



UNIVERSITY OF  
GOTHENBURG

DEPARTMENT OF PHILOSOPHY,  
LINGUISTICS AND THEORY OF SCIENCE  
FLOV.GU.SE

CENTRE FOR ETHICS, LAW AND  
MENTAL HEALTH  
CELAM.GU.SE

MORAL RESPONSIBILITY RESEARCH  
INITIATIVE (MRRRI)  
PHIL.GU.SE/MORALRESPONSIBILITY/

**IF FORENSIC PSYCHIATRY IS THE SCIENCE, WHAT IS  
ITS OBJECT OF STUDY?**

**IF IT IS A BRANCH OF MEDICINE, WHAT IS THE  
DISEASE?**

**IF IT IS A SPECIALITY, WHAT IS ITS TOPIC OF  
EXPERTISE?**



# Why are these questions important?

- They underly FP claims to special authority in societal systems of state power and coercion
- They define the validity and the limits to such claims
- They expose the potential for redressing normative ethical and political core issues as questions reserved for scientific expertise
- They imply ethical boundaries for FP researchers, clinicians and experts



# What kind of questions are they?

- Conceptual analytical → for what purpose?
- Pre-scientific, but defining the scope of FP science. Given that scope, science may ensue.
- Pre-clinical, but setting the focus of FP medical attention. Given that focus, diagnosis and therapy may ensue.
- **Main purpose: clarify how the choice of definition of what is the legitimate object/topic of FP may impact FP claims to political and legal authority**



# The Double Social Construction of FP Conditions

- First: the generic idea of **psychiatric pathology** usually implies some type of **social norm breach** (against self, others or society)
- Second: **FP pathology** adds that social norm breach expresses itself in **illegal (criminal) activity**
- Given a set of laws and social norms, there are set truths about which conditions are FP pathologies
- Human conditions may be studied scientifically independently of this, but if they are not FP pathologies, they fall outside FP's realm of legitimate authority
- **Example: sexual orientation.** Within FP authority realm in Sweden up to 1944, within general psychiatry realm until 1979, but the mechanisms of sexual orientation may, of course, still be studied scientifically)



# Relativity Regarding What FP Is To Be About

- Social norms vary across history and cultures. E.g., suicide, 'excentric' behaviour, tendency to have periodical downs or strong stress reactions
- Cultures at set times often embody conflicting social norms: the psychological 'normal' is in constant flux
- Legal statutes similarly vary, albeit legal systems strive to avoid situational internal inconsistency. E.g., age of sexual consent, publicly expressed opinion, manner of public dressing ...
- *Any type of act could be* outlawed by *some* legal system



# A Tension in How to Deal with the Relativity

- **Radical expansionism:** FP authority extends to *anything that may be outlawed* – all realms and types of human behaviour and states of mind
  - Escapes relativism
  - Makes FP boundless in a way that resolves any specific claim to authority
  - All types of anthropological science and medical expertise qualifies as FP
  - Lacks link to what the law *actually* says
- **Radical localism:** FP authority extends only to *behaviour that is in fact outlawed* in a particular setting at a particular time
  - Far-reaching relativism across space and time
  - Slightest change/difference of legal statutes may dissolve claims to FP authority
  - Legal details determine FP realm of authority, but do alleged FP experts possess this expertise?



# Diagnosis

- Tension results from FPs own ambition to be *both* a general human science, and a pragmatic servant of specific societal needs
- Tension between striving to avoid and acceptance of relativism
- Radical expansionism stresses the first, radical localism the second
- Both fail to deliver the type of authority required by the second
- Both highlight a lack of linkage to the legal system and legal knowledge in what we take to be paradigmatic specimen of FP experts



# A Third Way?

- A Subset of What Is In Fact Outlawed (Across A Selected Space-time Continuum)
  - What subset and what selection?
  - Lacking justification, the choice becomes arbitrary and undermines claim to authority
- A Normatively Constrained Reference Set Of Possible Legal Regulations
  - Requires a sound and valid normative (ethical, meta-legal, political) argument
  - Historically, FP scientist have at times stepped forward as moral beacons or propagandists, but often badly founded in normative theory and logic
  - Relevant normative theoretical knowledge a critical part of FP expertise to claim its alleged authority
  - FP expertise not only socially constructed and relative – also inherently evaluative and normative





## Conclusions and Work Ahead

- To claim its authority while avoiding too far-reaching relativism with regard to its topic and realm of expertise, FP needs to crucially involve normative (ethical, meta-legal, political) judgement and expertise
- There are many potentially conflicting and competing normative theories, which each seem too specific or constrained to do the job of justifying a consensus on what FP is about
- Can compromise, overlapping or complementing theory solutions be developed? This is constructive work for ethicists and philosophers to attend to – possibly with a "non-ideal theory" frame of mind.