, refers to the foundations of the right to punish, a debate that is initially political. This debate opposes two rationalities which, paradoxically, Foucault, better than others, knew how to distinguish: the pure legal - exemplified in Beccaria - and the pure anthropological - which adjusts the penalty to the anthropological reality of the criminal and develops massively from 1820-1830 (Foucault, 2001b, p. 1027).

From a strict utilitarian analysis, the lack of interest or the radical distortion of interest is secondary: most criminals start from a misconception, misjudge their interest, mistake without which they would not act against the law. What matters is, in this rationality, the material act committed and its relationship with the general interest. If the act violates the law, the penalty is legitimate according as it may dissuade most subjects from violating it. It does not matter whether the act was committed for a rational reason or not, its punishment will be example to everyone. The fundamental problem is the social utility of punishment. The absence of reason leads to a radically different issue: it brings the question of the moral relationship between the subject and his act, and becomes a fundamental issue in a rationality that emphasizes, in the right to punish, the question of the intrinsic morality of the action and agent, the relation between the moral subject and his act. It is a problem that is heterogeneous to the utilitarian reasoning and imposed from the 1820s. In fact, numerous Restoration magistrates were against liberals and alienists who invoked the absence of reason or the absence of moral relationship between the subject and his act, affirming that this improper humanism threatened the defense of social interest.

Actually, the argument that emphasizes the moral relationship between the agent and his act, the problem of the intrinsic morality of the agent and his action, the question of his reasons, as grounds of the right to punish, was initially part of a political strategy mobilizing a group of liberal

publicists against the utilitarian perspective and against the repressive laws of the Restoration. Some citations may be useful to illustrate this strategy: for Guizot (1822, p. 94), for example, the right to punish is founded on the intrinsic morality of actions and agent: "The morality of the act depends on its conformity with the eternal laws of truth, rationality and morality"; the morality of the agent is in the intention, that is, in the idea of what he himself conceives as morality of action and in the purity of the reasons which compel him to commit it". Guizot (1822, p. 96) emphasizes that the moral element, the problem of the author's reasons and his intention, cannot be ignored by the judges without "the natural feeling of justice being offended".

The offense, the moral offense is, therefore, the fundamental condition of punishment. Human justice requires it imperiously to admit the legitimacy of punishment; and legal justice lies when, in order to free itself from the demands of natural justice, attributes to itself another principle, another objective, and intend to find them in usefulness. (Guizot, 1822, p. 100)

It is the moral fact and not the material fact that gives legitimacy and grounds the right to punish. This conception that insists on the moral dimension of the crime is fundamentally political, and it is inscribed in a struggle against the use of utilitarian doctrine by the Restoration powers:

Power soon realized that if placed itself in the moral field, considering its actions in its sole relationships with the laws of eternal morality and with the agents' intentions, the penal laws and their applications would have great difficulties to be defended and prove their legitimacy. They tried [...] to deceive [...] and for that to be done, they diverted the question from its purpose. They were based on the social interest, on the conservation of order ... and bypassing the absolute justice of penalties, they were especially concerned with their usefulness. (Guizot, 1822, p. 99)

Guizot's reflection refers primarily to political crimes and to the crimes of the press, but concludes

with a general theory of the right to punish that emphasizes the question of the agent's morality and his perversity. The same happens with Rossi (1829, p. 78):

Let us then affirm a first principle which is nothing more than an expression of a law of human consciousness: punishment, which consists in inflicting an evil intentionally on account of an earlier fact [...], without regard to the patient's will, and in no way aiming at a future advantage for him, can only be a right according as it is aimed at the author of an unfair evil act; that is its essence. If we disregard [...] the moral bond that must exist between the punishable fact and the penalty, the right to punish disappears.

The position defended by Rossi is a strict theory of retribution. As Chauveau and Hélie (1836, p. 11) declare, summarizing this position, "this right to punish is subordinated in its exercise to the existence of the violation of a duty, to the existence of a moral infraction... The penalty is nothing more than the reparation of a violated duty, the retribution of evil with evil. "It is in the intrinsic immorality of the fact, in the agent's perversity, that punishment acquires all its legitimacy", conclude Chauveau and Hélie (1836, p. 13).

In this sense, if the penalty should be "proportionate to the nature of the violated duty and the agent's morality...how to accurately assess each of these two elements in each accused agent?" (Chauveau and Hélie, 1836, p. 92). From this, there is the imperative need for establishing the agent's reasons, besides evaluating the relationship between the subject and his act. Therefore, in this rationality, criminal practice implies knowing that provides information on the morality and degree of the agent's perversity, or is used to establish to what extent the agent was morally bound or not to his act. If we punished a subject who is not morally bound to his act, in a case where there was no moral bond between the agent and his act, then that punishment would not be in the right to punish.

In other words, it is in this way of seeing the right to punish, initially linked to a political strategy of liberals during the Restoration, that a desire for

anthropological knowledge is born, allowing the adjustment of criminal (and penitentiary) practice to the moral reality of the delinquent subject. And it is precisely within this scope that the "perversion/perversity" medical-legal debate acquires meaning. The strategy of psychiatry will be to present itself as necessary to solve a double rational doubt: (1) What should one do if a subject cannot be tied to his actions? The principles of a retributive and transforming justice presuppose that, in punishing the act, the subject is also reached, in such a way that the subject identifies himself with his act. But what should one do if there is no such correspondence between the subject and his act, and thus there is a disjunction? (2) How to distinguish precisely what belongs to the order of "perversity," that is, of vice and immorality, implying depraved will and malicious intent, an immoral subject that can be punished and amended; and what belongs to the order of "sick perversion," that is, of the morbid state and alienation, implying injured will and lack of intention, an abnormal or sick subject who must be healed or excluded from society?

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