



EUI Working Papers

MWP 2007/21

Interpreting Murder Medically

A Medico-Legal Case from an Early 20th Century
European Periphery

Svein Atle Skålevåg

**EUROPEAN UNIVERSITY INSTITUTE
MAX WEBER PROGRAMME**

*Interpreting Murder Medically
A Medico-Legal Case from an Early 20th Century European Periphery*

SVEIN ATLE SKÅLEVÅG

This text may be downloaded for personal research purposes only. Any additional reproduction for other purposes, whether in hard copy or electronically, requires the consent of the author(s), editor(s). If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the working paper or other series, the year, and the publisher.

The author(s)/editor(s) should inform the Max Weber Programme of the EUI if the paper is to be published elsewhere, and should also assume responsibility for any consequent obligation(s).

ISSN 1830-7728

© 2007 Svein Atle Skålevåg

Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy

<http://www.eui.eu/>
<http://cadmus.eui.eu/>

Abstract

The paper takes as its departure point a murder case from 1911, when four siblings killed their younger brother in a remote location in northern Norway. This episode becomes an occasion for discussing medical and juridical interpretations of human agency at the turn of the century, and especially of the role of some conception of 'race' in these interpretations. The men of medicine and of law sought to give an explanation of what had taken place, and these explanations, as they have been left in the sources, provides us with clues to two different interpretational modes. Four physicians were involved in the case in order to interpret the act and assess the mental state of the defendants. For at least two of them, the racial make-up of the ethnic group to which the actors belonged constituted an inevitable part of the context that made the act intelligible. While the concept of race, and the frameworks of Degenerationism, to a certain degree made the act intelligible, these interpretational schemes had little to offer in terms of assessing the legal accountability of the defendants. Hence the case illustrates the profound epistemological limits of the medical interpretation in facing a legal case.

Keywords

Forensic psychiatry, history of medicine, criminal responsibility, racism, Norway

Interpreting Murder Medically
A Medico-Legal Case from an Early 20th Century European Periphery

SVEIN ATLE SKÅLEVÅG

Max Weber Post-Doctoral Fellow (2006-2007)
European University Institute, Florence, Italy

“the subject of race is at root a question of power and is, therefore, whether we like it or not, profoundly political” (D.A. Lorimer)

On the second day of 1911, in the isolated village of Kautokeino in Finnmark county, northern Norway (see map), a crippled seven year old boy ended his life in his own home, brutally killed by his four adult foster siblings (two brothers and two sisters aged 19 to 29). They all belonged to the Sámi people, a national ethnic minority, but a local majority. When their father, who had been absent, returned home a few days after the tragedy, the four siblings attempted to kill him too, but he was saved by the intervention of some neighbours.¹ Later he explained that to him they had all seemed to be “confused”² at the time. Some regional newspapers, edited far away from the events, picked up the story, labelling the murderers the ‘madmen from Kautokeino.’³ Immediately a legal investigation was initiated, an investigation in which also several physicians came to play an important role in order to assess the sanity of the defendants. The question whether they were mad or not became a matter for negotiation (‘negotiations’ is here taken to mean the cultural processes in which meaning is determined).

¹ “han vilde nær været blet dræbt, om ikke Naboerne var kommet ham til hjælp.” *Dagsposten* 25. januar

² “Tullet”; probably the description by the father.

³ The newspapers in question were published in Trondhjem and Vardø, which are, respectively 450 and 1800 km from Kautokeino. *Dagsposten* (Trondhjem), 19th Jan. 1911: “Frygtelig Ugjerning i Kautokeino”, 25th Jan. 1911: “Rædselsfulde Enkeltheder – Guttens hode puttet ind i en brændende Ovn”, 27th Jan: “Morddramaet i Kautokeino” *Finmarken* (Vardø) 4th Feb. 1911: “De tre gale i Kautokeino. En liten guts frygtelige mishandling.”

In the wake of the murder, the (Norwegian) greater society responded to the tragedy by sending in two officials, a representative of the Law ('lensmannen') and a representative of Medicine ('distriktslegen'), in order to reveal the truth about the misdeed. In order for Justice to take place, the investigators had to establish the facts about *what* had happened, *who* made it happen and also to a certain extent *what it did mean* that this happened. An appropriate reaction demanded an intelligible interpretation. When I insist on the interpretative aspect, it is because I want to remind of how this is an aspect that these officials shares with the activity of the historian – also the historian is an outsider who tries to interpret what happened to give meaning to events, albeit this meaning belongs to a quite different order.⁴ This interpretation was the responsibility of the legal apparatus (the bailiff and the courts), but in this it was to demand help from medicine. The primary task of the district medical officer in the field was, of course, to determine the cause of death. But he was soon involved in a task which went beyond his habitual tasks as a medical officer (though it was by no means without precedence) namely that of assessing the legal accountability of the defendants. This task may seem a mere technicality, the work of a gate keeper of the court, at most, but in fact it had the potential of becoming an integrated aspect for the investigation's 'making sense' of the murder. In the pre-trial negotiations following the murder several physicians were involved performing mental examinations on these four people. These examinations were entangled with the legal investigations taking place in and outside of the courtroom.

In the jargon of modern science studies we might say that what the newspapers immediately took for granted had to be 'made a fact' in order to have juridical impact; the 'confusion' had to be transformed into 'madness' and then to 'insanity'. It is this process of 'factualisation', and the possible importance of the defendants' 'Sáminess' in this process that is the subject of this paper.

Three issues should be addressed as we start, three contexts should be sketched: 1) the geopolitical context of the murder, 2) the historiographical context of the studies of race and medicine and 3) the institutional context of forensic psychiatry.

The scene of the crime was the remote village of Kautokeino in inner Finnmark, a place dominated by a population of nomadic Sámi reindeer herders. For centuries Finnmark, a county bordering on the Arctic sea, Russia and Finland had been a region of ethnic diversity, where the population consisted of three groups: the Norwegians, the Sámis (originally nomadic reindeer herders but more recently depending on fisheries) and the Kvens (Finish-speaking immigrants and their descendants).⁵ Around 1900, well 50 percent of the Finnmark's population of app 32 800 inhabitants was Norwegian, app.

⁴ This is not of course to say that the legal and medical investigators engaged in exactly the same kind of practice as the historian. For a stimulating discussion of similarities and differences between the historian and the judge, as to their efforts to find out facts about the past, see Carlo Ginzburg, *The Judge and the Historian. Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice* (London/New York, 1999).

⁵ The Sámis live in Norway, Sweden, Finland and Russia and descend from people living in these areas for thousands of years. There are three sámi languages (of the Finno-Ugric branch of the Uralic family). Traditionally the Sámi were mainly nomadic, living off reindeer herding, but in northern Norway fishing has also provided an important means of living. Among the western Sámis there has been a strong evangelical congregationalism the last 150 years (laestadianism, named after its founder, the Swedish pastor Lars Levi Laestadius), partly substituting traditional beliefs in which the shaman played an important role. With the growth of the nation state in the nineteenth century there was increasing tensions between the Sámi and the state in the region, and the language was for long forbidden in public life.

28 percent Sámi, and 17 percent Kvens.⁶ The nomadic reindeer-herding Sámi had their heartlands in the interior of the county, while settled coastal Sámi, Norwegian and Kven fishermen and farmers lived in often segregated villages along the fjords. Among the Sámi and the Kvens knowledge of Norwegian was often scant or non-existing, despite official efforts to teach them the language of the national majority. Given its situation at the borders of Russia and (from 1918) Finland, and given the nomadic way of life of parts of its population, Finnmark was from the mid-nineteenth century regarded as a somewhat sensitive area by the government in Kristiania (later Oslo).⁷ According to this, the non-Norwegian speaking groups from this time were subject to an assimilationist policy (the politics of ‘Norwegianisation’). One important aspect of the assimilation politics was to try to persuade the minorities to use the Norwegian language. The at times troubled relationship between the Sámi and the state was (and is) multifaceted as it regards both economical (the ownership of natural resources), cultural (the question of language etc) and geopolitical matters (the fact that they live in four different states).



To state that science has played a prominent role in the history of racism has by now become something of a commonplace.⁸ In the nineteenth century theories of racism were deeply embedded in scientific discourses on man, history and civilization. Medicine was among the sciences that played an important role in legitimating the

⁶ The information on the population of Finnmark is taken from Teemu Ryymin “Changing minority culture: health services and health promotion in northern Norway, 1900-1950s”, unpublished paper.

⁷ As Finland became independent (in 1918) the question arose as to where the loyalty of the Finnish speaking inhabitants’ lay. As for the Sámi, the problem was somewhat different. As nomads they frequently crossed the borders, and there were closely related ethnic groups in all the neighbouring countries. For the question of Finnmark and national security, see Eriksen, Knut Einar and Einar Niemi. *Den finske fare. Sikkerhetsproblemer og minoritetspolitikk i nord 1860 – 1940*.

⁸ For an account that stresses the relationship between science and racism, see Nils Johan Lavik, *Rasismens intellektuelle røtter. Rase, psykiatri og vitenskap - et historisk perspektiv* (Oslo, 1998).

European imperialist project, by mediating knowledge and politics, biology and morality. According to Waltraud Ernst, in an introduction to the volume “Race, science and medicine”, emerging biological and anatomical frameworks helped facilitate “the conflation of ideas of racial difference with moral values and political rights”.⁹ The particular nineteenth century scientific racism was (or has traditionally been) in this manner linked to a ‘biologistic’ vision of the world, a notion of race as biology. And still, Ernst’s principal argument is that this association of racism and biologism has been made too absolute in the historiography and she calls for a disabandonment of the presumption of a “single monolithic racism.” According to Ernst, the historical studies of racism has tended to vacillate between two extremes: on the one side there has been studies that “*only* stress the all-pervasiveness of racial domination”, while on the other side there has been one-sided contextualisation. While the first have tended to “reify the very structures they intended to expose”, the second have been running the risk of loosing from sight “the wider structures of economic and political power within which these are situated.”¹⁰ One of the directions pointed out by Ernst in order to avoid this deadlock is to study the relationship between ‘race’ and other categories. By this operation it is possible, it is suggested, to ‘complicate the categories’ and arrive at a richer understanding of ‘race’, one that is sensitive to historical context, but not emasculated by a detachment from structures of power.

Ernst’s suggestions provides one occasion for us to approach the medical construction of race in a highly localized forensic context, where race was not the prime issue *per se*, but where race was highly present and played a significantly role in the complex medico-legal interpretation of a murder in early 20th century Norway. The murder case provides a case through which we may study the medical construction of race without subsuming under this subject other important historical themes, such as inter-professional tensions or the construction of abnormality.

Ernst depicts racial discourse as a discourse riddled with “ambiguities, contradictions and discrepancies.”¹¹ The point can easily be illustrated by examples contemporaneous with the case in question here. We can cite the future professor Ragnar Vogt’s book *Arvelighetslære og racehygiene* (*Heredity and racial hygiene*) from 1911.¹² In this book, in which a concept of race is signposted in the very title, Vogt operates with an indeterminate concept of race, referring here to population difference on a macro scale (‘the yellow race’ versus ‘the white race’), and there to minor regional differences within Norway. The book consists of two distinct parts, one discussing the modern theory of biological heredity, the other discussing the politics of racial hygiene. Racial hygiene (or eugenics) is here depicted as a field of politics, that partly is constructed around the family, as the unit for heredity, and partly on the much vaguer

⁹ Ernst, Waltraud *Introduction*, In Ernst, Waltraud and Bernard Harris (eds.) *Race, Science and Medicine*, 1700 – 1960. (London: 1999). Ernst gives a penetrating discussion of the politics of a history of science and race, but, surprisingly, without at all discussing the relationship between science and medicine.

¹⁰ Ernst 1999, pp. 7-8.

¹¹ Ernst 1999, p. 7

¹² Ragnar Vogt, *Arvelighetslære og racehygiene* (Kristiania, 1914). R. Vogt became Norway’s first professor in psychiatry in 1914. For a more thorough analysis of the question of race in relation to Vogt’s book, see Svein Atle Skålevåg, *Fra normalitetens historie. Sinnssykdom 1870 - 1920.*, Rokkansenteret Rapport nr 10 (Bergen, 2003).

'race'.¹³ The effortless juxtaposition of the two heterogeneous parts in Vogt's book – on the one hand the sober scientific exposition of neo-mendelian genetics, on the other a speculative politics of racial hygiene – illustrates the equivocal nature of the concept of race, and its versatility in scientific as well as political discourse, and as a reminder of Ernst's words that "racial discourses work well not despite their logical inconsistencies, ambiguities and mixing up of premises, but *because* of them".¹⁴

In following up the invitation to 'complicate the categories' by relating them to the way they are entangled with other conceptual struggles, I will propose a reading of the medico-legal documents stemming from the murder case in Kautokeino. These documents belong to a hybrid discourse, obeying partly the discursive rules of law and partly those of medicine. In the two centuries long history of forensic psychiatry, the theme of inter-professional struggle has continuously been present though to a varying degree.¹⁵ The discourse of forensic psychiatry has been contested from its very beginning. As early as in the late 18th century, before the existence of an institution bound mental medicine, Immanuel Kant argued against the idea that medical doctors possessed any knowledge of the mind of legal relevance, as these matters were metaphysical rather than physical (Skålevåg 2006). Similar arguments were presented in the face of a rising psychiatric profession (and science) in the mid-nineteenth century, not only from the outside of the medical profession, but also from the inside of a medical profession whose traditional ideal of general competence was under attack from the new scientific specialties, carriers of a new positivism.¹⁶ Also in the twentieth century a critique of forensic psychiatry has been recurrent, challenging the discipline's claim to relevant knowledge.

Some historians have wanted to see this history as the history of an everlasting war between law and medicine. For Roger Smith, e.g., "medico-legal conflict was [...] inevitable", and this partly due to the irreconcilable opposition between voluntarism and determinism (traditionally associated with law and medicine, respectively).¹⁷ Others have insisted on the entanglement of this relationship and who it was characterised by negotiation rather than war. For Joel P. Eigen on the contrary, distancing himself from the view of the medical profession as "the usurpers of the courtroom" the introduction of legal medicine in court was "consumer-driven", rather than driven by medical profession's will to power.¹⁸ A third author who has now been taken to support the first

¹³ For a broad discussion on scientific discourses on heredity in 20th century Norway, see Torben Hviid Nielsen, Arve Monsen, and Tore Tennøe, *Livets tre og kodenens kode. Fra genetik til bioteknologi. Norge 1900 - 2000* (Oslo, 2000).

¹⁴ Ernst 1999, p. 7.

¹⁵ I use the term 'forensic psychiatry' deliberately anachronistic here. We cannot speak of forensic psychiatry as a well defined subspecialty of psychiatry until the 20th century (indeed, in Norway we cannot talk of psychiatry before the second half of the nineteenth century). But the field that came to be occupied by the forensic psychiatrists was fairly well defined even a century earlier. 'Forensic psychiatry' is here taken to refer to the discourse of trained physicians pertaining to the question of legal accountability. Defined this way it should be unproblematic to apply even to the pre-psychiatric era.

¹⁶ Svein Atle Skålevåg, "Sykdom og tilregnelighet - fra sakkyndighetens historie," *Tidsskrift for den norske lægeforening* (2002).

¹⁷ Smith, Roger. *Trial by medicine. Insanity and responsibility in victorian trials.* (Edinburgh, 1981)

¹⁸ Joel P. Eigen, *Witnessing insanity. Madness and mad-doctors in the English Court* (New Haven & London, 1995). Eigen's position is explicit formulated in opposition to Foucault's position, who he finds to represent a picture of conflict, even though Foucault at least in one instance is explicit in his refusal an interpretation of this history as a conflict of interests. Michel Foucault, *Power/knowledge. Selected Interviews and Other writings 1972 - 1977*, ed. Colin Gordon (New York, 1980).

position and now the second is Michel Foucault. The essential point of Foucault's writings on forensic psychiatry as I see it, however, was to argue that the medicine and law, as to distinct forms of power and of producing knowledge, through the medico-legal practice, came to produce a third and distinct 'regime of truth', paradigmatic for what he called 'discipline'.¹⁹ Whether we view this as a history of inter-professional negotiations or as an epistemic transformation, in each way we end up with an entangled history, in which law and medicine is not only oil and water, but also two parts in the same machinery, they are antagonistic but also in cooperation. The history of forensic psychiatry, I will argue, is a history of *both* conflict and cooperation, a history in which these two themes is always present.

An assessment of the meaning of race in this discourse should take into consideration the complicated character of this very discourse – its hybrid character, and the degree to which it has been contested.

Forensic psychiatric examinations

The murder in Kautokeino was discovered upon the father's homecoming and there seems never to have been any doubt about the material facts. The bailiff and the doctor, for a long time the principal figures of authority of the province (alongside the priest), moved in, and the investigation started – not seeking to reveal who did it, but how it came about. The four siblings were under scrutiny. The investigation was carried out in the form of a series of court meetings, in which witnesses were heard in front of a judge. For some reason, the court meetings dealing with the four siblings were held separate. First there was a meeting in the local court in Hammerfest, dealing with the two eldest siblings. Secondly there was a meeting in the district court of Alta, dealing with the two younger siblings. It is not clear why the case was administered in this way, but it is possible that the reason was that the eldest siblings were already at the time hospitalized and that the court meeting dealing with their involvement by consequence was placed in this town. Whatever the reasons, two court meetings were held, and for each court meeting a separate medical report was produced, based on examination performed by two different sets of doctors. These two reports constitute my primary source material.²⁰

In order to understand a concept in its linguistic context I suggest it would be worthwhile to pay careful attention both to the function and the structure of these two texts. What do these texts set out to achieve, and how are they organised in order to achieve it? Therefore I will in the following try to follow in some detail the narrative of the forensic physicians.²¹ Only after this reading can we turn more explicitly to the more specific question of the importance of 'race' in this historically specific instance of forensic medicine.

¹⁹ Foucault, Michel. *Surveiller et punir. Naissance de la prison*. (Paris: 1975). Foucault, Michel *Les Anormaux. Cours au Collège de France. 1974 - 1975.*, Paris: 1999), cf. Skålevåg "Psykiatriens historie hos Michel Foucault." *Scandia* 72, no. 2 (2006): 13 - 29

²⁰ The documents are to be found in the archive of the permanent committee of forensic medicine (Den retsmedisinske komisjon) located in the Riksarkivet in Oslo. References in the following will be given to the file number, in the format "DRK file number/year".

²¹ 'Narrative' is here taken to be a candid term, referring to the textual nature of the medical reports. It is not intended to imply anything regarding the referentiality of the texts (their correspondence to the extra-linguistic world). For an analysis of the narrativity of psychiatric texts (case files), see Petter Aaslestad, *Pasienten som tekst. Fortellerrollen i psykiatriske journaler. Gaustad 1890 - 1990*. (Oslo, 1997).

I.

The first examination, focusing on the two elder siblings, Erik and Berit, took place at a general hospital (Hammerfest), situated at a fair distance from the events (the distance between Kautokeino and Hammerfest is about 280 km). Hence, the brother and sister to be examined were brought to the doctors. The two doctors in service were the hospital's physician, Trygve Nannestad, and Dr. Emil Eriksen, who functioned as a district medical officer in Hammerfest at the time. The siblings stayed at the hospital for some time; the documents do not state exactly how long, but the final statement is signed the 24th of January, i.e. less than a month after the killing. From the report we learn that the two under observation mastered poorly the Norwegian language, and that the examination therefore was performed by means of an interpreter. This interpreter is unnamed in the source, but he or she is referred to in passing as 'a neighbour', which means she is unlikely to have been a professional interpreter. The medical report the two doctors produced was based on two sources: the documents produced by the first legal investigations, and the first hand observation of the defendants in the hospital. In this manner, by the very organisation of the examination, we can see how legal and medical proceedings are combined into a medico-legal examination. This is significant because it illustrates what it means that forensic psychiatry constituted a specific kind of medical discourse. Forensic psychiatry is not simply about inserting medical discourse in legal proceedings; it is also about incorporating legal interrogation techniques in medical discourse, thereby creating a different, hybrid discourse, as signified by the very hyphen linking medico and legal.²²

Through the voices of a number of witnesses, as they were heard in the court, the report tells the story of how the boy was killed. The most important witness, the one that delivers most details, is the sister of the two siblings in Hammerfest hospital, Inger (who is herself one of the two objects of scrutiny in the second report). Through her testimony we learn that the elder brother, Erik, was the main character of the drama. In the days preceding the murder he had expressed a malaise, both physically and spiritually; he had wanted to see the doctor and also to be re-baptised. Allegedly he heard voices; and he was talking about his sins and his death. As a sign of the unease that his behaviour had instigated in his siblings, the witness mentioned that they had hid away the axe from him. Early the morning of January 2, Erik demanded that the boy should be woken. For several hours all of them stayed reading the Bible. At some point the boy wanted to go outside to play, but this was denied him. Then he was undressed and put in the oven. This turn of event is presented in a blunt matter without any explanation, something which the report states that a matter of fact: "Berit undressed the boy and put him in the stove."²³ The points explicitly to the lack of explanation, but ascribes this lacuna to the legal documents which constitute the sources for the report. The following events are more sketchily reported. Erik ran naked out in the snow (where the temperature is estimated to - 25° C). The two women placed the boy in the bed. One of them rang with a bell. They all held hands calling for the boy to return. Later the body was left in the snow.

The narrative of this report has the form of a collage of voices, in which the narrator's voice is hardly to be heard directly. It can be said to embody a medical

²² On science and the law of Vilhelm Aubert, "Legal justice and mental health," *Psychiatry* 21 (1958), Bruno Latour, *La fabrique du droit. Une ethnographie du Conseil d'État* (Paris, 2002/2004).

²³ "BA tok saa klærne av gutten og stak ham i ovnen (nogen forklaring hvorfor findes ikke i oplysningerne)" DRK 52/1911

perspective (as opposed to a juridical) by the way that witnesses' characterisations of the mental states of the defendants are more central than a reconstruction of the sequence of events ("The witness found everyone [in the household of the murder] to be strange and told so at home").²⁴ The text introduces the events indirectly, and we are well into the text before it even mentions that a murder has taken place. Hence, even though the order of the voices is set up by the court (the source for this part of the text is the documents from the legal inquiries, and to some extent it reads as a summary of these documents), their editing is unmistakably medical, and the end product is a text on the offenders rather than the offence. However in doing so, the text does to a large extent limit itself to referring the non-professional and therefore non-technical characteristics of others. When we come to the act of the killing, this report does not try to ascribe any intentionality to the act external to that found in the documents – on the contrary it states that no explanation is to be found in the legal documents:

The description of the act, narrated through a host of mediators, has the guise of a neutral description, a narrative mode which we may regard as borrowed from factual scientific discourse ("When M noticed that he [the boy] wouldn't pass through the opening of the oven, she took off the ring herself, and BA put the head of the boy into the glows")²⁵. This becomes particularly conspicuous by the way the narrative seems to be free of violence; only at a late stage in the narrative, the reader learn in an indirect way that there must have been a significant level of violence (the second report on the contrary, notes that the boy was screaming at this point).

II.

While the first examination was performed in a medical setting in a town far away from the 'natural' surroundings of the examined persons, the second examination, focusing on the two younger siblings (P and M), was performed closer to the terrain. The doctors Strømme and Daae, though both southerners, had both experience as general physicians in the area, and therefore some familiarity with local culture. In this case they had also been present on the crime scene at a very early stage, as they did perform the post mortem of the deceased boy. Only several weeks later however, on the 23rd January, they were appointed as forensic experts by the local court of law (Alten forhørsrett), the very same day as a court meeting took place (in Alta, still some 130 km away from the scene of crime). In this court meeting a number of witnesses were interrogated, together with the two defendants (the younger siblings). These doctors were performing a different kind of observation, sitting in on the legal interrogations. Their report also mentions the documents from the previous court meeting in Hammerfest and the forensic medical report of Eriksen and Nannestad as sources. The report is signed the 5th February 1911. It may seem that the combination of legal and medical procedure was slightly different in this case, as the examination was performed at the premises of the court and not those of medicine. And still the characteristic medico-legal combination of examinatory modes is recognizable.

The report consists of five parts: The first part proposes a synthetic narrative of the events in question, based on the testimonies proposed by the witnesses before the court. Secondly the report gives a 'somatical description' of the two defendants, based on what the physicians themselves had seen. Thirdly there is a discussion of morbidity

²⁴ "Vidnet syntes alle var saa underlige, og fortalte dette hjemme." DRK 52/1911

²⁵ "Da M saa, at han ikke kom ind gjennom ovnsdøren, tok hun selv ringen av ovnen, og BA stak guttens hode ned i glørne." DRK52/1911

in the family. And fourthly there is a general *exposé* of “the mental life of the Sámis”, before the last concluding part, addressing the question of mental sanity and dangerousness.

Maybe it is a result of the doubt surrounding the conclusion that this report more openly exposes the foundation for its conclusion than the first one. The conclusion of non-insanity is first presented as based on intuitive impressions: the two defendants explained themselves “in their full senses” before the court. Thereafter the physicians deliver a much more detailed narrative than was the case in the first report, striving to fill in the problematic gaps with cultural explanations. Where the first report merely stated that the boy somehow ended up in the fire, the second put a lot of effort into narrating how this came to be and which were the intentions of the perpetrators. The physicians tell a story of how the four siblings worked themselves into a frenzy coloured by religious exaltation

While the first report only referred the testimonies in the sequence the physicians had found them in the documents, this second report went to a greater length to create one single dramatized narrative out of the testimonies. In this narrative we can also recognize the presence of a narrator, discretely addressing the reader, as when the report reminds us of the darkness of the northern winter day: “The light started to dim – the days in Finmark in early January are short – and the lamps were alighted.”²⁶ The drama is further established by setting the story against a background of customary doings: “The said Saturday afternoon the four siblings where dozing in their beds in the habitual way of the Sámi”.²⁷ The eldest brother, here clearly portrayed as the main character, demanded to be (re)baptised immediately by his brother. This happened, and the four were consequently spending the night talking about spirits and God, and reading from the Bible. In the morning the elder brother prohibited everyone to talk, a prohibition that was broken by the young foster brother. What happened next is not completely clear. The boy seems to have had some kind of a fits (he closed his eyes, and looked like he was going to faint or even pass away), which might or might not have been what triggered a reaction from his siblings. In any case their response (to the fits or the disobedience) was to pour water into the boy’s mouth and then eventually putting him in the glowing fire in the fireplace. After that, he was taken out into the snow, where they finally poured more water into him. This, according to the doctors, caused the choking that eventually killed the boy.

The report also refers to a quaint scene following the death of the boy, not mentioned in the first report. When he was no longer alive, the siblings assembled around a lamp, holding each others hands with their eyes closed, calling for the boys return. After some time in this position they were interrupted by a blind man who arrived in the house led by another little boy. He was encouraged to join the group with a promise that if doing so he would regain his sight. He so did and they all continued to call out the name of the diseased, asking him to return. After describing this truly bizarre scene (but also truly morbid, taking into the consideration the circumstances), the authors interferes in the narrative with a rare reference to the situation in which the knowledge was obtained. When giving her explanation, the younger sister at this point

²⁶ “Det begyndte at mørkne igjen – det er korte dage i Finmarken i begyndelsen av januar – og lampen blev tændt.” DRK 59/1911

²⁷ “Nævnte lørdag eftermiddag lå de fire søskende og gutten på finnevis i sine senger og døset.” (DRK 59/1911)

started laughing “by the thought of how her sister managed to talk the old blind man into joining the others”.

Not even this episode is the end of the story of the second report. The report adds a very important sketch of the development of the state of mind of the two defendants. A number of witnesses testified that immediately after the killing all four of the siblings were ‘deranged’ (the actual term that is used, ‘tullet’, is a popular and very general term for nonsensical behaviour), though this was the case to a lesser degree for the two younger than the two older. This differentiation increased as time passed. The two younger, who all the time had been more quiet than the elder, showed themselves to be more ‘reasonable’, as they also started sleeping ‘normally’ and returned to a ‘normal’ appetite. While remaining within a non-technical vocabulary, this sketch establishes a temporal development as a crucial aspect of the mental state of the two siblings.

In addition to adding more narrative detail (more ‘drama’) to the narrative, the physicians behind the second report also add more cultural explanation. For example, when the narrative states that the elder brother was demanding rebaptism, the narrator informs the reader that there is – or at least was - a superstition among the Sámi that, after being baptised by a priest, children should be re-baptised to please “the old heathen gods.”²⁸ And when they tell that the siblings were burning juniper at this particular day, they add an explanation of the tradition of burning juniper as a means of exorcising evil spirits and the smell of the dead.²⁹ This fact was also mentioned in the first of the reports, but then the explanation was added as some kind of anecdotal colour (“among the Sámi *it is still said to be common to burn juniper against evil spirits*”³⁰), whereas in the second case it is dramatized as the the protagonist’s intentions: “she collected juniper and started burning it to drive away the evil spirits”³¹

The heading of the second part of the report, ‘somatical examination’, seems to signal a move to a ‘purer’ medical part of the report, as the medical expertise can be said, on a commonsensical level, to be an expertise of the body. And still under this heading a heterogeneity of topics are collected: age of confirmation (apparently considered a yardstick of development), language skills, masturbation, inebriate behaviour, and religious experience. Hence the reader learn that the two siblings under observation celebrated their confirmation at the age of 15 -16, that their Norwegian was very poor, but they both could write and read some in the Sámi language, and that he (but not she) had been masturbating, though not to a large degree. The sister had been bothered by sorrow and worries a couple of times, she had never been in love or engaged, never had sexual intercourse with a man, only a couple of times had she been intoxicated from alcohol. He, on the other hand, had on occasions been “senselessly drunk”, and, also occasionally, had taken part in prayer meetings held in a neighbour’s house. The technique in this ‘somatical examination’ is not the kind of hands-on techniques traditionally associated with medicine (symbolized by the stethoscope), but that of a simple questionnaire. The physicians proceed by way of oral examination, in which the topics but not the method differ from a police (or a legal) examination.

²⁸ “Som almindelig bekjendt har der især i gamle dager hersket den overtro blant lapper, at man burde late deres av presten døpte børn ”gjendøpe” for dermed at tilfredsstille de gamle hedenske guder”(DRK 59/1911)

²⁹ “Hun hentede også ener (busk) og begyndte at røke med ener for at fordrive de onde ånder og ”dauingslukt” som hun påstod hun kjendte.” (DRK 59/1911)

³⁰ “det skal endnu blant lapperne være almindelig at røke med ener mot troldskap” DRK 52/1911 (emphasis added)

³¹ DRK 59/1911

Only late in this part of the report, under the sub-sub-heading of ‘status praesens’, there is a truly bodily description of the two, in which it is obvious that the Sáminess, i.e. the Sámi as a bodily type, is the yardstick. Hence, we read that the brother is uncommonly muscular and without somatic signs of degeneration (more on this notion later). And his personal hygiene (*renslighet*) is as might be expected for a Sámi, which is to say, in the eyes of the physicians not very remarkable. Neither his sister has any somatic signs of degeneration - “except those anthropological features specific for the Sámi” - which is to say that her body carries the collective signs of the Sámi, but as an individual within this group she does not show any specific signs of abnormality. Taking this list into consideration it seems fair to say that ‘somatic examination’ is not to be taken to mean an examination of the body in a narrow sense, so much as an examination of the individual in a broad sense. The bodily description properly speaking is only a small part of task. The ‘race’ constitutes a framework for individualisation.

This second and more elaborate report falls as we have seen into four parts: the first part examines the set of events that was in the centre of the investigation. Secondly the physicians examine the life of the individuals that were the protagonists of the first part, in the scope of their lives. And thirdly it is an examination of the individuals as they appeared before the examiners. We have seen that the forensic experts offered much more than a strict medical investigation, as they combined the medical repertoire with one that was closer related to the investigative apparatus of the criminal law. All these parts were in accordance with the norm of a forensic psychiatric report at the time. In this particular case, however, the experts added to this yet another mode of knowledge as they inserted in the report a text entitled “On the mental life of the Sámi” (*Om lappernes psykiske liv*). In this text the experts employ a different mode of expertise, presenting what is presumably shared knowledge in the professional community (no references given whatsoever). This information does not relate nor rely directly on the legal proceedings, and hence it represents the discourse of the legal expert in a purer, less hybridized, form (though I do not mean to say by this that the information becomes more true by its greater purity). Here the experts take the role of scientific authority in delivering a monologue, not on the individuals in question, but on Sámis in general. I.e. they depart from the individual ‘case study’ and enter the realm of generalities. In this section of the text, the matter of race comes to play a much more central role than in the previous, more conventional parts of the text, so it is now time to turn more explicitly to the problem of the race in these documents.

The cultural factor

Sáminess is thematized to some degree in both of the reports. This first report mentioned the sáminess of the two siblings as a matter of fact, stating initially that they were ‘fjellsamer’, (sámis of the mountain, as opposed to coastal sámis),³² that they did not speak Norwegian and that therefore the examination had to be carried out by means of an interpreter. Apart from that, it does not seem to have been given much importance.

As we already have seen, the second report seems to be more preoccupied by the question of sáminess. In this report the concept of a Sámi race was employed referring to the physical characteristics of the defendants. And, through the notion of

³² The Norwegian sámis were generally divided in two socio-geographical groups: the coastal sámis, living from fisheries, and the mountain sámis, living from reindeer herding.

degeneration (more on this below), the physicians further indicated a connection between the Sámi body and their psychological make-up. We learn that the youngest brother is well built for a Sámi (lapp) and is as clean as a Sámi can be expected to be.³³ As for his sister, we are told that she bears the outer marks of her Sámi heritage.³⁴ And further it is stated that they both (up to the time of the murder, that is) complied mentally with a norm that is most evidently culturally specific.³⁵ In this way the racial element becomes a part of the context for evaluating the mind and body of the defendants. This report also makes some reference to Sámi customs and beliefs.³⁶ More conspicuously, the theme of race is present in two additional ways: firstly in allusions to the riots of 1852 and secondly in the already mentioned inserted exposition of folk psychology.

First, allusions are made to the riots which took place 60 years prior to the murders (in posterity generally referred to as ‘the Kautokeino riots’). In 1852 a group of laestadian Sámis burned down a house, killed two persons (the local *merchant* and the *bailiff*), and maltreated the local pastor and his wife.³⁷ Thirty-three persons were prosecuted after the incident, two of the rioters were executed, and sixteen more were sentenced to long-term prison in southern Norway.³⁸ In 1911, the local papers were quick to point out that the defendants were the direct descendants of two of the active participants of the infamous riots of 1852. One newspaper reminded its readers of the outcome of that old case, with its use of capital punishment (“the legal customs of old days”), which the enlightened paper evidently found despicable. This piece of information serves both as a parallel and as a contrast to the contemporary incident. It goes without saying, for the paper, that the murderers of 1911 were suffering from religious mania - as did those of 1852 - but it equally goes without saying that the asylum of 1911 represents a much more humane way of dealing with this problem than the scaffold of the 1850s. The 1850-incident is used both as an indication (proof) of morbid inheritance *and* as a didactic contrast that lends support to the decision to hospitalize the murderers.

This link between the riots of 1852 and the killing of 1911 was mentioned already by the newspapers, and the medical reports returned to this link. But whereas the newspapers seem to have evoked the incident as a means to contrast the harsh legal regime with the more docile therapeutical regime of their time, that allowed the offenders to go to hospital rather than the gallows, in the medical report the link was

³³ ”så renslig som lapper i almindelighed” (DRK 59/1911)

³⁴ ”de for lapperne ejendommelige antropogiske forhold” ”Hun er av utpræget lappisk herkomst” (DRK 59/1911)

³⁵ ”De har før de her omhandlede begivenheder ikke adskilt sig i psychisk henseende fra andre lapper.” (DRK 59/1911)

³⁶ ”Som almindelig bekjendt har der især i gamle dager hersket den overtro blant lapper, at man burde late deres av presten døbte børn ”gjendøpe” for dermed at tilfredsstille de gamle hedenske guder” ”Hun hentede også ener (busk) og begyndte at røke med ener for at fordrive de onde ånder og ”dauingsluk” som hun påstod hun kjendte.”

³⁷ Andresen, Astri ”In the wake of the Kautokeino-event. Changing perception of insanity and of the Sámi 1852-1965”(forthcoming in *Acta Borealia*, 2007.

³⁸ The interpretations of the act have varied greatly after the fact. Some has seen it as violence of crazy people, some as a religious protest against the official religious authorities and some as an ethnically based rebellion against state representatives. The main protagonists claimed that they acted on a higher calling.

evoked in relation to a discussion of heritable morbidity.³⁹ The point was evidently to indicate that the defendants of 1911 had inherited a heavy burden from the 1852 rioters – this burden was ambiguously placed between family and race. The rioters of 1852 were exemplars of the unpredictable unruliness of the Sami, as well as the forefathers of the Kautokeino Four in a concrete sense.

Furthermore, and even more tellingly, there is the rather long general *exposé* of “the mental life of the Sámi people” (“om lappernes psykiske liv”). The explicit purpose of this section of the text is to “throw light upon these circumstances”⁴⁰ – i.e. it is supposed to facilitate the reader’s understanding of the murder rather than the murderers. This text merits closer attention.

The primary concern of the writer of this text⁴¹ appears to be the natural and cultural isolation of the Sámi people. Primarily because of their linguistic inadequacies, the Sámi people had been cut off from influences from Culture (for the writer Culture is a noun in the singular). In addition to this, they also tend to inbreed to avoid splitting up family fortunes. Along with insanity, inebriety and inadequate nourishment, this led to a *degeneration of the race*.

In terms of psychological makeup, the Sámi are a simple people (as opposed to complex). The Sámi obeys his immediate impulses; his capacity for abstraction is poorly developed and distraction is a shared racial flaw.⁴² The Sámi man is a curious (‘nysgjerrig’) being, but his “is the curiosity of a child, with no thoughtfulness.”⁴³ For him (or her) new impressions rarely result in changes in notions that have been passed on unaltered for centuries.

The Sámi, we learn, is gullible, superstitious, dependent (unoriginal)⁴⁴ and his will is weak – in short, his personality lacks an individualistic core which is capable of resisting extraneous impressions.⁴⁵ He acts on impulse, and not according to some reasoned purpose (‘uten målbevissthet’). He is also unable to set himself higher ideals, something external to his own self to strive towards.⁴⁶ Furthermore he is incapable of holding on to new impressions. His ability to think is insignificant and inconsistent, lacking in depth and originality; his memory is poor, and he is easily exhausted by mental work (“åndsarbejde”). The Sámi is often considered a liar because he is unable to recall past events correctly (“referere korrekt”).

The Sámi is on a cultural level corresponding to (western culture of) the middle ages. As a natural people the Sámi is outside (historical) time; no Sámi has contributed to Culture or History and no talent nor genius has ever been demonstrated in any sense

³⁹ The reports are, however, not in complete agreement as far as the historical details are concerned. According to the report from the examination of the youngest sister, her grandmother was the sister of two of the convicted parties in the 1852-incident, one of whom was first condemned to death but then pardoned by royal decree. Oddly, this report (unlike the other report) does not mention that the grandparents were themselves part of the riot and imprisoned for 3 and 14 years respectively as the other report claims (DRK 52/1911.) This report also claims that the brother of the grandmother was one of the two persons executed after the riot.

⁴⁰ “kaste et klarere lys over de her omhandlede begivenheter ” (DRK 52/1911)

⁴¹ The text itself is unsigned but it is included in the report which was signed by both experts. It is reasonable, however, to believe that it was written by one of the experts, though it is impossible to say which one.

⁴² “Uopmerksomhed er en racefejl.” (DRK 52/1911)

⁴³ Also elsewhere in the reports the protagonists are referred to as “superstitious children” (DRK 59/1911)

⁴⁴ “selvstændig tænkning omtrent ikke kan spores hos ham” (DRK 52/1911)

⁴⁵ “De gir ofte motstandsløst efter for sine lyster og tilbøjeligheter”. (DK 52/1911)

⁴⁶ “at tilfredstille sit personlige Jeg og dets krav.” (DRK 52/1911)

among the population. Their music (the ‘joik’) is nothing but a monotonous squeamish song. They are superstitious; they believe in good and evil spirits, the presence of the Devil and of the dead, etc. Their universe is a magical universe. The superstition of the Sámi is fueled by traveling evangelists who preach a fire-and-brimstone gospel. Their religiosity is ultimately an expression of fear of the unfathomable, and it frequently takes on pathological forms. The ceremonies of the Church (Baptism, Communion) are regarded as miracle cures for any form of worry and disease.

The mental life of the Sámi is barely on a higher level than that of the imbecile. And the people of the particular local community where the murder happened are described as even more low standing and dirty than other people in the area.⁴⁷ Physically, the Sámi is weakly built. His cowardness is nothing but the consequence of his physical weakness. He may be cruel, but it is the cruelty of a child, it is never deliberate. More typically, however, the Sámi are a docile, peaceful and friendly people.

It is interesting to note, that despite the shameless racism of the text (which emerges from the long list of essentialist characteristics), the authors seem willing to relativise the frequently cited flaws of the Sámi. If the Sámi seem to be untruthful, it is because they are incapable of recalling exactly. If they steal, it is because stealing a reindeer is not considered a theft among them (this claim is backed up by the claim that other kinds of theft are rarely reported among them). If they seem to be superstitious it is partly the fault of travelling preachers, who exploits this tendency in them. If they seem cowardly, it is because they are physically weak. If they are drunk, it is because they are intolerant to alcohol. Moreover, they are never brutal when drunk, but rather behave like children: “innocently fun loving and joyful about themselves and others”. In these manners the writers seem eager to excuse the vice of the Sámi – not without displaying a penchant towards roussauian romanticism – and this eagerness is particularly evident in the treatment of (the allegation of) the vice of inebriety. The Sámi, it is said, are not as prone to drink as is often said. And when they do drink, it is not as bad as one will have it, because they do not act too badly when drunk. And when they do get drunk, it is actually the (non-Sámi) merchants who are to blame for furnishing them with the worst possible spirits, blended with the most awful substances.⁴⁸ This problem is explicitly linked with the existence of pathological inebriation (“patologisk rus”) – possibly – according to the writers – caused by this particular liquor in combination with morbid heredity.

As already suggested, the text attempts to anchor the flaws of the Sámi (the objectivity of this approach is hardly questioned) within the organism, thereby explaining them away as something other than moral flaws. The discourse of degeneration constitutes the most conspicuous context for this somatization of moral flaws.

At the turn of the century, degeneration was, both in the popular and scientific discourse, associated with modernity . Degeneration was a spin-off product of progress. Darwinism and economical liberalism together established purposeful design (“hensiktsmessighet”) as a guiding principle of the world; as long as a phenomenon was

⁴⁷ Cf. ”I Koutokeino [sic] er finnerne smaa, lurvede, uvaskede og sjuskede og ser sure og misfornøiede ud. Der er ingen brogede farver i klædesdragten og ingen pynt hos det smukke kjøen, saa alt er mer ensformigt.” Amund Helland Topografisk-statistisk beskrivelse over Finmarkens amt. Anden del. Befolkning og historie. Kristiania 1906

⁴⁸ “de uhyggeligste ting” (DRK 52/1911)

purposeful, it was legitimate. But culture's steady progress had a darker side, that of degeneration.

The ideology of degenerationism (it hardly can be described as a science) had two faces. Degeneration was the object of concern for the responsible citizen, but it also was an object of a regular 'cult' for those who opposed this culture from within. The degenerationist writers of the late 19th century, in continuous opposition to the new bourgeoisie, aesthetised cultural decadence, as they perceived it as being a desirable counter phenomenon to 'the natural'. "The more we study art, the less we care about nature", Oscar Wilde wrote.⁴⁹ What both the proponents and the opponents of degeneration would agree on was that nature was a mirror of culture; as liberal society progressed during the long 19th century, so did nature as explained through the Darwinian notion of natural selection. Degeneration occurred when culture was too far removed from nature.

And yet, when it came to other cultures foreign to the dominant western culture, the nature-culture relationship would appear to have been inverted. In these cases, as in the one that concerns us here, it was the natural people's *distance* from culture that provoked their degeneration. The Sámi people were not corrupted by Culture's steady progress, but by their alienation from this process. They had been left in the wake of Civilisation, sinking in a marsh of morbid properties. What seemed significant was not that the Sámi were of a foreign culture, but that they were lacking Culture. In the psychological domain, the result of this opinion is that their naturalness does not express itself as purposeful design, but as a lack of impulse control.

In medical psychology it was considered a hallmark of civilized man (and to a lesser degree, woman) that he was capable of controlling, or suppressing, his basic instincts through his will power. His consciousness was capable of taking control of the human being, of inhibiting certain actions, of channelling energy in a certain direction in order to carry out mental work. The notions of 'energy' and inhibition is inscribed in this civilisation theory gives it a positivist allure and links it to psychology.⁵⁰ The natural man, on the other hand, lacked this capacity. He was considered unfocused and lacking sovereignty over his own being. This was – e.g. according to the emerging discourse of criminal anthropology – a flaw that the natural man shared with the criminal, or at least those criminals who were thought to lack impulse control (as were most murderers).⁵¹ Hence, when thinking along these lines, an analogy emerges between the naturals of the mountain plateaus and the urban sediments of Culture (where the majority of the criminals live). It is exactly this lack of inhibition, shared by the savage and the criminal, that made the criminal commit another crime. Neither the criminal nor the primitive were thought capable of following an ideal which emanated from a higher moral sphere above the immediate self. These shared features allowed the fin-de-siècle culture to view the criminal as an atavist, i.e. as a backlash of evolution. Indeed, it was the degenerative tendency of modernity itself that produced the criminal man – a man who was a primitive psychologically speaking, though he could be

⁴⁹ Quoted by Elaine Showalter, *Sexual anarchy. Gender and Culture at the Fin de Siècle* (London, 1992). 170.. This antinaturalism was often linked to antifeminism, as women were regarded closer to nature than men. "Woman is natural, which is to say abominable", wrote Baudelaire. (op.cit.)

⁵⁰ On the notion of inhibition in psychological discourse, see Roger Smith, "The meaning of "Inhibition" and the Discourse of Order.," *Science in Context* 5 (1992).

⁵¹ On criminal anthropology, see e.g. Tove Stang Dahl, *Barnevern og samfunnsvern. Om stat, vitenskap og profesjoner under barnevernets oppkomst i Norge*, UniPax (Oslo, 1978).

distinguished from other primitives insofar as he was not an instance of *underdevelopment* (i.e. a retarded development) but rather a step back on the evolutionary scheme (i.e. an inverted development). On the one hand, the moral character of the Sámi aligned him with a child or an imbecile, who were both considered legally unaccountable, and on the other, he was aligned with the criminal, the very target of criminal law.

The forensic experts in this case, by outlining a broad cultural-psychological picture, were able to draw upon a variety of related discourses such as the colonial, psychological, criminal anthropological. By way of notions such as impulse control and inhibition, degeneration was inscribed in the psyche. It concerned the relationship between psyche and soma, the relationship between the individual and the collectivity, and between the majority and the minority. The physiognomy of the Sámi carried the signs of collective degeneration; but in addition, the individual Sámi could carry signs of individual degeneration, a deterioration within the larger body of Sámi people.

It is particularly interesting that the psychological dimension of *this* case was discussed in this way, because it occurred at a time (1909/10) in which the Morelian notion of degeneracy was actually disappearing from psychiatric discourse and the discourse of inheritance to be replaced by (neo-)Mendelian genetics.⁵² But as we have seen, the discourse survived in the peripheries of scientific discourse. However, despite the demodded notion of degeneracy that made its way into the report, what made the discourse convincing in this case was the way in which the old theme, was inscribed in a mechanistic psychology, in which the more modern concept of ‘inhibition’ was central. Degenerationism invested criminal anthropology with ambiguity. If the criminals were a separate people, culturally, biologically and psychologically speaking, what was the criminal law to do with them? The dilemma was re-presented when the criminals come from a foreign race, as the Sámi were considered to be.

From a certain perspective, this discourse in folk psychology may be regarded as cultural anthropological backdrop, intended to make the horrific event more comprehensible. The brutal and irrational act is rendered more comprehensible by being clothed in the rags of cultural relativism. And still the lesson leaves the readers in bewilderment as to its consequences. Why was the lesson inserted in the file? What difference did it make? In the end of the day it was the exercise of concluding the medical report that would prove the value of the lesson in folk psychology.

Medicine drawing conclusions

In a comparative ethnography of science and law, Bruno Latour points to a number of (discursive) divergences between science and law.⁵³ Among these divergences we find the question of conclusion: while science has a built-in impetus to perpetually push forwards, to ever open up closed doors, to incessantly question the (always preliminary) conclusions, law has a duty to conclude.⁵⁴ According to this thinking it is in a sense against the nature of science to conclude, at least in the very definitive way that Law demands. Sooner or later the legal machine *has to* reach an endpoint - it *has to* say that this is how it was. Even though medical discourse should not too easily be conflated

⁵² Skålevåg, Svein Atle. *Fra normalitetens historie. Sinnssykdom 1870 - 1920., Rokkansenteret Rapport nr 10*. Bergen: 2003, ch. 9.

⁵³ Latour, Bruno. *La fabrique du droit. Une ethnographie du Conseil d'État*. (Paris: 2002/2004).

⁵⁴ A similar point can be found in V. Aubert's "Legal Justice and mental Health" (In *Psychiatry* 21, no 2 (1958))

with scientific discourse, these structural difference between the legal and the scientific discourses weighs upon the medico-legal situation, which is a true hybrid, part legal and part medical. The result may in some cases be a clear ('legal') conclusion, in others a more open ('medical') conclusion.

I will with these general points in mind turn to the conclusions, and especially concentrate on those of the second report.

The first report, as we might expect, draws a distinction between the two. For what regards the brother, the act of concluding was done by way of giving a list of symptoms and a clear cut conclusion. The symptoms were: hallucinations of sight and hearing, confused speak, inexplicable and unreasonable acts, and inconstant changes in mood ("stemningsforandringer"). The sister posed some particular problems because she resisted the very examination along medical lines. This resistance in itself became her prime symptom: "She is totally confused and so excited that any examination is impossible. She tears off her clothes and now wanders around completely nude, gesticulating, incessantly uttering incomprehensible words." And, it is added, showing how the examination relies totally on an interpreter in this business, "even the interpreter says that it has no meaning". The conclusion is pretty clear cut: The two siblings under observation are found to be insane without any doubt. This conclusion seems not to have been contested. As a consequence, the two were sent to the far away Rønvik Asylum for the insane (as was still the official designation).

The second report has a more complex conclusion, the endpoint being, however, that the two younger siblings were neither insane nor dangerous at the time of the examination. This report goes further in offering an interpretation of the murder, than did the first report. What regards the sister, the physicians start by establishing some negative findings: there are no signs of degeneration on her body, and no suspicious episodes to be found in her early life. But from here they quickly move on to a list of symptoms which shows the same kind of simplification as we found in the discussion of the mental life of the Sámi: she is naïf, dependent, does not reason very well, she is a coward, superstitious, weak willed, she has a bad memory and an impaired intelligence as well as she is lacking in coherence. Summing up this catalogue of inherent vices, the physicians characterises her as psychologically degenerated (with an implicit reference to the lack of signs of degeneration on her body). The list leads over in an interpretation of the person *in* the situation, as the reports explains that she was *as a person* incapable of resisting the fear and superstition raised by the full blown fits of insanity in her elder brother. I.e. in a psychological sense, she was weekend by her degeneration, by the long sleepless hours and also by her menstruation, so that when a critical situation arose, she was unable to resist. In a characterisation of both of the siblings in question in this report it becomes clear which function the text on the mental life of the Sámi has: "Before these events, they were not psychologically different from other Sámis. On the basis of the existing degeneration, however, and through the influence of the eruption of insanity in the elder siblings, in both of them a state of confusion has occurred, a state which lasted for about four days."⁵⁵ While in this extra-ordinary state, both of them suffered from compulsory acts, hallucinations and deprived memory. It follows from this medical interpretation, which lends support from some fashionable psychological

⁵⁵ "De har før de her omhandlede begivenheter ikke adskilt sig i psychisk henseende fra andre lapper. På basis av den bestående degeneration er der imidlertid hos begge optrådt – væsentlig ved vanvidd utbrudt hos de to ældre søskende – gennem suggestion en forvirringstilstand, hvis maximum har været omtrent fire døgn." DRK 59/1911

concepts such as “inhibition”, “psychological state”, and some less fashionable concepts, such as “psychological degeneration”, that the defendants had no intentions worthy of blame: they did not want to harm the child, they did not even realise that they did so.

This medical reasoning was followed up by a more technical conclusion in which the doctors state that the two siblings’ mental faculties were morbidly deranged (“Sykelig forstyrrelse af sjæsevnerne”) as a result of both hereditary taints and of imperfect development (“mangelfuld udvikling av sjæsevnerne”).⁵⁶ These defects were considered to be persistent. But despite this, the siblings were not regarded as insane at the time of the declaration, nor to represent a danger for themselves or their surroundings.

This seemingly labyrinthine conclusion is in fact a conclusion very finely tuned to the demands of the Law. The Norwegian criminal law from 1902 stated that one can not be punished when being “insane, unconscious or otherwise in a state of accountability [iøvrigt utilregnelig] due to imperfect development of the mental faculties [mangelfuld udvikling af sjæsevnerne] or to impairment or morbid derangement of those faculties” (Straffelov av 1902, § 44). This paragraph does not translate easily because the original meaning is very ambiguous. When studied up close one discovers that this law states that a criminal is unaccountable when in a state of unaccountability (i.e. a circular argument) – and this ‘rule’ did not give the courts much of a guideline for judgment. Neither did it delineate convincingly the jurisdiction of the psychiatric expert in court. By consequence, the rule was the origin of extended juridical, medical and political discussions in the years up to 1929, when it was revised. What is important here, however, is to note how the physicians adopted certain key terms from the rule and inserted it into their statement. Avoiding altogether the “state of accountability”, they conclude that the defendants are not insane, but yet that their mental faculties suffered from “morbid derangement” due to “imperfect development”. This actually means that the defendants should not be prosecuted, but all the same leaves it to the court (or the prosecuting authority) to draw this conclusion.

Finally, one last addition of the text should be commented upon. It was standard procedure that when a medico-legal report had been delivered, a copy should be submitted to the central Committee of forensic medicine (DRK), which acted as a national overseeing agency for this activity (both in forensic psychiatry and other branches of forensic medicine).⁵⁷ This committee consisted of a selection of the most advanced medico-legal expertise in the country, and they sought to assure the quality of the reports that were delivered to the court. When they found it necessary they could present objections against reports that were delivered to the courts. In this case, the Committee was not completely satisfied with the work of the physicians in Finmark. One short dry comment is inscribed in handwriting in the document and signed by one of the members in the Committee (P Winge): “Pathologically disturbance of the mental faculties seems to have become popular even among doctors.” By the unmistakable sarcasm, the committee put up a signpost for the scientific hierarchy, marking out the

⁵⁶ ”[begge må] utvilsomt efter det foran anførte erklæres at ha været hensat i en tilstand av sykelige forstyrrelse av sine sjæsevner, en tilstand hvortil de var særlig disponerede på grund av arvelig belastning og deraf følgende mangelfuld utvikling av sjæsevnerne.” (DRK 59/1911)

⁵⁷ Schiøtz, Aina. "Medisin og juss: Ambisjoner og ulikheter. Opptakten til Den rettsmedisinske kommisjon 1880 - 1900." In *Den mangfoldige velferden*, edited by Edgeir Benum, Per Haave, Hilde Ibsen, Aina Schiøtz and Ellen Schrupf. (Oslo: 2003), Skålevåg 2003.

language of the experts in the case as unprofessional. Though it did not lead to any formal objections on behalf of the committee, the remark is a reminder of the heterogeneity and the hierarchal structure of (forensic) medical discourse.

Endnote

The medico-legal assessment of race, normality and accountability of which this paper has given a reading, offers one case of “how the heterogeneity of race manifests itself” at a time when a medical understanding of race was not necessarily a purely ‘biologicistic’ understanding.⁵⁸ I have sought to emphasize the very local context in order to “move away from overly generalising accounts that *only* stresses the all-pervasiveness of racial domination”.⁵⁹ The reports that have been in focus here demonstrate an understanding of race that is biological, but also psychological and cultural.

It is conspicuous that in their discussion of the characteristic of *sáminness*, the doctors did not evoke the framework of the nascent neo-mendelian genetics that at this very time were replacing the much vaguer framework of degeneration as the foundation for a science of heredity. These doctors were apparently much more interested in psychology than in biology.

What are we to make of the meaning of race and ethnicity in the medical texts discussed here, and how are we to assess the effects of these representations? This case illustrates, I believe, what Waltraud Ernst has described as the “chameleon-like versatility of racialised discourses, their facility in shifting from ethical norms to biological arguments or to those of cultural identity”.⁶⁰ The cultural hierarchies of the time are articulated on the very body and minds of those defendants. The argument set forth here is not that these people are suppressed by a racial discourse full of discriminatory prejudices, but that racial discourse offers an opportunity for the representatives of medicine to articulate in a very concrete way the complex relationship between medicine and ‘race’. This articulation is less a result of medical ideology than of a specific cultural practice in which racial discourse is embedded. We should be careful not to overemphasise the importance of ‘race’ in this case. Race was but one element in a general assessment of the accountability of the persons in question. It cannot easily be inscribed in a chain of causes and effects, but belongs in a wide web of discursive processes of signification. And race did have a function in these discourses but, more significantly maybe, ‘race’ was the product of these intersecting discourses.

⁵⁸ Ernst 1999, p. 7

⁵⁹ Ernst 1999, p. 8

⁶⁰ Ernst 1999, p. 7

Cited Literature

- Andresen, Astri” In the wake of the Kautokeino-event. Changing perception of insanity and of the Sámi 1852-1965”(forthcoming in *Acta Borealia*, 2007)
- Aubert, Vilhelm. "Legal justice and mental health." *Psychiatry* 21, no. 2 (1958): 101-113.
- Dahl, Tove Stang. *Barnevern og samfunnsvern. Om stat, vitenskap og profesjoner under barnevernets oppkomst i Norge, UniPax*. Oslo: 1978.
- Eigen, Joel P. *Witnessing insanity. Madness and mad-doctors in the English Court*. New Haven & London: 1995.
- Eriksen, Knut Einar and Einar Niemi. *Den finske fare. Sikkerhetsproblemer og minoritetspolitikk i nord 1860 – 1940*. Oslo: 1981
- Ernst, Waltraud, and Bernard Harris, eds. *Race, Science and Medicine , 1700 - 1960, Routledge Studies in the Social History of Medicine*. London: 1999.
- Foucault, Michel. *Power/knowledge. Selected Interviews ans Other writings 1972 - 1977*. Edited by Colin Gordon. New York: 1980.
- . *Surveiller et punir. Naissance de la prison*. Paris: 1975..
- . *Les Anormaux. Cours au Collège de France. 1974 - 1975., Hautes études*. Paris: 1999
- Ginzburg, Carlo. *The Judge and the Historian. Marginal Notes on a Late-Twentieth-Century Miscarriage of Justice*. London/New York: 1999.
- Latour, Bruno. *La fabrique du droit. Une ethnographie du Conseil d'État*. Paris: 2002/2004.
- Lavik, Nils Johan. *Rasismens intellektuelle røtter. Rase, psykiatri og vitenskap - et historisk perspektiv*. Oslo, 1998.
- Nielsen, Torben Hviid, Arve Monsen, and Tore Tennøe. *Livets tre og kodenenes kode. Fra genetik til bioteknologi. Norge 1900 - 2000*. Oslo: 2000.
- Pick, Daniel. *Faces of degeneration. A European disorder, c. 1848 - c. 1918*. Cambridge: 1989.
- Ryymän, Teemu “Changing minority culture: health services and health promotion in northern Norway, 1900-1950s”, (unpublished paper). Showalter, Elaine. *Sexual anarchy. Gender and Culture at the Fin the Siècle*. London: 1992.
- Schiøtz, Aina. "Medisin og juss: Ambisjoner og ulikheter. Opptakten til Den rettsmedisinske kommisjon 1880 - 1900." In *Den mangfoldige velferden*, Edgeir Benum, Per Haave, Hilde Ibsen, Aina Schiøtz and Ellen Schruppf (eds). Oslo: 2003.
- Skålevåg, Svein Atle. *Fra normalitetens historie. Sinnssykdom 1870 - 1920., Rokkansenteret Rapport nr 10*. Bergen: 2003.
- . "Sykdom og tilregnelighet - fra sakkyndighetens historie." *Tidsskrift for den norske lægeforening*, no. 1 (2002): 65 - 68.
- . "The matter of forensic psychiatry." *Medical history* 50, no. 1 (2006): 49 -68.
- . "Psykiatriens historie hos Michel Foucault." *Scandia* 72, no. 2 (2006): 13 - 29.
- Smith, Roger. *Trial by medicine. Insanity and responsibility in victorian trials*. Edinburgh: 1981
- . "The meaning of "Inhibition" and the Discourse of Order." *Science in Context* 5, no. 2 (1992): 237-263.
- Straffelov av 1902, § 44
- Vogt, Ragnar. *Arvelighetslære og racehygiene*. Kristiania: 1914.

Aaslestad, Petter. *Pasienten som tekst. Fortellerrollen i psykiatriske journaler. Gaustad 1890 - 1990*. Oslo, 1997.