

Article

Cultural Expertise in Italian Criminal Justice: From Criminal Anthropology to Anthropological Expert Witnessing

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Abstract: This article traces the rise and fall of psychiatric evaluation in criminal trials from the School of Criminal Anthropology of the late nineteenth century to the current Italian justice system. Influenced by positivism and by specific theories on human evolution, Cesare Lombroso considered criminal action as the result of organic causes excluding any kind of legal autonomy and responsibility of the accused. The Positive School of Penal Law he founded with Enrico Ferri and Raffaele Garofalo profoundly inspired the Rocco Code, on which the current Italian Penal Code is still based, albeit with revisions and repeals. Drafted in 1930 during the fascist government (1922–1943), the latter has also suffered from racial ideology. In order to assess potential mental illnesses that would exclude the responsibility of the accused, to determine their level of dangerousness and to establish the corresponding security measures introduced by the Rocco Code, Italian criminal justice consolidated the link between penal law and psychiatric instruments. Such faith in psychiatric evaluation, however, has been particularly questioned by the increasing frequency of judicial processes involving members of different cultural communities in Italy since the 1970s. Thus, the predominantly pathological aspects evaluated by forensic psychiatrists have often proved to be conceptually and methodologically inadequate to take fully into account the differences between cultures, as well as the different social and cultural conditions affecting the defendant's behaviour. This paper argues that cultural anthropology is particularly suited as an instrument capable of disclosing the cultural implications of the legal process and encourages the use of cultural expertise as an important tool for the inclusiveness and understanding of diversity.

Keywords: criminal anthropology; psychiatric evaluation; cultural expertise; Italian criminal justice system; legal anthropology

1. Introduction

The role that cultural expertise should play in Italian legal proceedings is influenced by the way 'culture' and 'cultural factors' have been interpreted throughout the history of Italian law and codes. The most important turning point dates back to the late nineteenth century, when Italy had just been unified, criminal anthropology was at the pinnacle of its success, and its founder, Cesare Lombroso, set up the Positive School of Penal Law, together with Enrico Ferri and Raffaele Garofalo (Lombroso et al. 1886).

The Positive School contributed significantly to what we would now call 'cultural competences' by proposing a pioneering idea: it strongly promoted the engagement of social sciences in the Italian penal law system. The Positive School was persuaded that the competences and the analytical tools of social sciences were capable of comprehending both the crime as a social phenomenon and the complexity of criminal behaviour as a result of both an individual and a social dimension.

Criminal anthropology and the Positive School deeply inspired and shaped the so-called Rocco Code, drawn up by the then Minister of Justice Alfredo Rocco in 1930 and on which the current Italian Penal Code is based, albeit with adjustments, revisions, and repeals. The Rocco Code, in fact, was the second Penal Code to be drafted after the unification of Italy in 1861, the first one being the so-called Zanardelli Code in 1889, entirely inspired by the liberal principles of the Classic School of Penal Law (Carrara 1867; Ferri 1883). Furthermore, being drafted during the government of Benito Mussolini, the Rocco Code was a partial expression of the fascist ideology, based on the belief that Italy was a nation-state and had one, and only one, racial identity, language and religion. The aim of fascist politics was to strengthen the unity of the nation, which was heavily threatened by the historical, economical, and social inequalities of the South compared to the North.

Consequently, the current Italian criminal justice system is still suffering from the effects of both fascism and the historical and cultural changes of the late nineteenth century, powered by scientific positivism, social and Darwinian evolutionism, and—last but not least—Lombroso’s theories about criminals.

Lombroso observed, analysed and classified a great number of criminal and insane people. By interpreting their behaviours as a return to the early stages of human development, he applied the theory of atavism to the study of criminals (Bulferetti 1975; Ferracuti 1996; Frigessi 2003; Gibson and Rafter 2006; Knepper and Ystehede 2013; Lombroso 1921; Montaldo and Tappero 2009; Villa 1985). In his most famous book, *L’uomo delinquente* [The Criminal Man], he wrote that the criminal was a man, or a woman, and born criminal, i.e., affected by some kind of mental illness whose signs and manifestations were identifiable inside as well as outside the body. He believed crime was thus a symptom of moral madness (Lombroso 1876; Lombroso and Ferrero 1893). Considered the highest expression of Lombroso’s theories as closely related to his scientific approach, criminal anthropology was able to gain an official role inside the Italian penal system at that time.

Precisely because it was based on an interdisciplinary dialogue between law, criminal anthropology and other social sciences, the Positive School managed to revolutionize the Italian criminal justice system by allowing penal law out of the box of exclusively legal studies, positioning it inside sociological ones, and placing the criminal at the heart of penal proceedings. Moreover, contrary to what the Classic School implied—i.e., conceiving crime as corresponding to a violation of moral values—the Positive School impressed the importance of social defence by giving priority to the ‘danger to society’ rather than to the moral seriousness of the crime committed by the accused.

Lombroso and the Positive School argued that the responsibility of the accused, and their dangerousness, should be ‘measured’ by means of an anthropological evaluation based on a bio-psycho analysis. By using data from biology, psychology, psychiatry, statistics and sociology, Lombroso’s anthropology—and the role he thought the anthropologist should play as an expert in criminal behaviour—focused on the link between the criminal and their anti-social behaviour as the result of an organic compound and social background together. Consequently, the tools of the psychiatry of the time were used to examine the mental illnesses that might have caused the criminal activity, or to exclude those that may have. Indeed, by meeting the scientific criteria of observation, verifiability and predictability, the psychiatric evaluation was viewed as an objective assessment tool in criminal proceedings. Such a view still persists today.

Having worked on the most proper approach for determining the defendant’s level of awareness and dangerousness, and the corresponding security measures to be implemented, the Positive School and the Rocco Code have thus given great importance to the close link between penal law and psychiatry, and to the role of the psychiatrist in criminal trials (Miletti 2007). In their opinion, the Court had to resort to non-arbitrary, objective, and technical requirements, and the right way to assess criminal ‘behaviour’ technically was offered precisely by forensic psychiatry.

Nevertheless, the supposed objectiveness on which psychiatric evaluation is based has been disturbed by the impact of diasporic communities on the Italian legal system in recent years. Current Italian jurisprudence and social sciences question not only how best to handle cultural

differences, but also what forensic psychiatric evaluation lacks in order to be useful when different cultural conditions and origins are to be treated. Since the Italian Code of Criminal Procedure forbids any kind of expertise on the ‘personality’ of the defendant, except for those assessing their mental disorders which could diminish or completely remove their capacity, the only option to analyse the cultural and behavioural profile of the accused remains psychiatric evaluation.

What so far has prevented cultural anthropologists from taking up an official role as expert consultants in Italian legal proceedings concerns the difficulty in defining and studying ‘culture’, the lack of regard for culture-related factors inside Italian law and codes, the obstacles that anthropological data encounter in order to be qualified as ‘evidence’ in the trials as well as the lack of credibility endured by anthropology as a scientific discipline in Italy combined with the criticism of it for having contributed to theories that justified racial distinctions in the past.

The present article aims to reflect at least on three issues. The first concerns the importance of engaging social sciences within the Italian criminal court. The Positive School of Criminal Law and Lombroso’s criminal anthropology had already stressed the usefulness of the perspective of social sciences in the late nineteenth century, precisely because they pursued the aim of understanding the complexity of criminal behaviour in its interaction with biological and social factors. The Rocco Code accepted the support of ‘auxiliary sciences’ only partially while promoting, instead, the contribution of psychiatry and of the other ‘hard sciences’. The second point addresses the (claimed) ‘objectiveness’ on which the forensic psychiatric evaluation is based. In the last few years, defendants belonging to different cultural communities have heavily challenged the faith put in the positive scientific method and on the presumed universality of the ‘Western’ tools which forensic psychiatry conventionally use to evaluate criminal behaviour. Finally, this article aims to highlight the need for cultural expertise (and particularly anthropological competences) for a better understanding of cultural diversity and in order to improve the current tools being used to evaluate different cultural conducts on trial.

2. The Alliance between Criminal Anthropology and the Positive School

In order to reflect on the engagement of anthropologists as experts of culture-related behaviours in current Italian criminal trials with specific regard to the shortcomings of forensic psychiatric evaluation, what penal law inherited from criminal anthropology and the Positive School needs first to be clearly understood. Therefore, this article is primarily the result of an analytical and historical study of the literature published by Lombroso and by the major exponents of the Positive School of Criminal Law and, secondarily, of the critical analysis and interpretation of the most appropriate bibliography concerning criminal anthropology in Italy.

Anthropology as the study of ‘culture’ was not a recognized discipline in the middle of the nineteenth century. The first important definition of ‘culture’ formulated by Edward B. Tylor ([Tylor 1871](#)), indeed, dates back to 1871 and cultural anthropology, as a defined discipline, established itself much later in Italy. The anthropology at the time of Lombroso was conceived as ‘the natural history of the human being’ ([Mantegazza 1871](#), p. 17) and it mainly adopted a biological and physical approach. Paolo Mantegazza, one of the most important (and one of the first to be recognized as such) Italian anthropologists of the middle nineteenth century, said that anthropology ‘has no other claims than that of studying the human being with the same experimental criterion with which plants, animals and stones are studied; that it has no other aspiration than that of measuring, weighing the human being and his strengths without the yoke of religious traditions, of preconceived philosophical theories’ [non ha altre pretese che quella di studiar l’uomo collo stesso criterio sperimentale con cui si studiano le piante, gli animali, le pietre; che non ha altra aspirazione che quella di misurare, di pesare l’uomo e le sue forze senza il giogo di tradizioni religiose, di teorie filosofiche preconcelte] ([Mantegazza 1871](#), pp. 17–18). Contextually, folklore and ethnology (meaning the study of ‘exotic’ populations around the world, far from ‘Western’ civilization) developed their researches and techniques of analysis much more slowly ([Bernardi 1978](#); [Clemente and Mugnaini 2001](#); [Clemente et al. 1985](#); [Grottanelli 1977](#); [Lombardi Satriani 1980](#); [Puccini 1991](#)). Although these different

fields of ‘anthropological’ studies prolifically dialogued at the turn of the nineteenth century, with the coming of fascism and the so-called ‘debate on human races’, the biological and cultural approaches gave birth to two different schools of thought.

Therefore, unlike the anthropology based on the studies of human socio-cultural practices, customs and behaviours which developed on one side and is taught in Italian universities today, the anthropology to which Lombroso referred was a science ‘studying the human being by means and with the methods of physical sciences, that replaces the dreams of theologians, the fantasies of metaphysicians, with few hard yet real facts . . . yet real facts’ [che studia l’uomo col mezzo e coi metodi delle scienze fisiche, che ai sogni dei teologi, alle fantasticherie dei metafisici, sostituisce pochi aridi fatti . . . ma fatti] (Lombroso 1871, p. 9). This means that Lombroso applied the study of the organic and psychic components of the various human races anthropologists usually undertook in general to the study of the criminal man and woman (Ferri 1892, p. 54).

Even if *L’uomo delinquente* summarizes the key conclusions of criminal anthropology and the modern view of the Italian penal law better than his other works, Lombroso enlightened many fields of study and theories concerning criminals (Lombroso [1864] 1872; Lombroso 1886, 1888, 1909), which widely and quickly spread within, and outside of, Italy for at least three reasons.

Firstly, Lombroso was a great graphomaniac: he wrote many volumes, articles, and essays on what he was studying, discovering and thinking. In addition, he publicized them not only in print, but also by discussing them during his lessons at the Universities of Pavia and Turin as well as in national and international meetings. Lombroso’s reputation peaked at the second half of the nineteenth century (Baima Bollone 2003; Colombo 2000; Velo Dalbrenta 2004).

Secondly, Lombroso developed his theories at a time of fervent cultural turmoil. While he was studying ‘his’ criminal and mad men, Auguste Comte’s positivism, and Charles Darwin and Herbert Spencer’s theories of evolution were coming to Italy and they would soon revolutionize the Italian scientific, philosophical, and cultural scene (Comte 1831; Darwin 1859; Spencer 1879). According to positivism, human history should have evolved through three stages: the theological one (where people would attribute the causes of natural phenomena to deities), the metaphysical one (where people would attribute the causes of natural phenomena to reason, i.e., to an abstract concept), and finally the scientific one (where reason would identify rules by using observation). In line with this way of thinking, every natural phenomenon would have evolved by means of a close cause-effect relation, and science would have to identify them by using empirical research, experience, and observation.

In addition, theories on social evolution were disseminating quickly. They were based, in brief, on the assumptions of the original unity of human beings, their development by stages, their variability related to their adaptability to the environment, and the inheritance of the characteristics they had acquired (Chiarelli and Pasini 2010; De Lauri 2010; Giacobini and Panattoni 1983; Pancaldi 1983). In line with those theories, Lombroso believed that ‘civilization’—meaning the rate of progress achieved by every human population—was one of the causes of insanity. In one of his early books, *Influenza della civiltà su la pazzia e della pazzia su la civiltà* [The Influence of Civilization on Madness and of Madness on Civilization], Lombroso (1856, p. 28) argued that ‘where civilization has a real impact is on the shape insanity takes. Insanity always shapes itself on the image of civilization in which it rages’ [dove veramente influisce la civiltà è nella forma della pazzia. La pazzia si modella sempre su l’immagine della civiltà, in mezzo alla quale imperversa]. So, even if he considered ‘civilization’ as a synonym of ‘culture’ (in line with most intellectuals of the time), and he never referred to culture in the same way that we define it nowadays, Lombroso was fascinated from the beginning of his career by the different ‘cultural’ expressions ‘typifying’ different human populations. In his works, he repeatedly claimed that criminals were an example of human regression, being like primitive men still living among civilized ones (Lubbock 1865, 1898).

Thirdly, Lombroso’s studies on criminals were perceived as important answers to the change Italy was going through as a consequence of its unification in 1861. Their impact on penal law profoundly affected the Italian criminal justice system. In fact, by defining the competences of what he called

‘criminal sociology’ (Ferri 1892), he established a close link between criminal anthropology and penal law. As he argued,

[...] by determining the organic and psychic nature of the criminal man and the diverse contributions given by age, gender, marital status, profession, etc. ... to the varied types of crimes, as well as the scientific study of the classes considered dangerous for society, the study of the anthropological factors of crime will provide the judicial police and the very administration of justice itself with the support of new and more secure means for pursuing culprits [lo studio dei fattori antropologici del reato, determinando i caratteri organici e psichici del delinquente ed il vario concorso dell’età, sesso, stato civile, professione ecc ... nelle varie specie di reati, nonché lo studio scientifico sulle classi pericolose della società, offriranno alla polizia giudiziaria ed alla stessa amministrazione della giustizia il sussidio di nuovi e più sicuri mezzi per la ricerca dei colpevoli] (Ferri 1892, p. 624)

By providing the tools to better understand the criminal’s bio-psychic behaviour, criminal anthropology, as it was understood, was expected to facilitate the work of the Court.

Being a natural scientist, social physician, forensic psychiatrist, and criminal anthropologist, Lombroso spent his whole life studying the biological factors of mental illness and connecting them to criminal behaviour. By means of criminal anthropology, he intended to find out the organic nature of criminal behaviour by using bio-anthropological data and to give such data a scientific value.

Lombroso’s research into the causes of cretinism and pellagra—two very common pathologies in northern Italy in those years, both originated by nutritional deficiencies (cretinism by a lack of iodine and pellagra by a lack of b-group vitamins) and causing dementia and mental illness, which he studied at the beginning of his career—opened his eyes to human behavioural abnormalities and led him to investigate their origin (Lombroso 1870). He had thus started gathering a large amount of data on thieves, bandits, and murderers of the time when he worked as an army medical doctor in Calabria (Lombroso 1898; Milicia 2014). Having many problems related to health and hygiene, illiteracy and poverty due to historical, social and economic reasons, the South of Italy was poorer than the North, and therefore it appeared to Lombroso as a great ‘human laboratory’ where he could better study criminals.

After his discharge from the army in 1863, he started to give some courses on the clinical and anthropological study of mental diseases at the University of Pavia and at the University of Turin (from 1876) and to work as a medical doctor in the psychiatric hospitals of those cities. There he had the opportunity to observe criminally and mentally insane individuals and to develop his theories on atavism, moral madness and epilepsy with regard to criminal behaviours.

In his studies, he used a positive-scientific method consisting of the empirical observation of human beings, the measurement of their physical and biological attributes, and the comparison and classification of the latter into criminal typologies. His aim was to collect data able not only to describe case-related behaviours, but also to predict and prevent crime. Indeed, by means of observation and thanks to ‘the direct, somatic and psychic study of the criminal man comparing him with the findings obtained from the healthy man and the alienated man’ [allo studio diretto, somatico e psichico, dell’uomo criminale, confrontandolo colle risultanze offerte dall’uomo sano e dall’alienato] (Lombroso 1876, p. 2), criminal anthropology was deemed capable of producing scientific data.

Consequently, Lombroso claimed his observations and measurements to be at the same time a method and evidence of mental and behavioural anomalies, in order to distinguish between criminals and ‘normal’ people. In his opinion, every type of mental illness caused specific types of crimes, and such recognition had to be the primary aim of ‘his’ anthropology.

Just like many other evolutionary biologists and anthropologists in the late nineteenth century, such as Paolo Mantegazza and Giuseppe Sergi, Lombroso believed the study of human morphology (i.e., the measurements of human crania and bodily features in order to benchmark different races, languages, levels of intelligence and capacity for pain and memory, etc.) was the starting point for

defining the degree of progress achieved by human beings. They also had in common an interest in phrenology, a discipline based on the supposed link between human morphology and psychology derived from Aristotle's *Physiognomica* (IV century BC) and designed by Franz Joseph Gall in the early nineteenth century (Lombroso 1897; Mantegazza 1876; Puccini 1991; Sergi 1911). More specifically, Lombroso believed that criminals had physical, psychological, and emotional traits close to those of the 'primitive' people studied by his contemporary evolutionary anthropologists far from Europe, and so he placed both criminals and primitive people on the last step of progress and civilization.

Lombroso's perspective was strongly affected by the organicistic approach of nineteenth-century psychiatry. By wanting to overcome the Cartesian (in reality dating back to Plato) dualism of mind and body, the anthropological science studying psychiatric phenomena had to examine the close relationship between the human body and mind, and for that reason it was based precisely on both a biological and psychic analysis.

By examining criminals' bodies and brains, criminal anthropology was specifically intended as a human science that, when facing criminals, had to be able to recognize the signs of their crime. Criminal anthropologists should be able to discover the existence, or otherwise, of injuries which might have altered their ability to discern and thus to live according to social rules. According to Lombroso and the Positive School, the classification of men and women into different criminal typologies had just to simplify the work of the Court. Judges, indeed, would use those criminal categories to recognize criminals, to obtain proof of their nature and to adapt the penalty to their anti-social behaviour.

In order to determine the degree of criminals' responsibilities, the bio-psychic analysis in criminal proceedings had precisely the duty of revealing if the crime was the result of an intentional act or of any kind of mental injury.

In regard to this matter, that is to say with reference to the criminal's free will, the two most important Italian schools of penal law of the late nineteenth century collided.

Inspired by the liberal principles formulated by Cesare Beccaria in his most famous volume, *Dei delitti e delle pene* [On Crime and Punishments] published in 1764 (Beccaria [1764] 2001), the Classic School of Penal Law believed that the criminal had the ability of determining himself and of choosing independently. Fully aware, they had to assume the responsibility for their criminal acts and for having violated social norms. While respecting human dignity, the punishment had to be proportionate to the moral seriousness of the crime committed. Having, indeed, a retributive nature—i.e., its function was to meet the needs of society and to protect its values—the punishment for the crime committed had to correspond to the capacity of the criminal to understand the social and moral values they had infringed with their actions (Carmignani 1854; Carrara 1867; Lucchini 1886; Marotta 2004; Pessina 1868; Povolo 2007).

Free will is an 'illusion', Ferri said, 'a criminal is not he who wants to be such. In order to commit crimes one needs to have a special physical and moral temperament that either forces one to break the law, or cannot resist outside temptations' [non è delinquente chi vuole. Per commettere delitti bisogna avere una speciale tempra fisica e morale, che o vi spinga, essa, a delinquere o non sappia resistere alle tentazioni esterne] (Lombroso et al. 1886, p. 120).

Indeed, based on Lombroso's criminal anthropology studies and adopting a positive method, the Positive School of Penal Law shifted the focus from the Classic School's idea of crime as a result of violating moral or religious law, to the criminal as a person to be concretely examined. By means of criminal anthropology, criminal sociology and criminal statistics, the Positive School tried to oppose the Enlightenment's idea of crime as the consequence of a sin, committed violating religious laws, or a moral choice, made violating social norms (Ferri 1878, 1881; Garofalo 1880). Depending on biological and pathological causes, the criminal could not have any kind of free will. Given that they were a mad and abnormal individual, indeed, the punishment had to be commensurate with the danger their behaviour might have caused to society rather than with its moral value.

Lombroso actually believed crime to have many causes, such as hereditariness (predominantly), the impact of climate and environment, the influence of 'ethnicity' and civilization, and the consequences

deriving from nutrition, age, gender, marital status, profession, education, but it was Ferri (1883, 1892) who clearly theorized the factors conditioning crime. He distinguished between: (1) anthropological or individual factors (i.e., the criminal's organic and psychic constitution and personal characters); (2) physical factors (belonging to the physical environment such as climate, land, weather, etc.); and (3) social factors (i.e., the social environment wherein the criminal lived). Although social factors were involved in all crimes, the Positive School believed the only possible aspect to be proven was the influence of mental illnesses. Thus, the only choice was to reduce and to prevent social factors determining criminality, and that was the main purpose of the Positive School. In other words, the Positive School wanted 'to assert scientifically and propose appropriate means in the need for a greater social defence against the criminals' offences' [di affermare scientificamente e di proporre i mezzi adatti nella necessità di una maggiore difesa sociale contro gli attacchi dei delinquenti] (Ferri 1883, p. 3).

The purpose of the repressive measures, thus, should be to guarantee the defence of society: crime being the symptom of a socially-dangerous behaviour, the security measures taken had to prevent further criminal activities by means of the removal of the criminal from society itself or of their medical treatment in a designated mental hospital.

3. Lombroso's Idea of Forensic Psychiatric Expertise

By determining the level of 'social danger' of the accused, and by providing credible evidence of their 'social responsibility' (Ferri 1892; Garofalo 1885), the Positive School—and then the Rocco Code—gave great importance both to the psychiatric evaluation of the defendant and to the role of the psychiatrist during the criminal proceedings.

According to Ferri, the following questions could be asked of criminal anthropology: 'Is the criminal always, or if not in what cases, a normal man or an abnormal one? And if and when he is abnormal, where does his abnormality come from? And is it innate or acquired? Is it correctable or not?' [Il delinquente è sempre, o in quali casi, un uomo normale o un uomo anormale? E se esso è e quando è anormale, onde proviene questa sua anormalità? Ed è essa congenita od acquisita, correggibile od incorreggibile?] (Lombroso et al. 1886, p. 74).

Lombroso was interested in the same matters when he explained very precisely what the forensic psychiatric expertise of the time consisted of in a little-known book entitled *La perizia psichiatrico-legale coi metodi per eseguirla e la casuistica penale classificata antropologicamente* [Legal-Psychiatric Expertise with Methods for Conducting it and the Anthropologically-Classified Criminal Casuistry] (Lombroso 1905). It was planned and written when Lombroso was 70 years old. At that period, he finally had a chair in criminal anthropology at the University of Turin and his theories and ideas were already widely used and recognized.

La perizia psichiatrico-legale is made up of two parts: the first collects many examples of criminal-anthropological evaluations, where every case-study described corresponds to a typology of mental disease, pathology or disorder; the second is more methodological, where Lombroso explains the tools and techniques to be used in a correctly performed anthropological and forensic-psychiatric evaluation.

In reality, many of Lombroso's books include famous examples of bio-anthropological and psychiatric evaluations (Frigessi et al. 2000; Lombroso and Bianchi 1884, 1905), but *La perizia psichiatrico-legale* is a practical testimony of how forensic psychiatric expertise was consolidated in those years and what was expected from it. It was, in fact, originally designed by Lombroso to be a handy guide capable of teaching the ways in which to carry out a psychiatric assessment when the Court requested it. The result is a catalogue including, on the one hand, numerous criminals' life stories and, on the other, the techniques used by nineteenth-century forensic psychiatrists in their evaluations.

By entering the medical history of the criminal, Lombroso simultaneously recommended the examining of their disease, their family surroundings (i.e., their social, economic, and 'cultural' circumstances) and, not least, their personality, temperament, and attitudes. Such a suggested method

used to discover the criminal's behaviour comprised both a direct physical observation (i.e., concerning physical appearance and external factors) and an indirect one (i.e., laboratory tests). By means of anthropometric and cephalic measurements, anatomical and psychological examinations, emotionality, susceptibility and mobility testing, observations of tattoos, objects, pictures and papers written by the criminals themselves, and the analysis of interrogation reports, the psychiatric-legal evaluation was able to provide a biography of the accused and their bio-anthropological and psychological profile. In addition, Lombroso recommended the inclusion of an in-depth inquiry into their family, social, and 'cultural' background, as Salvatore Ottolenghi wrote in his *Programma di polizia scientifica per lo studio dei veri criminali* [Scientific-Police Programme for Studying Real Criminals]. Among other things, indeed, Ottolenghi suggested exploring the intelligence level (acculturation and education), individual skills, religious beliefs and practices, relationships (with family and friends), passions (political, patriotic, etc.), sexuality, morality (altruism, heroic acts, charity, honesty, loyalty, instincts of rebellion, etc.), the capability to commit crime (causes, manners, behaviours after crime), ideas of justice, remorse, recidivism, and so on (Ottolenghi 1910).

Although criminal anthropology was seen as a means for proving the link between the anomaly in the behaviour of the criminal and the (permanent or temporary) anomaly of their mind, it set out to study the two factors of human life as inseparable: the organic component and the psychic one together. Lombroso considered bio-anatomical examination so much as the very basis of psychic analysis that he specifically meant psychology as 'the study of the passions, the writings, the slang, the religion, the morality, the education, the mental illnesses, the historical, meteoric, hereditary, dietary influences behind the crime' [è lo studio delle passioni, degli scritti, del gergo, della religione, della morale, dell'educazione, delle malattie mentali, delle influenze storiche, meteoriche, ereditarie, alimentari sopra il delitto] (Lombroso et al. 1886, p. 44). However, he and his peers in anthropology had to prioritize the biological analysis because they believed 'the organ' needed to be studied before 'the function' that let it work.

Even if Lombroso did not explicitly speak about 'culture' or 'cultural conditionings', he did deal with elements, practices, and behaviours that could be qualified as 'cultural', secondary to physical causes and hereditary predispositions. His books and his forensic-psychiatric expertise are effectively based on reconstructions of criminals' lives: paradoxically, Lombroso used these qualitative analyses to provide an objective reconstruction of the criminals' lives in relation to their background, social environment, and adaptation to society.

Lombroso's tools and interpretations are controversial and obsolete, but clearly the focus of legal-psychiatric expertise is its presumed scientific method because it is believed capable of understanding the complexity that characterizes the criminal. He and his peers in psychiatry realized the importance of examining the criminal's life, relationships, and social and cultural background, while considering these only as circumstantial data to be used to provide an overall picture of the criminal. In order to learn more about their profile, Lombroso eventually highlighted the need for the input of all social and human sciences in the Italian penal system; nevertheless, he was repeatedly accused of treating the data merely as information rather than as a key resource for the understanding of the criminal.

Contrarily to the 'individualism' of the Classic School, indeed, the Positive School wanted to restore the equilibrium between the social element and the individual one (Ferri 1883). Demonstrating the abnormality of the criminal (as was required of legal-psychiatric expertise) thus meant evaluating both the suitability of the criminal for social life, and the degree of their anomaly, or better, as Garofalo (1885, p. 100) put it, 'if the anomaly is permanent and the mental illness is incurable or long-lasting in its dangerous form towards society, i.e., if there is any hope of improvement and suspension of the criminal impulses' [se l'anomalia sia permanente e l'infermità incurabile o duratura nella sua forma pericolosa alla società, ovvero se vi sia speranza di miglioramento e di cessazione degli impulsi criminosi].

Forensic psychiatrists, therefore, were called both to deal with the criminal, biologically considered an anomalous subject because of their way of behaving, and to identify them in order to establish their degree of ‘danger towards society’. This concept has its roots in one of Garofalo’s intuitions, according to which the punishment should be determined on the basis of the ‘fear’ (i.e., the degree of insecurity) caused by the criminal towards society. For this reason, he proposed the distinction between the offence to social security and the probability of the crime’s reiteration. It was Ferri then who recommended the use of the concept of ‘danger to society’ in order to differentiate the dangerous ‘fact’ from the dangerous ‘man’ (Ferri 1892; Garofalo 1885).

Since some criminal acts were interpreted as the results of mental disease, Lombroso believed most of them were affected by congenital mental anomalies, and therefore, were not to be considered responsible for their behaviours. Consequently, they had to be interned in special criminal psychiatric hospitals.

The Positive School concluded that the crime was ‘an organic, psychic, and social abnormality’ [il delitto è un’anormalità organica, psichica e sociale] (Lombroso et al. 1886, p. 104).

Even if faith in a positive science still persists in certain fields of behavioural genetics and forensic neurosciences as well as in some fields of psychology, psychiatry and criminology, most of the elements of Lombroso’s bio-psychic anthropology are no longer accepted (Canepa 1974; Di Tullio 1931; Musumeci 2012). Italian cultural anthropology today, in particular, has expressly distanced itself from criminal anthropology. In Italy, ‘criminal anthropology’ actually coincides with Lombroso’s criminal anthropology, because an anthropological field specifically dealing with ‘crime’ has not yet developed. Cultural anthropology inevitably rejected the biological and organicistic approach applied by Lombroso and the use he, and his peers in anthropology, made of the theories regarding the ‘human race’ (Lévi-Strauss 2002; Pogliano 2005; Stocking 1968). Moreover, the Nazi and fascist ideology decontextualized the evolutionary classifications of the human races produced by criminal anthropology and utilized them for justifying the ‘scientifically-based’ racial doctrine of segregation. By considering the debate on ‘human race’ a black page in Italian anthropology, cultural anthropology is thus reticent towards nineteenth-century (and particularly towards Lombroso’s) Italian anthropology and rather it bases its approach on the understanding of cultural diversity. The hope is that Italian cultural anthropology will get more involved in studying the impact cultural diversity may have on the Italian juridical system, as well as on crime.

4. Psychiatric Expertise in Current Italian Criminal Trials

Among the various reforms proposed, the Positive School managed to shift the focus of penal law from the criminal fact, in the abstract, to the criminal individual, in concrete terms, and more specifically from the criminal’s individual responsibility for the committed crime (as the Classic School affirmed) to their responsibility towards society (as argued by the Positive School). In order to determine their level of responsibility, Lombroso and ‘his’ School claimed to submit to the Court scientific, substantiated, objective and exhaustive expertise based on the biological origin of the criminal behaviour. The aim was to identify ‘for sure’, and so to prevent crime and to protect society from dangerous people.

If Lombroso underestimated the value of socio-cultural factors, Garofalo and Ferri improved the organicistic approach of their teacher by focusing the attention on the link between the individual behaviour of the criminal and their social background. When Garofalo (1885, p. 5) talked about ‘social uses’, i.e., ‘the rules of behaviour to which most people are subjected’ [norme di condotta a cui la maggioranza degli uomini si sottomettono], he sketched something similar to what we mean by ‘culture’ today. These rules, he continued (Garofalo 1885, p. 6), ‘are there to guide almost every action of ours. Tradition, habit and example ensure that, without even investigating the reason, we are happy to submit to them and, in order to deserve the name of well-behaved people, we want to show in every occasion that we do not neglect them’ [sono lì a dirigere quasi ogni nostro movimento. La tradizione, l’abitudine, l’esempio, fanno sì che noi, senza neppure indagarne la ragione, ci sottomettiamo ad esse

volentieri, e per meritare il nome di persone ben educate, desideriamo mostrare in ogni occasione di non ignorarle].

The Positive School believed that violating social rules meant failing to adapt them. Indeed, its efforts focused not only on the practical norms establishing the different types of criminals, but also on the most appropriate penalty for every criminal typology.

Although Lombroso's classification of criminals has been surpassed, the Rocco Code pointed out the need for determining both the imputability (mental capacity) of the defendant and the danger of their act to society. The Code tried to find a compromise between the Positive School's proposals and the Classic School's philosophy: indeed, by introducing a 'double-track' system a Third School attempted to mediate between the idea of the free will and self-determination of the accused supported by the Classic School, and the factors conditioning human actions and behaviour referred to by the Positive School ([Alimena 1900](#); [Carnevale 1891](#)).

That is why, even today, psychiatric forensic expertise is required for two kinds of assessments in criminal trials: the first to recognize the 'imputability' of the defendant, i.e., the causal link between their ability to understand and their will, and any kind of diseases that would exclude or diminish it. As maintained in article 85 of the Italian Penal Code, the 'ability to understand' is defined as the faculty to correctly comprehend reality (according to the values and principles expressed by society and relating to the stages and states of the life of the accused), while the 'ability to want' is defined as the ability of the accused to determine themselves autonomously in the various circumstances of their life ([Aleo and Di Nuovo 2011](#); [Bertolino 1990](#); [Ceretti and Merzagora 1994](#); [Collica 2007](#); [Dawan 2006](#); [Monzani 2009](#)). In addition, the Italian Penal Code indicates those cases in which the capacity to understand and take action excludes or diminishes mental capacity, such as mental illnesses (articles 88 and 89) or the consumption of alcohol or drugs (articles 91–95), a physiological immaturity due to minor age (articles 97 and 98) or a paraphysiological immaturity due to mutism and deafness (article 96). Conversely, emotional or passionate states are considered by Italian law not to exclude or diminish mental capacity (article 90).

The second kind of assessment demanded by expert psychiatric appraisal is to determine the dangerousness of the accused towards society in order to evaluate an alternative measure to imprisonment. As indicated in article 203 of the Italian Penal Code, dangerousness is defined as the probability that a defendant will commit a crime again. This article emphasizes the need to understand how the accused could be considered dangerous and what the risk level towards society is by means of a probabilistic evaluation ([Caputo 2015](#); [Dell'Osso 1985](#); [Martini 2017](#); [Pelissero 2008](#)). The assessment of danger is oriented towards the future, and it is therefore indeterminate. For this reason, it needs to be integrated with all the elements pertaining to the 'personality', behaviour and background of the accused as indicated by article 133 of the Italian Penal Code.

By using a series of quantitative and qualitative parameters, these two kinds of technical response requested by the forensic psychiatric evaluation are presumed by the Italian criminal justice system to be capable of verifying both any mental disease related to the specific behaviour of the criminal and the chances that this could be risky for society ([Aleo and Di Nuovo 2011](#); [Ponti and Merzagora 1996](#)). In this sense, the function of forensic psychiatry is to formulate an evaluation which is simultaneously diagnostic (imputability) and prognostic (danger to society).

Since forensic psychiatric expertise is a technical judgement, it is regulated by article 220 of the Italian Code of Criminal Procedure, and is considered to be a tool for obtaining information and means of proof at the same time. Experts are indeed requested to observe a very rigorous methodological procedure: after technical and legal preconditions, they have to proceed with the description of criminal facts, the collection of clinical data (and possibly historical data), the medical history, physical examinations and the laboratory and psycho-diagnostic tests in order to assess the mental capacity of the defendant, their capability to consciously participate in the trial, and their dangerousness towards society ([Angelini and Verde 2010](#); [Fornari 1997](#); [Ingino and Scarfato 2016](#); [Ponti and Merzagora 1996](#); [Volterra 2005](#)).

Even though this kind of forensic expertise includes collecting the accused's familial, social and interpersonal information, these data are intended to increase the information available about them, and not to be complementary to diagnostic and prognostic evaluations in any way. Consequently, their level of responsibility, guilt and maturity are still viewed as the essential result of scientific, objective and quantitative assessment rather than of the evaluation of cultural variables and conditions.

Current forensic psychiatric expertise in Italy appears unable to entirely assess the range of cultural differences—i.e., cross-cultural differences and the different kinds of social and cultural conditions and behaviours of the defendant—because cultural differences are not objectively quantifiable (Collica 2012; Merzagora 2017). At least three limitations for this can be noted: firstly, 'culture' cannot be considered as an entity, and its variety and variability are impossible to define objectively and universally; secondly, the tools and methods used to define the culture-related behaviours of the accused may be inadequate for giving evidence in Court; and finally, 'culture' does not appear as a key factor in the forensic evaluation of mental capacity, responsibility and dangerousness because it is considered closely associated to 'personality', i.e., concerning individual subjectivity, and thus the Italian Code of Criminal Procedure hinders its evaluation.

The key point here is that psychiatric expertise, as it is currently organized and planned, might be unable to take completely into account the complexity of human—and criminal—activity. Focusing on the criminal event (framed by time, place and situation), forensic psychiatry does not have all the tools for completely recognizing and revealing the complexity of circumstances that encouraged the criminal to commit the crime, especially when it is necessary to take into account appropriately every kind of culture-related manifestation of a particular disease. Effective support could come from the analytical tools of ethno-psychiatry and ethno-psychology. Basing their approach and appraisal on the recognition and respect of mutual cultural diversity, ethno-psychiatry and ethno-psychology reflect on the different culture-related psychic disorders and care systems developed in different cultural settings, thus questioning the belief in the presumed universality of both the 'Western' psychiatric categories of mental illness and the tools and techniques of the psychiatric science. In Italy, both disciplines—arising from the experiences gained within French ethno-psychiatry (Devereux 1978, 1980; Fanon 1952, 2011; Nathan 1986, 1993)—have recently been developing and refining their field of study and application, and they are trying to build a methodology capable of recognizing and treating the mental illness of members of diasporic communities (Beneduce 2007, 2010; Coppo 2003, 2007; Taliani and Vacchiano 2006). In this sense, they may effectively help 'official' forensic psychiatry because their approach aims at contextualizing, and filling with historical and cultural meanings, the traumatic (and potentially dangerous) experiences of immigrants.

From a legal viewpoint, the main strength of Italian psychiatric expertise (but also its biggest obstacle) arises from article 220 of the Code of Criminal Procedure, which states that expert appraisal is required when further investigation needs to be carried out and when the assessments need to specify technical, scientific or artistic competencies.

Indeed, if in the first paragraph article 220 closely correlates forensic expertise with technical and scientific competences, in the second it does not admit expertise concerning 'the psychological qualities independent of pathological causes'. This means that anything not having pathological causes (and therefore not to be based on technical and scientific evaluation), such as the accused's habits, skills, character, personality and customs, is left out of forensic expert appraisals.

Article 133 of the Italian Penal Code provides a possible alternative: according to this, the Judge has to 'deduce' the seriousness of the crime from a number of factors, among which include the nature, modalities, purposes, time and place, intensity and level of guilt of the crime. Furthermore, it indicates that the capacity of the accused to commit crime has to be 'deduced' from their reasons, character, criminal history, previous and concomitant conduct, and their living, individual, familial, and social conditions.

The critical point rests in the arbitrary nature of that 'deduction'. If the Judge does not consider themselves able to comprehend the profile of the accused by means of using all the information obtained

during the investigative work and in court proceedings, or they deem further assessment necessary, they may request a psychiatric evaluation by forensic consultants, which is the only instrument of evaluation they can use to understand the profile of the accused and to define an appropriate security measure for them. In practice, the Judge almost automatically requires forensic psychiatry to examine the defendant at the same time as the ‘perpetrator’ of the committed crime and as a ‘potential perpetrator’ of new crimes, in order to assess an appropriate social rehabilitation.

By making the close link between psychiatry and penal law increasingly vulnerable, this legal axiom appears fragile and leaves some doubts.

Firstly, in fact, mental illnesses are not the only causes of criminal acts. They may no longer be considered special causes of crime, but rather one of the many factors interacting with others in causing a criminal activity. This means that the social and cultural circumstances contributing to the crime do not inevitably have to be excluded *a priori* because current scientific tools are not able to evaluate them. For example, many social and human sciences, such as cultural anthropology, have developed and refined their methods and analytical tools in this sense. Already at the end of the nineteenth century, the Positive School emphasized the need to investigate the criminal as a whole with the contribution of all the social sciences.

Secondly, the accused’s character, skills, customs and ‘culture’ are not simple corollaries of their criminal activity; rather, they are likely to form their background. In addition, this inevitably also includes their behaviour: even though this is a controversial concept, in truth it does not reveal what the accused is, but rather what made the crime possible. By claiming their aim of the study (culture and its expressions), the anthropologists dealing with law and crime should clarify how ‘culture’ is debated in the Italian legal system in order to stress that culture not only is a concern of minority groups, immigrants or foreigners, but that it relates also to the anti-social behaviours of the majority of the population. The key matter, here, is how culture could be technically evaluated in order to provide an objective assessment. The Positive School has already answered this question, though only partially: considering the scientific competence behind its proposals, the Positive School, and Ferri (1892) in particular, recognized both the importance of introducing permanent social scientists in every court, and the need to teach criminal anthropology, biology, psychology, statistics and sociology to judges, magistrates and lawyers, in order for them to better understand the complex profile of each criminal and also crime as a social phenomenon.

Finally, objectiveness does not stand for science, but more likely for awareness techniques. Science bases its system of knowledge on using specific techniques able to provide a meticulous and understandable assessment because it guarantees both the impartiality of the consultant and the non-arbitrariness of evidence. In this perspective other sciences, like human and social sciences, may be equally qualified. Ferri (1883, p. 18), for instance, asked: ‘But what reason would there be for denying social sciences that extension of the positive method which has already provided such great services in every other discipline?’ He answered: ‘Evidently none’ [ma quale ragione vi sarebbe per negare alle scienze sociali quell’estensione del metodo positivo, che già rese così grandi servigi in ogni altra disciplina? Evidentemente nessuna]. The evaluations of cultural experts are expected to have the same objectivity, neutrality and validity as any other technical assessment in Italian legal proceedings. Since their expert testimony is the result of both a specific disciplinary training and suitable instruments used to understand and explain ‘culture’, anthropologists in Italy should also be seen as qualified consultants in criminal behaviours related to culture.

Indeed, the doubt raised by expert forensic psychiatric evaluations highlights the present-day need to work and refine tools of analysis capable of comprehending and interpreting cultural variables more than they do at present.

5. Against Discrimination: The Need for Cultural Experts

As all other competences, forensic psychiatry is based on the concept of impartiality. This relates to the objectivity of forensic consultants, and the neutrality of their assessment, which have to be valuable as evidence.

In Italy, however, such claimed impartiality was affected not only by the faith shown in positive science in the nineteenth century, but also by the racial classifications of human beings that culminated in the fascist ideology. This close link between science and race ([Israel and Nastasi 1998](#); [Maiocchi 1999](#); [Manfredi 1988](#); [Mantovani 2004](#)) percolated into the Rocco Code too and still persists in Italian penal law in the fear of repeating that mistake again. The problem of analysing the ‘personality’ of the criminal arises from that very concern for categorizing people on the basis of assumptions, deductions and stereotypes as has happened in the past.

This difficulty mainly emerged at the end of the fascist period (when the concept of race was discussed by the intellectuals of the time) and in the 1970s, when waves of migration from outside Europe started to impact the Italian justice system.

The nineteenth-century Italian concept of culture corresponded to that of race. The race classificatory system was based on the study of human morphology and on the effort to find the biological, linguistic and historical origins of any race ([Lombroso 1871](#); [Mantegazza and Giglioli 1876](#); [Niceforo 1901](#); [Sergi 1900](#)). The presumed scientific methods used to conduct that research, and the resulting categorizations of people, seemed to strengthen and justify the fascist ideology of nationalism and the superiority of the ‘Latin race’.

Such a political view inevitably contaminated the Italian justice system too, and especially the Rocco Code which was drafted in that period. Not without reason, in the Second Book, Title Ten, the Rocco Code included ‘*Dei delitti contro l’integrità e la sanità della stirpe*’ [On Crimes Against the Integrity and Health of the Race], i.e., a number of articles (from 545 to 555) predisposed precisely for defending and securing an Italian national identity. Unlike the Zanardelli Code of 1889, the Rocco Code contained many culture-related articles which have now been revisited, deleted or repealed, such as those concerning the father’s dominance over his sons and wife, the superiority of man over woman, public humiliation and shame, honour crimes, and so on.

In Italy, science in support of race was intended to promote the political and cultural identification of one nation with a single ethnic identity (Western and of Latin origins), a single religion (Catholic), a single language (Italian) and a single history, tradition, custom and culture.

However, even if most of the intellectuals and criminal lawyers of that time exalted Latin-ness, they strongly rejected the deterministic concept of race as biologically hereditary, and the eugenic practices on which Nazi ideology was based because it was considered to be contrary to the Christian spirit ([Mazzacane 1986](#); [Pavan 2008](#)).

Indeed, consisting of rejecting the research on the organic, biological and genetic origin of any race, while preserving the value of a common and single culture at the same time, that threat still persists in the Italian criminal justice system. Moreover, it was further impacted when migratory movements increased in Italy in the second half of the twentieth century.

During the Italian economic boom of the ‘1970s, immigration appeared as a social and legal problem. In the past, Italian immigration studies mainly concerned migratory movements from the South to the North of Italy—or beyond—for seeking employment. However, the impact of the diasporic communities moving around the world in more recent years has brought the concept of ‘culture’ into Italian trials as well. The historical, social, cultural and linguistic differences embodied by immigrants (and equally their economic inequalities) can make the understanding of their behaviours hard in the proceedings and increase the tension in the application of juridical norms.

Thus cultural expertise, and specifically the use of expert anthropological assessments as expert consultants of local law and conflict resolution, is an emerging need not only in the international context ([Holden 2011, 2019](#)) and specifically in the Italian justice system ([Basile 2010](#); [Bernardi 2010](#); [De Maglie 2010](#); [De Pasquali 2016](#); [Gianaria and Mittone 2014](#); [Ruggiu 2012](#)). In Italy, indeed, social,

human and criminal sciences question the legal effects deriving from cultural differences: such effects are difficult to comprehend, especially with reference to the resulting discriminatory and racist behaviours inside and outside the trials.

Since it might be seen as an opinion on what the criminal is and not on what they did, the Italian penal justice system excludes any kind of evaluation intending to reveal the personality of the criminal; it refuses any kind of expertise focusing on the biological origins of the mental illness or criminal behaviour of the accused, but explicitly requires the assessment of a specific event, i.e., the causal link between imputability and any potential mental disease that could preclude or diminish their capacity within the restricted time of committing a crime; it suggests a psychiatric assessment of dangerousness based on the future; and it limits any kind of culture-related evaluation, because of the complexity of defining the conditioning role of the cultural background on the behaviour of the accused and to avoid the risk of confusing ‘culture’ and ‘race’.

Even though the concept of race—and the purity of race—has been overcome and scientifically denied, ‘race’ continues, however, to be a form of discrimination. The promotion of forensic assessments that seek to define the cultural identity of the accused in Italian trials is at risk of returning to racial or ethnic classifications. Yet the result of such a choice is often different types of discrimination (ethnic, racial, cultural, religious, social, economic, sexual, etc.), which is equally painful and unfair.

What is crucial, here, is again the concept of impartiality and the tools to be used for providing it. Reflecting on cultural expertise both as a technical tool and one of comprehension is a necessity nowadays in order to ensure the equality of any individual before the law. Together with other forensic sciences, cultural anthropology has to be considered as a valuable resource too, useful for understanding different cultural conditions and situations, and for making the mechanisms of cultural meetings or clashes clearer ([Rosen 1977](#)).

Based on the use of both technical and comprehensive tools, cultural competence aims to understand cultural differences and conditions in order to broaden their consideration and formulate strategies to let them live together. Anthropology, in particular, should also engage in the resolution of cultural conflicts in the Italian multicultural setting.

Cultural expertise, indeed, could be seen as something more than the mere interpretation of cultural differences: the technical evaluations, lines, and solutions offered by such anthropological competences may simultaneously explore criminal activity and behaviour related to the criminal as a person (their traditions, customs, social and familial situation, etc.) in order to facilitate their integration, rehabilitation and inclusiveness in society and to reduce discriminations and stereotypes in and out of the trial.

6. Conclusions

Traces of the rise and fall of psychiatric evaluation in Italian criminal proceedings, as well as the obstacles that limit the use of cultural expertise in this context have been documented in the history of the Rocco Code’s drafting, between the end of the nineteenth and the first three decades of the twentieth century. Even though engaging cultural experts in Italy is an evident necessity, including anthropologists as consultants on the complexity of the criminal’s profile is not a new idea. Criminal anthropologists of the late nineteenth century stimulated the legal system, proposed reforms and worked together with other social scientists to obtain an approved role in legal proceedings.

Although the current Italian penal system inextricably tries the imputability of the accused and the assessment of their dangerousness merely through the methods and tools offered by psychiatry, it reveals the need to obtain more information on their profile, background and manner of behaviour that may not always derive from investigative work, especially when cultural differences in behaviour, custom, law and language emerge and collide with criminal justice.

This ‘grey zone’ can be resolved by using tools specifically suitable for systematically revealing and comprehending the variety of cultural manifestations, and by investing in cultural expert assessments.

According to Ferri, the social factors of crime were among the most important achievements of the Positive School (Lombroso et al. 1886). The new School was already able both to show the capacity of social sciences to scientifically engage in the understanding of social—and ‘cultural’—inequalities and to work on the requisites the criminal anthropologist should have had.

The limits for an effective use of anthropological knowledge in the Italian trial need to be better understood today: on the one hand, not all people have a complete knowledge of cultural anthropological competences (the recognition of the aim of cultural anthropology still causes many problems in Italy), while on the other some anthropologists are rather reticent if they have to deal with criminals and the criminal justice system. It would be necessary to inquire, therefore, how cultural anthropology in Italy is prepared to engage in legal proceedings and how it can work better together with the other sciences to achieve this aim (Ciccozzi and Decarli 2019).

Cultural experts (and cultural anthropologists first and foremost) can propose appropriate strategies by which to approach cultural differences and to determine the different cultural conditions of crimes without falling into biological classifications of criminals, stereotypes about race or arbitrary judgements of individual personality. Working on shared tools and guidelines, and on tested solutions, cultural experts may also provide information on the accused and their culture, which may bear value, credibility and impartiality so as to integrate expert psychiatric assessments. Not only, by helping psychiatric expertise improve its analysis and its data in a coherent and systematic manner, cultural experts may better define the imputability and dangerousness of the accused, which may help avoid cases decided on discriminatory grounds. Working on the cooperation between law and cultural anthropology, cultural expertise would prove itself very capable of providing efficient support for Courts when making decisions.

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References

- Aleo, Salvatore, and Santo Di Nuovo. 2011. *Responsabilità Penale e Complessità: Il Diritto Penale di Fronte alle altre Scienze Sociali: Colpevolezza, Imputabilità, Pericolosità Sociale*. Milano: Giuffrè.
- Alimena, Bernardino. 1900. Lo studio del diritto penale nelle condizioni presenti del sapere. *Rivista di Diritto Penale e Sociologia Criminale* 1: 1–49.
- Angelini, Francesca, and Alfredo Verde. 2010. *La Struttura Narrativa della Perizia Psichiatrica*. Milano: Ludes Press.
- Baima Bollone, Pierluigi. 2003. *Dall'antropologia Criminale alla Criminologia*. Torino: G. Giappichelli Editore.
- Basile, Fabio. 2010. *Immigrazione e reati Culturalmente Motivati: Il Diritto Penale nelle Società Multiculturali*. Milano: Giuffrè.
- Beccaria, Cesare. 2001. *Dei Delitti e delle pene*. Milano: Fondazione Feltrinelli. First published 1764.
- Beneduce, Roberto. 2007. *Etnopsichiatria. Sofferenza Mentale e Alterità fra Storia, Dominio e Cultura*. Roma: Carocci.
- Beneduce, Roberto. 2010. *Archeologie del Trauma. Un'antropologia del Sottosuolo*. Roma-Bari: Laterza.
- Bernardi, Bernardo. 1978. *Uomo, Cultura, Società: Introduzione agli Studi Etno-Antropologici*. Milano: FrancoAngeli.
- Bernardi, Alessandro. 2010. *Il "Fattore Culturale" nel Sistema Penale*. Torino: G. Giappichelli Editore.
- Bertolino, Marta. 1990. *L'imputabilità e il vizio di Mente nel Sistema Penale*. Milano: Giuffrè Editore.
- Bulferetti, Luigi. 1975. *Cesare Lombroso*. Torino: Unione Tipografico-Editrice Torinese.
- Canepa, Giacomo. 1974. *Personalità e Delinquenza: Problemi di Antropologia Criminale e di Antropologia Clinica*. Milano: A. Giuffrè.
- Caputo, Alice. 2015. *La Pericolosità Sociale: Vecchie Esigenze e Nuove Prospettive alla luce della Legge 30 Maggio 2014, n. 81*. Roma: Aracne.
- Carmignani, Giovanni. 1854. *Elementi di Diritto Criminale*. Napoli: Stabilimento Tip. P. Androsio.
- Carnevale, Emanuele. 1891. Una terza scuola di diritto penale. *Rivista di Discipline Carcerarie* 21: 1–18.
- Carrara, Francesco. 1867. *Programma del Corso di Diritto Criminale Dettato Nella R. Università di Pisa*. Lucca: Tip. Giusti.
- Ceretti, Adolfo, and Isabella Merzagora. 1994. *Questioni sulla Imputabilità*. Padova: Cedam.
- Chiarelli, Cosimo, and Walter Pasini. 2010. *Paolo Mantegazza e l'Evoluzionismo in Italia*. Firenze: Firenze University Press.

- Ciccozzi, Antonello, and Giorgia Decarli. 2019. Cultural Expertise in Italian Courts: Contexts, Cases, and Issues. *Studies in Law, Politics, and Society* 78: 35–54.
- Clemente, Pietro, and Fabio Mugnaini. 2001. *Oltre il Folklore: Tradizioni Popolari e Antropologia nella Società Contemporanea*. Roma: Carocci.
- Clemente, Pietro, A. R. Leone, Sandra Puccini, C. Rossetti, Piergiorgio Solinas, and Pref. Alberto Mario Cirese. 1985. *Antropologia Italiana: Un Secolo di Storia*. Roma-Bari: Laterza.
- Collica, Maria Teresa. 2007. *Vizio di Mente: Nozione, Accertamento e Prospettive*. Torino: G. Giappichelli.
- Collica, Maria Teresa. 2012. La crisi del concetto di autore non imputabile ‘pericoloso’. *Diritto Penale Contemporaneo* 1: 1–47.
- Colombo, Giorgio. 2000. *La Scienza Infelice: Il Museo di Antropologia Criminale di Cesare Lombroso*. Torino: Bollati Boringhieri.
- Comte, Auguste. 1831. *Cours de Philosophie Positive*. Paris: J. B. Bailliére et Fils.
- Coppo, Piero. 2003. *Tra Psiche e Culture. Elementi di Etnopsichiatria*. Torino: Bollati Boringhieri.
- Coppo, Piero. 2007. *Guaritori di Follia. Storie dall’altopiano Dogon*. Torino: Bollati Boringhieri.
- Darwin, Charles Robert. 1859. *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life*. London: John Murray Ed.
- Dawan, Daniela. 2006. *I Nuovi Confini dell’imputabilità nel Processo Penale*. Milano: Giuffrè.
- De Lauri, Antonio. 2010. *La Patria e la Scimmia: Il Dibattito sul Darwinismo in Italia dopo l’unità*. Milano: Biblion.
- De Maglie, Cristina. 2010. *I Reati Culturalmente Motivati: Ideologie e Modelli Penali*. Pisa: ETS Edizioni.
- De Pasquali, Paolo. 2016. *Criminologia Transculturale ed Etnopsichiatria Forense: Terrorismo, Immigrazione, reati Culturalmente Motivati*. Roma: Alpes Italia.
- Dell’Osso, Giuseppe. 1985. *Capacità a Delinquere e Pericolosità Sociale*. Milano: Giuffrè.
- Devereux, Georges. 1978. *Ethnopsychanalysis: Psychoanalysis and Anthropology as Complementary Frames of References*. Berkeley: University of California Press.
- Devereux, Georges. 1980. *Basic Problems of Ethnopsychiatry*. Chicago: Chicago University Press.
- Di Tullio, Benigno. 1931. *Manuale di Antropologia e Psicologia Criminale Applicata alla Pedagogia Emendativa, alla Polizia ed al Diritto Penale e Penitenziario*. Roma: Anonima Romana Editoriale.
- Fanon, Frantz. 1952. *Peau Noire Masques Blancs*. Paris: Editions du Seuil.
- Fanon, Frantz. 2011. *Decolonizzare la Follia: Scritti Sulla Psichiatria Coloniale*. Verona: Ombre Corte.
- Ferracuti, Stefano. 1996. Cesare Lombroso (1835–1907). *Journal of Forensic Psychiatry* 7: 130–49. [\[CrossRef\]](#)
- Ferri, Enrico. 1878. *Teorica dell’imputabilità e Negazione del Libero Arbitrio*. Firenze: Barbera.
- Ferri, Enrico. 1881. *I Nuovi Orizzonti del Diritto e della Procedura Penale*. Bologna: Nicola Zanichelli.
- Ferri, Enrico. 1883. *La Scuola Positiva di Diritto Criminale. Prelezione al Corso di Diritto e Procedura Penale Nella R. Università di Siena Pronunciata il 18 Novembre 1882*. Siena: E. Torrini Ed.
- Ferri, Enrico. 1892. *Sociologia Criminale*. Torino: Fratelli Bocca Ed.
- Fornari, Ugo. 1997. *Trattato di Psichiatria Forense*. Torino: Utet.
- Frigessi, Delia. 2003. *Cesare Lombroso*. Torino: G. Einaudi.
- Frigessi, Delia, Ferruccio Giacanelli, and Luisa Mangoni. 2000. *Delitto, Genio, Follia. Scritti Scelti*. Torino: Bollati Boringhieri.
- Garofalo, Raffaele. 1880. *Di un Criterio Positivo della Penalità*. Napoli: Leonardo Vallardi.
- Garofalo, Raffaele. 1885. *Criminologia. Studio sul Delitto e sulla Teorica della Repressione*. Torino: Fratelli Bocca Ed.
- Giacobini, Giacomo, and Gian Luigi Panattoni. 1983. *Il Darwinismo in Italia*. Torino: Utet.
- Gianaria, Fulvio, and Alberto Mittone. 2014. *Culture alla Sbarra: Una Riflessione sui reati Multiculturali*. Torino: Einaudi.
- Gibson, Mary, and Nicole Hahn Rafter. 2006. *Criminal Man*. Durham: Duke University Press.
- Grottanelli, Vinigi. 1977. Ethnology and/or Cultural Anthropology in Italy: Traditions and Developments. *Current Anthropology* 18: 593–614. [\[CrossRef\]](#)
- Holden, Livia. 2011. *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives*. Abingdon: Routledge.
- Holden, Livia. 2019. *Cultural Expertise and Socio-Legal Studies*. Special Issue. Bingley: Emerald.
- Ingrino, Nicoletta, and Riccardo Scarfato. 2016. *Colpevolezza, Imputabilità e Neuroscienze Cognitive: Criteri Giuridici e Conoscenze Scientifiche nella Valutazione della Responsabilità Penale*. Padova: Cleup.
- Israel, Giorgio, and Pietro Nastasi. 1998. *Scienza e Razza nell’Italia Fascista*. Bologna: Il Mulino.
- Knepper, Paul, and Per Jorgen Ystehede. 2013. *The Cesare Lombroso Handbook*. London: Routledge.
- Lévi-Strauss, Claude. 2002. *Razza e Storia. Razza e Cultura*. Torino: Piccola Biblioteca Einaudi.

- Lombardi Satriani, Luigi Maria. 1980. *Antropologia Culturale e Analisi della Cultura Subalterna*. Milano: Biblioteca Universale Rizzoli.
- Lombroso, Cesare. 1872. *Genio e Follia*. Milano: Gaetano Brigola Editore. First published 1864.
- Lombroso, Cesare. 1856. *Influenza della Civiltà su la Pazzia e della Pazzia su la Civiltà*. Milano: Tipografia e Libreria di Giuseppe Chiusi.
- Lombroso, Cesare. 1870. *Studj Clinici ed Sperimentali sulla Natura, Causa e Terapia della Pellaagra*. Milano: Tipografia di Giuseppe Bernardoni.
- Lombroso, Cesare. 1871. *L'uomo Bianco e l'uomo di Colore. Letture sull'origine e la Varietà delle Razze Umane*. Padova: F. Sacchetto.
- Lombroso, Cesare. 1876. *L'uomo Delinquente Studiato in Rapporto alla Antropologia, alla Medicina Legale ed alle Discipline Carcerarie*. Milano: Ulrico Hoepli.
- Lombroso, Cesare. 1886. *Delitti di Libidine*. Torino: Fratelli Bocca Ed.
- Lombroso, Cesare. 1888. *Palinsesti del Carcere. Raccolta Unicamente Destinata agli Uomini di Scienza*. Torino: Fratelli Bocca Ed.
- Lombroso, Cesare. 1897. *L'uomo Delinquente in Rapporto all'antropologia, alla Giurisprudenza ed alla Psichiatria. Atlante*. Torino: Fratelli Bocca Ed.
- Lombroso, Cesare. 1898. *In Calabria. Con Aggiunte del D.r. Giuseppe Pelaggi*. Catania: Niccolò Giannotta Editore.
- Lombroso, Cesare. 1905. *La Perizia Psichiatrico-Legale coi Metodi per Eseguitarla e la Casuistica Penale Classificata Antropologicamente*. Torino: Fratelli Bocca Ed.
- Lombroso, Cesare. 1909. *Ricerche sui Fenomeni Ipnotici e Spiritici*. Torino: Unione Tipografica Editrice Torinese.
- Lombroso, Gina. 1921. *Cesare Lombroso. Storia della vita e delle opere Narrata dalla Figlia*. Bologna: Zanichelli.
- Lombroso, Cesare, and Augusto Guido Bianchi. 1884. *Misdea e la Nuova Scuola Penale*. Torino: Fratelli Bocca Ed.
- Lombroso, Cesare, and Augusto Guido Bianchi. 1905. *Il caso di Alberto Olivo con Aggiunta in Appendice l'autobiografia di Alberto Olivo*. Milano: Libreria Editrice Nazionale.
- Lombroso, Cesare, and Guglielmo Ferrero. 1893. *La donna Delinquente la Prostituta e la Donna Normale*. Torino: Editori R. Roux e C.
- Lombroso, Cesare, Enrico Ferri, Raffaele Garofalo, and Giulio Fioretti. 1886. *Polemica in Difesa della Scuola Criminale Positiva*. Bologna: Nicola Zanichelli.
- Lubbock, John. 1865. *Pre-Historic Times, as Illustrated by Ancient Remains, and the Manners and Customs of Modern Savages*. London: Williams and Norgate.
- Lubbock, John. 1898. *The Origin of Civilisation and the Primitive Condition of Man*. New York: D. Appleton and Company.
- Lucchini, Luigi. 1886. *I Semplicisti (Antropologi, Psicologi e Sociologi) del Diritto Penale: Saggio Critico*. Torino: Unione Tipografico-Editrice.
- Maiochi, Roberto. 1999. *Scienza italiana e Razzismo Fascista*. Firenze: La Nuova Italia.
- Manfredi, Mario. 1988. Antropologia negativa tra Otto e Novecento. *Lares* 54: 5–48.
- Mantegazza, Paolo. 1871. *Quadri della Natura Umana. Feste ed Ebbrezze*. Milano: Giuseppe Bernardoni, vol. I.
- Mantegazza, Paolo. 1876. *Atlante della Espressione del Dolore*. Firenze: Giacomo Brogi Fotografo Ed.
- Mantegazza, Paolo, and Enrico Giglioli. 1876. *L'uomo e gli Uomini. Lettera Etnologica*. Milano: Maisner & Co.
- Mantovani, Claudia. 2004. *Rigenerare la Società: l'eugenetica in Italia dalle Origini Ottocentesche agli anni Trenta*. Catanzaro: Rubbettino.
- Marotta, Gemma. 2004. *Teorie Criminologiche: da Beccaria al Postmoderno*. Milano: LED.
- Martini, Adriano. 2017. *Essere Pericolosi: Giudizi Soggettivi e Misure Personali*. Torino: Giappichelli.
- Mazzacane, Aldo. 1986. *I Giuristi e la crisi dello stato Liberale in Italia fra Otto e Novecento*. Napoli: Liguori.
- Merzagora, Isabella. 2017. *Lo Straniero a Giudizio: Tra Psicologia e Diritto*. Milano: Cortina Raffaello.
- Miletti, Marco Nicola. 2007. La follia nel processo. Alienisti e procedura penale nell'Italia postunitaria. *Acta Histriae* 15: 321–46.
- Milicia, Maria Teresa. 2014. *Lombroso e il Brigante: Storia di un Cranio Conteso*. Roma: Salerno Editore.
- Montaldo, Silvano, and Paolo Tappero. 2009. *Cesare Lombroso cento anni dopo*. Torino: Utet.
- Monzani, Marco. 2009. *Imputabilità e Pericolosità Sociale: Un Binomio da Rivedere?* Napoli: ScriptaWeb.
- Musumeci, Emilia. 2012. *Cesare Lombroso e le Neuroscienze: Un Parricidio Mancato: Devianza, Libero Arbitrio, Imputabilità tra Antiche Chimere ed Inediti Scenari*. Milano: FrancoAngeli.
- Nathan, Tobie. 1986. *La folie des Autres: Traité d'ethnopsychiatrie Clinique*. Paris: Dunod.

- Nathan, Tobie. 1993. *Fier de n'avoir ni pays ni ami . . . quelle sottise c'était. Principes d'ethnopsychanalyse*. Grenoble: La Pensée Sauvage.
- Niceforo, Alfredo. 1901. *Italiani del Nord e Italiani del Sud*. Torino: Fratelli Bocca Ed.
- Ottolenghi, Salvatore. 1910. *Trattato di Polizia Scientifica*. Milano: Società Editrice Libreria.
- Pancaldi, Giuliano. 1983. *Darwin in Italia: Impresa Scientifica e Frontiere Culturali*. Bologna: Il Mulino.
- Pavan, Ilaria. 2008. La cultura penale fascista e il dibattito sul razzismo (1930–1939). *Ventesimo Secolo* 7: 45–78.
- Pelissero, Marco. 2008. *Pericolosità Sociale e Doppio Binario: Vecchi e Nuovi modelli di Incapacitazione*. Torino: G. Giappichelli.
- Pessina, Enrico. 1868. *Dei Progressi del Diritto Penale in Italia nel Secolo XIX*. Firenze: Stabilimento Civelli.
- Poglianò, Claudio. 2005. *L'ossessione della Razza. Antropologia e Genetica nel XX Secolo*. Pisa: Edizioni della Normale.
- Ponti, Gianluigi, and Isabella Merzagora. 1996. *Psichiatria e Giustizia*. Milano: Raffaello Cortina Editore.
- Povolo, Claudio. 2007. Retoriche della devianza. Criminali, fuorilegge e devianti nella storia (ideologie, storia, diritto, letteratura, iconografia). *Acta Histriae* 15: 1–18.
- Puccini, Sandra. 1991. *L'uomo e gli Uomini. Scritti di Antropologi Positivisti dell'Ottocento*. Roma: CISU.
- Rosen, Lawrence. 1977. The Anthropologist as Expert Witness. *American Anthropologist* 79: 555–78. [[CrossRef](#)]
- Ruggiu, Ilenia. 2012. *Il Giudice Antropologo: Costituzione e Tecniche di Composizione dei Conflitti Multiculturali*. Milano: FrancoAngeli.
- Sergi, Giuseppe. 1900. *Specie e Varietà Umane. Saggio di una Sistematica Antropologica*. Torino: Fratelli Bocca Ed.
- Sergi, Giuseppe. 1911. *L'uomo, Secondo le Origini, l'antichità, le Variazioni e la Distribuzione Geografica: Sistema Naturale di Classificazione*. Torino: Fratelli Bocca Ed.
- Spencer, Herbert. 1879. *The Data of Ethics*. London: William and Norgate.
- Stocking, George W. 1968. *Race, Culture and Evolution: Essays in the History of Anthropology*. Chicago and London: Chicago University Press.
- Taliani, Simona, and Francesco Vacchiano. 2006. *Altri corpi. Antropologia ed Etnopsicologia della Migrazione*. Milano: Unicopli.
- Tylor, Edward Burnett. 1871. *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom*. London: John Murray.
- Velo Dalbrenta, Daniele. 2004. *La scienza Inquieta: Saggio sull'antropologia Criminale di Cesare Lombroso*. Padova: Cedam.
- Villa, Renzo. 1985. *Il deviante e i suoi Segni: Lombroso e la Nascita dell'antropologia Criminale*. Milano: FrancoAngeli.
- Volterra, Vittorio. 2005. *Psichiatria Forense, Criminologia ed etica Psichiatrica*. Milano: Elsevier Masson.



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