

Master's thesis

NTNU
Norwegian University of
Science and Technology
Faculty of Social Sciences
and Technology Management
Department of Sociology and Political Science

Sean Eivind Linge Boatwright

The Expertise of the 21st Century

Professional dilemmas that face forensic
psychiatry in the aftermath of the
2011 Norway Attacks

Master's thesis in sociology
Trondheim, spring 2014

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Preface

The events on 22nd of July 2011 affected most Norwegians, myself included. Through media broadcast, I soon learned that the terrorist Anders Behring Breivik and his motives were highly complex, and that the legal system had trouble settling down on a conclusion. When I read about and saw how forensic psychiatry struggled to provide the court with clear answers on his accountability status, I was for the first time curious about their procedures. As a sociologist and inquisitive person, I often wonder about phenomena that are commonly taken for granted. Consequently, this inspired me to discover more about this expert system.

I considered the topic very important, because it complicated important principles in Norwegian society such as legal security, and because the case challenged our conception of accountability. Through the study, I reached the goal of learning more about these issues, which has left me with more questions to address in the future.

I want to thank my parents Eli and Michael, as well as my better half Kristina, for support, inspiration and constructive feedback from beginning to end. This has been an exciting, enlightening and rewarding learning experience for us all! I would also like to thank my supervisor Håkon Leiulfstrud for his hard-hitting and accurate advice, which forced me to remain focused throughout the study.

Sean E. L. Boatwright

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Abstract

The aim of this thesis is to investigate and identify possible professional dilemmas facing forensic psychiatry in the context of the Breivik-trial and the aftermath, to determine whether mental evaluations are given too much weight in court decisions. A contextual framework is provided, as well as the theoretical frame of reference, which relies mainly on theorists associated with sociology of knowledge, such as Foucault and Bourdieu. Their definitions of power, prestige, discourse and legitimacy are a central inspiration for my interpretation, and communicative aspects are compared to the thoughts of Habermas, Kompridis, Mercier and Sperber.

I used qualitative content analysis as my methodological approach, to examine various sources from the public debate. The main findings suggested that forensic psychiatry is antiquated, illegitimate and invalid. Evidence showed that mental evaluations unproportionately affect court decisions, and acts of symbolic violence were detected in these, as well as within professional power struggles against opposing disciplines. Public trust in experts declined because of the power struggles, and the expert system of psychiatry was portrayed as inadequate and untrustworthy. According to evidence, psychiatric language is intertwined with the principle of medicine and related laws that guarantee their position in the judicial system. Legislation and the principle will likely be changed, and the court will be assisted by a broader academic competence in the future.

The study has shed light on the lack of transparency in the expert system of psychiatry, and it thus defies the principles of an open democratic society. The media, public and alternative fields of expertise were highly influential for the appointment of specialists, the outcome of the court trial, and for staging the necessary scrutiny and criticism of psychiatry. This would not have been possible without extensive media coverage.

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Abbreviations

22/7	The date of the terror attacks
DNL	Norwegian Doctor's association
DRK	The Norwegian board of forensic medicine
DSM-IV	Diagnostic and Statistical Manual of Mental Disorders
GAF	Global Assessment of Functioning
ICD-10	International Statistical Classification of Diseases and Related Health Problems
HLSPL	Law on health personnel
NOU	Norwegian official report
NPA	Norwegian Psychiatric Association
SIFER	The competence centre for research and education in forensic psychiatry and psychology
STRPL	The code of criminal procedures

Chapter 1

Introduction

In two sequential cold-blooded attacks on the 22nd of July 2011, the terrorist Anders Behring Breivik targeted the Norwegian government, the civilian population and the Labour Party's Youth League (AUF). On forehand he made his manifesto available to the public and claimed that his actions were the first steps towards what he termed "a holy war against Islam and the Cultural Marxists" (Vikås 2011; Breivik 2011). By using a bomb, a pistol and a semi-automatic rifle, he killed 77 people – and left hundreds injured. The police special unit finally arrested him, and he was since charged with both attacks (NTB 2012; Nørve 2012).

The devastating terrorist attacks caught the eye of the international media, and it took most people by surprise that this incident could occur in an otherwise peaceful and democratic country like Norway. Furthermore, many people condemned the police's late response to the crime scene and the lack of overall organization in a crisis mode. The events on the 22nd of July thus became the deadliest attacks on Norwegian soil since the Second World War (Feldman 2012). Soon to follow was the preparation for a lengthy and fatiguing court-trial, where Breivik's mental health was analysed by forensic psychiatrists to establish if he was accountable for his actions.

According to §20 in the Criminal Code (Straffeloven 2005 [§44 1902]), a perpetrator cannot be punished if they fit the criteria of psychosis when a crime is committed, a conclusion that is based on the Principle of Medicine. The judicial system was criticized for requesting specialist assistance primarily from psychiatrists and not psychologists to assess Breivik's mental health. Psychologist Anne-Kari Torgalsbøen (2012) pointed out that the field of psychiatry has long been engaged in a professional power struggle, and that the judges are biased in their decisions. She claims that "inhability concerns" with the psychologists was only a diversion for appointing psychiatrists in the court trial, and that the judiciary generally shows little interest in achieving a broad academic competence, when it could have benefitted from it.

The initial expert evaluation was thus conducted by two psychiatrists, and they claimed Breivik was psychotic (Brenna et al. 2013). This was seconded by the Commission for Forensic Medicine (DRK) – whose function is to quality assure the evaluations. The report

was leaked to the press, and it resulted in a media storm of great magnitude. The profession of forensic psychiatry became the centre focus of a critical debate that scrutinised the validity of expert work, and which suggested that there was a discrepancy between the outcome of the report and the public expectations of how to punish the perpetrator.

Soon after, media headlines such as “129 terror victims demand a new Breivik-evaluation” indicated a public need for a reevaluation (Utheim et al. 2012). Many did not understand how the experts could deem him insane, when he planned the attacks down to the smallest detail, and acted upon his plans with the greatest calm. Through pressure from the media and counsel for the aggrieved party, the court eventually decided to call in two new expert psychiatrists to reevaluate his mental health. In the second report, they concluded that he was *not psychotic* and was fit to plead, although DRK did not approve it (Brenna et al. 2013; Dagbladet 2012). Nonetheless, both reports became the prosecution and judge’s basis for assessing Breivik, and he was finally considered accountable for his actions and sentenced to 21 years preventive detention (Buan & Gran 2012; Lewis & Lyall, 2012).

The outcome of the forensic psychiatrists’ two very different conclusions sparked a nationwide discussion. During and after the trial, the media created several headlines with hard-hitting words such as “The Norwegian Board of Forensic Medicine has serious trust issues” and “Half of Norway has lost its confidence in forensic psychiatry”. Via the media-storm, many questions were asked: For instance, what is the worth of expert opinions; why were there no psychologists involved, and do forensic psychiatrists have too much power in court decisions (Svendsen, Mostue & Ertesvåg 2012; Buan & Gran 2012; Hultgren, Foss & Gedde-Dahl 2012)?

1.1 Critical hindsight

Two and a half years later, forensic psychiatry is still criticised in connection with the Breivik-case and more recent news such as the Sigrid-case and the Halloween-murders (Skille 2013; Hanssen 2013). Even though forensic psychiatry is currently in a defensive position, to criticise it is by no means a new phenomenon. The public has discussed the forensic psychiatric observations of author and Nazi-sympathizer Knut Hamsun for 60 years, since he was institutionalized in 1945 (Krokfjord 2012; Skålevåg 2005). In contrast, most court cases are simple by nature, and handled by jurists, who assess the perpetrators and their crime, by interpreting the criminal code to determine a fitting punishment. However, forensic

psychiatrists can be appointed to *advise* them on accountability issues when the perpetrator and crime is complex, like the particularly challenging case of Breivik.

The necessity to involve psychiatry in court is confirmed by both legislation and Norwegian Official Reports (NOUs), but many reckon what the principle of medicine is based on can be problematized (Strpl. 1981; Hlspl. 1999; NOU 2001: 12). The principle states a perpetrator shall not be punished if considered psychotic when he or she commits a crime. Psychiatric evaluations based on this principle are in addition considered to reduce the autonomy of the court, and the principle itself causes indemnity for repeat offenders who are not active psychotics. Norway is one of few countries that work out of this principle, and it is seen as an obstacle to partake in a morally just court proceeding. One alternative is the principle of psychology, which has been successfully adopted by courts in for instance Sweden and Denmark. This entails to detect whether psychosis possibly led *directly* to commit the criminal act, and as such provides an entirely different scope for evaluating the psyche of a perpetrator (Hirsti & Falch-Nilsen 2012; Auestad, Nilssen & Omland 2012).

The quality of the two different mental evaluations in the Breivik-case was markedly different, and the various expert and public remarks that were voiced through media suggest an uncertainty about whether forensic psychiatry should have the monopoly on assessing the health of “criminal minds”. In connection with the Breivik-scenario, input from for instance political science, theology, neuroscience and sociology shed further light on the perpetrator and the criminal act. The public debate itself led to a reevaluation that appears to have challenged the status and legitimacy of forensic psychiatry. Psychologist Gry Stålsett (cited in Helmikstøl 2012: 475) stated that Breivik is an extreme exponent of tendencies in the Norwegian culture, and that we may not be able to analyse him fully, as we do not yet have a language that accommodates the existential.

DRK was criticised for being incompetent, both in legal and professional terms, and the same criticism fell on the two psychiatrists that conducted the first evaluation (Færaas 2012). The procedures of the second evaluation showed a will to adapt to and incorporate ideas from other professional fields. Representatives from SIFER, the competence centre for research and education in forensic psychiatry and psychology, claim that much of the criticism derived from the debate after 22nd of July has largely pinpointed issues that directly relate to political dilemmas and resource allocation. In their opinion, the professional fields themselves have desired an improvement of contemporary forensic psychiatric work for years. They blame the

media for using words such as “crisis” and directed verbal assaults towards psychiatrists instead of the politicians (Fleiner 2012).

In sum, there were conflicts of interest between actors on different levels, and the public debate took a huge toll on the legitimacy of forensic psychiatry. Breivik and his crimes were considered so complex that it was problematic to place him into categories (Hanssen 2013). Yet, the forensic psychiatrists placed him into categories and he was consequently sentenced by the judge. In light of the 2011 Norway attacks, the dichotomous nature of forensic psychiatry and the laws and principles it is founded on, seems more arbitrary than accurate – and the predicaments of its current state may even defy logic in the legal sense. It remains unclear how and if forensic psychiatry will change their procedures and framework to accommodate this. Is the case of Breivik simply the story of a “lone wolf” who falls between two stools, or is the case the embodiment of severe flaws in our whole government system? Should the court be assisted by a broader academic competence, and whom should the public trust? These have been frequent questions in the public discourse.

Clearly, appointed forensic psychiatrists are in a crucial position within government, because they represent how our society views normality and deviance, and their knowledge affects court decisions. *The aim of this study is hence to explore professional dilemmas facing forensic psychiatry in the context of the Breivik-trial and the aftermath.* I am here particularly interested in the weight given to the professional evaluations made by appointed forensic psychiatrists in the realm of the Norwegian justice system. To gather evidence for this, I work by the research question: *How has forensic psychiatry been criticized?*

1.2 Outline

I am inspired by theories that focus upon professional discourses, expert knowledge and argumentation, including work by Michel Foucault, Pierre Bourdieu, Jürgen Habermas, Nikolas Kompridis, Hugo Mercier and Dan Sperber. I frequently refer to theoretical concepts such as field, discourse and system, as well as knowledge, expert and expertise. This will be elaborated in chapter 2. My approach is methodologically exploratory, in line with my focus upon professional dilemmas that face forensic psychiatry in the context of the legal system. I use qualitative content analysis.

The empirical data is selected in order to highlight aspects that relate directly to dilemmas facing forensic psychiatry and the Breivik-trial. This includes, but is not restricted to,

statements from people holding key positions relevant to their professions, such as psychiatry, psychology and the court system. Some data obtained from mainstream media sources represents prevailing currents of thought within the civil population. This is considered relevant, as the “civil discourse” had a significant impact on the trial after the first psychiatric report was leaked to the press. My methodological approach is described in chapter 3. In chapter 4, I present the analysis and highlight the main findings related to my thesis. These will be discussed in light of the theory in chapter 5. Conclusively, chapter 6 contains a brief summary, as well as thoughts on the relevance of future research on related topics and places this study into a broader sociological context.

Chapter 2

Theoretical and conceptual framework

Sociology of knowledge has traditionally dealt with uncovering the potentially misleading aspects of our thoughts about the world. Karl Mannheim (1934) was a prominent contributor to this field, but due to the dominance of functionalism through the middle years of the 20th century, the sociology of knowledge largely remained on the periphery of mainstream sociological thought. Peter Berger and Thomas Luckmann (1966) built their concepts in *The Social Construction of Reality* based on Mannheim's legacy. They were accredited of "re-inventing" and applying the concept more closely to everyday life, and their ideas are still influential.

Inspired by the revival, a "new" sociology of knowledge has emerged. According to Swidler and Arditì (1995: 306), it now began to focus on how kinds of social organization made whole orderings of knowledge possible, rather than being based on social locations and interests of individuals or groups. They claim that newer work in sociology and cultural studies suggests that formal systems of ideas are linked to broader cultural patterns – as we might think of as "social consciousness". Swidler and Arditì claim that the layperson is not only shaped by knowledge specialists, but also by structures of knowledge. This can be seen in relation to the following quote by Mannheim (1936: 3):

"Strictly speaking it is incorrect to say that the single individual thinks. Rather it is more correct to insist that he participates in thinking further what other men have thought before him. He finds himself in an inherited situation with patterns of thought which are appropriate to this situation and attempts to elaborate further the inherited modes of response or to substitute others for them in order to deal more adequately with the new challenges which have arisen out of the shifts and changes in his situation."

Forensic psychiatrists and clinical psychologists are considered expert witnesses in the Norwegian court of law. They are expected to fulfil certain roles, perform a set of duties and live up to (public) expectations. The terms *expert* and *expertise* have a range of connotations, both in science and everyday life. The common-sense definition of *expert is* based on the assumption that he or she has a long formal education and many years of practical experience, where theoretic knowledge and learning from work has led to acquiring unique skills. *Expertise* can be defined as high-level and longstanding performances within a field of

specialty, which is a result of personal attributes and not coincidences or luck (Madsen 1999: 1).

In the standard sociological interpretation expertise is often associated with unique skills/assets (Wright 1985), or professional associations based upon the idea of closure in order to reduce competition (Weber [1919]1946; Parkin 1974). Weberian theory also focuses upon how experts deploy strategies to protect the self-interests in order to legitimize and sustain their work in society. The experts make sure that their esoteric knowledge and specialized skills are employed tactically to ensure control over professional skills, economic benefits and to maintain status and power. This sociological contribution focuses largely on external and socially attributed factors regarding expertise and experts (Madsen 1999: 1).

When it comes to research problem solving and applied expertise, psychology and cognitive studies have devoted much to this field. It is generally believed that experts, who have longstanding experience and a heavy theoretical backbone, have a much higher success rate than novices. On the other hand, if an expert relies too heavily on his or her job-specific schema, it can be hard to adapt and respond to unknown or unfamiliar situations. This can be seen as an undesired effect linked to the concept *automation of knowledge*. A similar phenomenon is *simplification*, where complex situations are interpreted as simpler than what they are – which can lead to dangerous misunderstandings and errors, and eventually a limited application of knowledge. Finally, relying too deeply on context-based procedures inhibits an expert's ability to realize when his or her expertise is not sufficient or in need of adjustment. In such cases, the expert becomes “a one trick pony” (Madsen 1999: 2-3).

Knowledge and expertise is intimately linked to issues of power and legitimisation. This is also, despite differences, a common thread for Foucault, Bourdieu, Habermas, Kompridis, Mercier and Sperber in their approach to knowledge and expertise. In their research, they apply various concepts such as *field*, *symbolic violence*, *habitus*, *discourse*, *rationality*, *reflective disclosure* and *confirmation bias*. These terms are not interchangeable, but the context in which they are applied is transmissible to understand the complexity of the Breivik-scenario. The case and its aftermath reveals *several* professional dilemmas, like how the presence of experts and applied expertise in court is considered problematic, and how laws related to the principle of medicine complicate matters of establishing guilt or diagnosis. How society defines madness in relation to the question of guilt can also be linked to this setting, as well as professional power struggles between psychiatry and psychology. The empirical data

presented in this study thus portrays discourses through its content, as evidence for professional dilemmas and underlying themes of conflict within expert systems, as regards *knowledge, power, prestige and legitimacy*.

2.1 Knowledge and expertise in professional power struggles

Foucault (1991) describes power as being everywhere in a constant communication of knowledge. For him, knowledge does not equal power, but mechanisms of power produce different types of knowledge. In this viewpoint truth, morality and meaning is created through *discourse*. His research indicates that whichever institutions produce the knowledge and language that governs a given discourse, is likely to be in a dominating position within the social body. To understand the contemporary institutions of law and medicine as expert systems, he examines the discursive traces and orders left by the past in an archaeological approach.

Foucault (1991) argues that certain institutions prevent non-professionals from gaining access to specific knowledge, thereby effectively freezing particular relations of power so that a certain number of people are at a disadvantage. This argument is applicable to the alleged power struggle between psychiatry and psychology, where they dispute their influence in court. Perhaps because of the “stalemate”, Norwegian court has abided the principle of medicine since 1842. However, the Breivik-case has induced much negative publicity and criticism of psychiatry, and many desire to replace the existing framework with the principle of psychology. Psychiatric expertise is for instance considered old-fashioned and views presented through the public debate has favoured a “regime change” (NOU 2001: 12, Helmikstøl 2012).

Bourdieu (1988: 65) explains that the scope provided for everything contributing to the social cohesion of scholars within the academic faculties is designed to ensure the durable homogeneity of the habitus, and tends to increase as we move from physicists and mathematicians, to clinical practitioners and jurists. According to him, this is no doubt because of the need to ground in the social unity of the group, where the intellectual unity of the *communis opinio doctorum* (scientific consensus) is all the more pressing when their specifically academic coherence is more uncertain and when the social responsibility of the body is greater. Bourdieu (1988: 65) argues particularly, that in the case of jurists, a body of

“authorities” cannot present itself in a state of disarray, as intellectuals may, without compromising its capital of authority:

“Just as it must erase from its ‘written judgement’ the contradictions which are the visible traces of the very conflicts that gave rise to it, and the questions which might allow its true functions to be discovered, it must make a pre-emptive dismissal of all those who could threaten the order of the body of the guardians of order”

In this perspective, it makes sense that the structure of “the body of the guardians of order” has remained largely conservative through the years, and that the extensive negative attention towards forensic psychiatry after July 22nd compromised the legitimacy of the institution. In a Foucauldian view, the accessibility for non-professionals to learn about and criticise the language of psychiatry, can be seen as an increased threat to its legitimacy (given that the field of psychiatry practice closure as a way to maintain their power relations within court). Bourdieu (1988) speaks of the importance to preserve the scientific consensus. If forensic psychiatry currently finds itself in a “crisis”, a Bourdieuan view could explain that its representatives are now forced to retain homogeneity and unity in order to withstand the crisis.

2.2 Normative validity: Views on mental illness

Foucault’s (1991) studies into the depths of madness have attempted to look beyond the institutional ideologies of psychiatry for the conditions of their possibilities. Foucault (1991: 17) quotes Blaise Pascal and Fyodor M. Dostojevskij:

“Men are so necessarily mad, that not to be mad would amount to another form of madness.” - Pascal

“It is not by locking up one’s neighbour that one convinces oneself of one’s own good sense.” - Dostojevskij

These quotes depict a view on normality and society that question the way we categorise and separate the mad from the normal, but according to which logic does madness exist, and in which language is it spoken? Foucault (1991) speaks of society as a social body, where the discourse is the main vehicle in which power is asserted throughout the various institutions. He links this closely to the social production of knowledge, where knowledge-ownership enables an uneven distribution of power. He maintains that this power is not “contained”, but is constantly flowing within the discourse. One example is how he sees psychiatry as the institution responsible for creating the language of mental illness – where the voices of the

mad are not heard. In his viewpoint, psychiatry enforces their definitions of normality and reinforces their legitimacy by constantly repressing the discourse of the mad. This suggests that the psychiatric discourse is opinionated, and potentially invalid in the sense that the knowledge it produces is one-sided.

Foucault (1991: 17-18) talks about a point in time when “madness” as a concept was first invented. In order to find the origin, he expresses the need to lose all the “truths” we have learned on the way. Foucault states that the language and the terms of science and psychopathology must not play a key role in investigating the matter – but rather the *actions* that separate madness from sanity. In a metaphoric train-of-thought, he explains that there was a constant battle between reason and non-reason in the first division process. In the centre, he explains there was a void that marked the position from which the sane and insane moved away from each other. In Foucault’s words, both domains communicated about the splitting in a crude and archaic language. In this context, the people that “belong” to each category were mutually connected and depending on each other, quite unlike how the mad are currently institutionalised and separated from the normal.

Foucault (1991: 17) argues that in the calm world of the mentally ill the modern citizen does not communicate with the insane; he points out that the insane person is left with the doctor by the reasonable men and women. According to him, this enables a one-sided relationship through the abstract universality of the disease. Moreover, Foucault sees the insane person’s communication with their surroundings as solely conveyed by a reason that is just as abstract for them – order, physical and moral compulsion, anonymous group pressure and conformity demands. In this perspective, language plays a key part as a domination-technique of exploitation and misleading.

According to Foucault (1991: 18), a common language for reason and madness has not existed since psychiatry established insanity as a disease of the mind at the end of the 18th century. He explains that this marked the point where the dialogue stopped and where the separation between the two was complete. According to him, all the stammering and incomplete words without a set syntax, which represented the unity between both domains, were forgotten. Foucault affirms that the language of psychiatry, which is reason’s monologue over insanity, can only exist based on the forgotten and the silenced. With these communicative aspects in the back of the mind, it makes you wonder in what direction the views on madness could take if psychiatry’s know-how was challenged. Furthermore, Foucault’s historical setting puts psychiatry into perspective, and brings about questions on

the validity of psychiatric work – as it has largely remained uncontested for over two hundred years.

2.3 Psychiatry's relationship with the justice system

Foucault (1991: 48) tells the dark story of how psychiatry began its relationship with the justice system, and he dates it back to the emergence of what he terms *the Classical Age* of the 17th and 18th century. He calls this “The Great Imprisonment”, and refers to how enormous institutions were erected, much like prisons or concentration camps. He explains that during these times, the autocracy made sure the mad, poor, unemployed, criminals and “similar” were rounded up and confined within four walls. He argues that year 1656 serves as a milestone in history, when Hôpital Général was opened in Paris. He describes how the administrative reform led to a centralization of power to the directors in charge of the hospital, its affiliated institutions and the city of Paris. At this point, he claims the fate of any person, of any sex, of any age and with any physical, social or mental condition considered unfitting, was in the hands of the director. According to Foucault, the director's duty was to punish, administer, police, rule and trade. He describes this as a central event where medicinal institutions became half-judiciary systems, with autonomy so great it could be considered micro-societies within society. Consistent with this, he explains that medicinal institutions became a submission-authority for social deviators and mad people, which maintained order in society together with the police and the king.

Towards the 18th century, similar tendencies had spread all across Europe. Foucault (1991: 50-51) contends that the church played a central part too as a fierce competitor for power over the government, but also for cooperating with the government to treat the mad. He refers to one point in time, where as many as 6000 people in Paris (1% of the population) were arrested and confined within the jurisdiction of medicinal and quasi-medicinal institutions. In the midst of all the madness of mass-incarceration, it brings about the question of the meaning of it all. In line with Foucault's research, the *Zeitgeist* of the Classical Age encouraged a seemingly perverse way of defining who should be locked away. The phenomenon could be seen as a response to a public need to deal with poverty, economic problems, unemployment and vagrancy, but foremost as a moral obligation. The same needs are also topical today.

Foucault (1991: 52-53) explains how the treatment of deviant behaviour thus gives an indication of how madness was experienced and perceived in Europe, and how it coloured the

culture of that time. It also shows how the science of medicine and psychiatry started to play a central part in government. While contemporary psychiatry is not by far as autonomous as it used to be, it is still debateable whether forensic psychiatrists today have more influence than what we think and what is necessary. The wrongdoings in history can be criticised, but many aspects of psychiatry has remained the same.

The Norwegian approach to address issues of psychosis in relation to criminal acts puts a lot of pressure on forensic psychiatrist – while it gives them a lot of power. The outcome of the forensic psychiatric evaluations affects court decision, and this ultimately affects the fate of the perpetrators – in terms of punishment by regular imprisonment or admission to compulsory treatment in medicinal institutions. If the principle of psychology is implemented, to diagnose psychosis will not be a central concern for court cases, inasmuch as it may not be linked to factors that motivate the criminal act itself. In other words, when issues of accountability become subsidiary, the perpetrator's self-insight and ability to act on "free will" becomes a primary issue.

There are no formal requirements for specialized competence in order to partake in a full forensic psychiatric evaluation, and two psychiatrists are usually appointed. However, on rare occasions one assistant doctor or specialist in clinical psychology will assist one psychiatrist. Generally, the education of psychiatrists does not include much teaching on specific forensic psychiatric work, but to learn how to determine if a person is insane is central. Forensic psychiatric work cannot be quality assured in the same way as laboratory-medicine, but a chief concern is to ensure that it follows certain formalities, as for instance to commence certain amounts of conversations with the subject, use standardised instruments of measure and document by protocol (NOU 2001: 12). Until recently, there has been no formal professional unit devoted to training people specifically in the work required by the court, even though there was much public demand. Former Minister of Justice Grete Faremo (cited in Torset 2013), announced that a pilot project has been initiated in Trondheim, and will be fully operational by 2014.

The actual psychic evaluation produced by an appointed forensic psychiatrist will be quality assured by DRK, as stated by the code of criminal procedure (Straffeprosessloven §146, §147,). The board and the court receive the same written statement from the appointed specialist regarding the evaluation. If the verbal statements given in court differ from the documents, the specialist is obliged to send the board a summary of the verbal explanation.

DRK is obliged to inform the court if there are any substantial shortcomings of the appointed specialist work.

2.4 Symbolic violence

Bourdieu's (1988) work is among other things devoted to understand the social mechanism and power relations within academia and elite positions in society. For him, *symbolic capital* is the crucial source of power – and if a holder of symbolic capital uses his or her power against agents who holds less capital in order to change their actions, this is referred to as symbolic violence. Forensic psychiatry's major influence in court decisions is by some considered symbolic violence against both the court and clinical psychology, and is even considered an obstacle to a holistic understanding of criminal deviance. Bourdieu's views are thus important to analyse power struggles within the legal system, and how psychiatry reproduces its social standing and balance.

As clinical medicine and its sciences serve as a unifier between interests of the nation and the social rationale legitimizing its structures, it is according to Bourdieu (1988: 63-64) possible to show in the same logic that the very exercise of the clinical act implies a form of symbolic violence. He sees clinical competence as a system of patterns of perception, which are codified to varying degrees – and more or less completely personified by their medical agents. According to Bourdieu, this competence cannot function practically, if it is analogous from the act of jurisprudence for the judge, with the exception of relying on indices from the patients, bodily indices and verbal indices – which for the most part have to be solicited by *clinical enquiry*.

Bourdieu (1988: 64) exclaims that we find a dissymmetrical social relation in the enquiry process, where the expert is able to impose his own cognitive presuppositions on the indices delivered by his patient, without having to consider any discrepancy between the tacit assumptions of his patient – and his own explicit or implicit assumptions about clinical signs. Bourdieu admits if it were not so, misunderstandings might be generated and mistakes could be made in the diagnosis of the patient; but herein lies the fundamental problem: The translation of the spontaneous clinical discourse of the patient becomes the codified clinical discourse of the doctor, with for instance a “red patch” becoming an “inflammation”. In this perspective, it appears that the clinical practitioner themselves hold a crucial position, where they may legitimize any diagnosis based only on their own competence.

Moreover, Bourdieu (1988: 64) argues that often neglected factors are those of the cognitive effect of the time spent acquiring information, the limitations of the cognitive repertory of the expert (the questions not asked) and/or limitations to his skill in deploying his knowledge. He explains that these factors can be based on lack of experience, but also from the haste or presuppositions (reinforced by *leading questions*) generated by an emergency. Thus, he asserts that a great deal of power is at play through the enquiry process between doctor and patient, expert and subject. This is important to consider in light of the Breivik case, as the acts of terror invoked an emergency status in most parts of society.

2.5 Legitimacy of experts

Foucault (1991: 54-60) argues that psychiatric treatment of the mad has not fixed underlying social problems at all, because the institution itself is based on exploitation instead of humane ethics. Psychiatric experts today most likely hold a higher moral standard than in the classical age, but their methodology is highly similar. The media-focus during and after the Breivik-trial highlighted flaws and weaknesses of appointed psychiatric professionals in court, which thus challenged the legitimacy of the work they perform.

Like Foucault, Bourdieu (1988: xi) emphasizes the great importance to distance oneself from one's own social context:

“The sociologist who chooses to study his own world in its nearest and most familiar aspects should not, as the ethnologist would, domesticate the exotic, but [...] exoticize the domestic, through a break with his initial relation of intimacy with modes of life and thought which remain opaque to him because they are too familiar.”

Bourdieu (1988) argues the necessity to review the categories of thought we consciously or unconsciously deploy. He states that many concepts we use in the scientific construction of the social world, often are mere common-sense notions; which have been uncritically introduced into scholarly discourse, like the term “profession”, or other terms, that in a more or less disguised manner contribute to the effects of social determinism. By being willing to constantly revert our modes of thought and/or scientific direction to a point where we can analyze the (social) determinants from an objective point of view, sociology stands a chance to escape the vicious circle of historicism or sociologism (Bourdieu 1988: xiii). Can the same be said for psychiatry? This viewpoint encourages criticism of not only what people generally take for granted, but also a criticism of established institutions. More explicitly, it problematizes the legitimacy of expert systems that do not distance themselves from their own

context or fail to justify the “truth” of their applied expertise. For example, DRK and the first forensic psychiatrists in the Breivik-case were criticised for being decontextualized, when they ignored essential parts of Breivik’s cultural and societal context (Helmikstøl 2012).

How can we evaluate their scientific competence? According to Bourdieu (1988), the various disciplines within society are arranged into two categories, “the higher” and “the lower”. The higher consist of the faculty of theology, law and medicine – and are able to provide the government with the strongest and most durable influence on the people. He explains that these faculties are also the most controlled by the government, the least autonomous from it and are entrusted with creating and controlling customary practice, which then provides ordinary exponents of knowledge, priests, judges and doctors. According to him, the lower category and its faculties have no temporal power. Bourdieu (1988: 62-63) quotes Immanuel Kant: “The ‘right wing of the parliament of knowledge’ holds authority, whereas the left wing holds the freedom to examine and object.” This suggests that psychiatry can only be properly examined and criticised by those institutions (lower disciplines) that lie farthest away from the “right wing of the parliament of knowledge”.

Bourdieu (1988) declares that the competence of the doctor or jurist is a technical competence guaranteed by the law, which in turn gives the authorization and legitimacy to execute a more or less scientific knowledge in practice. He elaborates on the fact, that medical researchers are subordinated the clinical practitioners, and it thus expresses the subordination of knowledge to social power, which decides its functions and limits. He explains that the very initiation ceremonies of the higher faculties sanctify a competence, which is inextricably social and technical. Foucault’s (1991) genealogy of the concept of clinical medicine similarly revealed this dual dimension of medical competence. Bourdieu (1988: 63) also describes the progressive institution of social necessity, which underpins the social importance of professors of medicine. Importantly, he asserts that it distinguishes their scientific art from all the technical skills that confer no particular social authority (like for instance the engineer).

Bourdieu (1988: 84-85) thus argues that the reproduction of the university body is strategic, to ensure for those endowed with agency positions an elitist and statutory authority. He describes the regulation of entrance as a function-related attribute, which is much more linked to hierarchical position than to any extraordinary properties of the applicants or their work. According to Bourdieu, the extent of the semi-institutionalized power which each agent can exercise in each of the positions of power he holds (his “weight”), depends on all the

attributes of power invested in him – invoked for example by the usage of terms of address such as “Dean” or “President”. Bourdieu also puts forward, that the production of legitimacy within these institutions derives from a mutual social relationship between the members of several secondary institutions overall and not least by personal affiliation to them (being a university president or elector to that office).

Bourdieu (1988: 85) describes the mechanisms behind admission to the higher institutions of academics: Within the Institute, the members are divided more or less equally between the “academic” and the “scholarly” or “intellectual”. Together, he claims they can exercise over the whole field, and especially on the former, that of an immense institutional power of control and censorship. He sees that capital breeds capital, and that there is a link between teachers with high academic capital and the success of their pupils. Bourdieu asserts that to hold positions that confer social influence will determine and justify holding new positions – themselves invested with all the weight of their combined holders. This clearly suggests that positions that confer social influence are not necessarily publicly accessible, and as such do not represent a democratic structure, or one based on merits – but rather an elitist congregation existing under the guise of social camouflage. Such a case disfavours those who do not share the specific capital needed to be part of that academic field, and it thus provides protection for those already initiated by preventing “intrusion”.

The bottom line is that if to acquire the capital needed to sit in elite positions that confer social influence is seemingly restricted to specific groups, based on preconditions rather than merit and achievements, it raises doubts about the performance, reliability, objectivity and accuracy of whatever tasks the holders of those positions perform. The 2011 Norway Attacks-crisis and the aftermath has shed light on the dysfunction of several important positions within the social body, and in particular forensic psychiatry. The public debate thus indicates discontent with psychiatric expertise – as it failed to meet the public expectations, which casts doubt on the reliability and capability of their work.

2.6 Towards a paradigm shift

Bourdieuian and Foucauldian discourse analysis has so far invited us to compare Norwegian psychiatric expertise to historical and more contemporary socio-political scenarios apparent in their research. In the context of the Breivik-case and the massive criticism directed towards

the expert system of psychiatry, it is interesting to explore whether its seemingly unconditional dominance on forensics will prevail in the years to come. With the exception of occasional public criticism, forensic psychiatry has largely been an applied expertise hidden from public view, which prevents interference from competition. Through the extensive media coverage, arguments and opinions on the subject crossed paths with *numerous* academic disciplines including psychiatry, psychology *and* the nonprofessionals. Through a Bourdieuan and Foucauldian viewpoint, this setting challenges psychiatry's prominent position within the judicial system, but Habermas's viewpoint extends on their frame of reference and provides a scope for examining the argumentative circumstances that surround these public discourses. Similarly, Kompridis, Mercier and Sperber offer additional means to comprehend the logics behind argumentation and broaden the interpretative context.

Habermas (2006) contributes to understand how the concepts symbolic capital and discourse are interconnected with negotiating truths on any matter through (rational) argumentation, and can be compared with aspects of what he terms *communicative action*. Within this paradigm, he highlights that truth can only be achieved through "ideal speech-situations" where participants are required to have the same capacities of discourse, social equality and not being bound by ideologies. He points out that these conditions mark some boundaries between the public and private sphere, but that these very boundaries are deteriorating in contemporary society. He thereby offers a framework for studying the conditions surrounding the "battle zone" between expert systems, and for explaining how the mass media has power to regulate the discourses. The deterioration of boundaries that Habermas points out in contemporary society can be seen in relation to how the public interfered with the professional expert remarks in the Breivik-case. The knowledge-conditions between the professionals and non-professionals were different, yet the latter were highly influential. This supports Habermas's notion of a future less bound to traditional institutions, and will be discussed in chapter 5.

In Habermas's (2006) theoretical framework, it is possible to identify the various types of arguments people engage in, and for what purpose. He distinguishes between three intentions of rational argumentation; *validity claims to the truth*, *validity claims to normative correctness* and *validity claims to truthfulness* (Habermas 2006: 8-16; Joas & Knöbl 2011: 230). In short, they describe aspects that ought to constitute professional normative validity. Habermas (cited in Joas & Knöbl 2011: 232) points out that the importance of each validity claim depends on the context and circumstances, but that his model of rationality is versatile. His model may as

such be used to analyse professional discourses that are apparent in the analysis. His theories are also a useful point of departure, to discuss how different professional norms coincide or interact through the various discourses/viewpoints.

Habermas' (2006) theory of action is almost inseparably linked with the conception of rationality, as it is based on the theory of rationality. Communicative action does not assume an actor in isolation, it is *not* teleological, and does not adhere to given norms or a means-end schema (Joas & Knöbl 1999: 232-233, 234-235). Rather, communicative action suspends the validity of predetermined goals, and emphasizes honest discussion that does not have a fixed goal. In this context, the different parties' goals and ends can and should be revised, refuted and convincingly rejected.

In the perspective of Habermas, everybody thus needs to have an open mind about the outcome of the conversation, to ensure a conclusion that is not based on predetermination. Habermas (cited in Joas & Knöbl 1999: 235-236) emphasizes that this action scenario is geared towards mutual understanding through argument, and that it can lead to more fair and desirable resolutions. In the analysis, I will portray various contexts and argumentative discourses that can be compared with such a conception. In chapter 5, I will use Habermas's communicative action schema, to discuss further if, how and why certain aspects of the scenario necessarily promote an improvement of the existing expert systems related to the court. This could help clarify the possibilities of change within the current judicial system.

With the intention to understand the logics behind argumentation and reasoning, Mercier and Sperber (2010) fittingly introduced a theory named *Argumentative theory of reasoning*. As the name suggests, their theory shows how humans argue and for what reason they do so. Consistent with their thoughts, common belief declares that arguments are usually put forward to improve knowledge and make better decisions. However, Mercier and Sperber claim that much evidence demonstrates that reasoning often leads to epistemic distortions and poor decisions. In this context, they explain that the function of reasoning is argumentative, with the intention to devise and persuade. They put forward that reasoning is adaptive given the exceptional dependence of humans on communication and their vulnerability to misinformation.

According to Mercier and Sperber (2010), a consequence is thus, how skilled arguers are not by default after truth, but after arguments that support their claim. This is in line with the implications of the term *confirmation bias*. They reckon that humans are equipped with this

strong bias in order to win arguments, and is as such not negative by design – but its consequences in public debates such as in the Breivik-case may be viewed as negative. They explain that the confirmation bias is present not only when people argue, but also when they proactively reason from the perspective of having to defend their opinions. We may compare this to instances where representatives from the discipline of forensic psychiatry has addressed public criticism, to evaluate the worth of their counter-arguments. They elaborate on the fact that when people who disagree with one another can discuss a problem amongst themselves, it will partially balance out their confirmation bias, and make the group able to focus on the best solution. Hence, to work in interdisciplinary groups, especially if they are prone to disagreement, is in this perspective portrayed as desirable. This may be compared to the overall Breivik-scenario where the various media outlets and fora have enabled such a common ground for discussion.

Kompridis (2006: 187-189) offers a similar, but alternative framework to Habermas used not only to understand arguments and their conditions, but also to rework and rephrase a speech scenario in order to steer it towards untried directions. His term *reflective disclosure* is based on Martin Heidegger's *world disclosure*. The former refers to a thought-process where we can “unlearn” what we know about something, and “reinvent” its meaning. He argues that reflective disclosure detaches itself from the restrictions of traditional practices, and its versatility thus offers real alternative possibilities for speech and action. Kompridis self-critically claims to expand the normative and logical “space of possibility”. According to him, the strength of this perspective lies in uncovering possibilities that have previously been suppressed or untried, or refocusing a problem in a way that makes something previously unintelligible, intelligible.

Kompridis (2006: 264-280, 30-34) argues that Habermasian self-understanding restricts itself to clarify the procedures by which we can reach argument, and that his own framework can instead denote practices where we can articulate meaningful alternatives to current social and political conditions. He asserts that reflective disclosure is the first step to initiate a significant contribution to political, ethical and cultural transformation. According to him, such a method can lead to affect conditions of possibility, by imposing on questions such as: “What constitutes a thing, how is true or false determined and how is the best way to go about something?”

Where Habermasian critical theory may have its limitations, Kompridis presents a viable alternative. They both offer a solid point of departure, if we were to look at for instance the “validity claims” within specialist/legal discourse and its mechanisms. Habermas lets us study the conditions and boundaries of professional speech and action, but Kompridis invites us to re-think the whole setting of the Breivik-scenario. Is the existing (traditional) method to appoint psychiatrists and base the criminal code on the principle of medicine, the best-suited way to ensure a fair trial and a correct sentence for perpetrators like Breivik, who are not easily placed into the pre-determined categories of mental illness?

2.7 Summary

Sociology of knowledge is characterised by an aim to uncover potential misleading aspects of our thoughts about the world, and the recent criticism of forensic psychiatry and expert opinions has revived the need for such an approach. In this study, the perspectives of Bourdieu and Foucault are useful to understand questions tied to “symbolic power” and to what Bourdieu refers to as “symbolic violence”.

The legitimacy of forensic psychiatry rests on the quality of their work as experts. When put into the Foucauldian/Bourdieuian perspective, the relevance of the knowledge their profession is founded on can be discussed and compared to that of alternative professions. Symbolic violence and professional power struggles are terms that will be tested on these grounds, in relation to the language of psychiatry. In addition, parts of the Norwegian political framework is tied to the debate, to shed light on the validity of the principle of medicine and the government ideology. In the words of Bourdieu, it is important to distance oneself from one’s own social context, and that is why psychiatry is placed in a historical and political context.

The actual communicative context of discourses that originate from the Breivik-case is discussed in light of Habermas, Kompridis, Mercier and Sperber as they offer a way to understand the logics behind argumentation in terms of rationality, reasoning and preconditions. Like Foucault and Bourdieu, they focus on language and discourse – but in a more fundamental and de-contextualized manner. For example, an employment of Habermasian mode of thought can entail to look at the validity of truths-claims that are negotiated in the social setting. The perspective Kompridis implies, promotes a de-contextualization of any pre-determined goals and truths in a speech context. He underlines the value and importance to recognise *new* possibilities of outcomes through argumentation.

Mercier and Sperber's term confirmation bias helps to reflect on why arguments are portrayed in certain ways, with attention given to whether a speaker is in a defensive mode and if there are factors present that cancel out the effects of the bias.

Chapter 3

Research method and design

One of the purposes of analysing the data material was to reveal a nuanced picture of contemporary discourses surrounding forensic psychiatry within the given period. More important was to address the aim of the study. From an early stage in the data-collection, I predicted to find content that proved the existence of several professional dilemmas related to forensic psychiatry, as well as sources supportive of the contemporary system. In light of the intense criticism suffered on behalf of the field of psychiatry, I also expected to find content that suggested a paradigm change or modification to the existing expert systems. In the midst of the public debates, there were clear signs that professional power struggles were at play, and I thus looked at how the arguments were constructed and for what purpose. Language and discourse were hence essential terms for the interpretation.

I am theoretically inspired by Foucault and Bourdieu, who are commonly associated with discourse analysis through large-scale research projects. However, it is not obvious how such an analysis can be employed in a study like this. I therefore chose a more tangible approach inspired by qualitative content analysis. In order to address the research question, qualitative content analysis together with case study design proved a valuable combination. Florian Kohlbacher (2006: par. 75-80) explains that the strength of qualitative content analysis lies in how it synthesises openness, while transforming information that is essentially qualitative to quantitative evidence. In this process, it offers the opportunity of a more comprehensive approach, while being strictly controlled methodologically by a systematic step-by-step analysis of the data material. Kohlbacher further claims that in contrast to its quantitative counterpart, qualitative content analysis features the context as central to the interpretation and analysis of the material. Hence, it is not only the manifest content of the material that is important, but also the latent content as well as formal aspects that need to be taken into consideration. According to him, this is in line with achieving a holistic and comprehensive analysis of complex social phenomena.

Bryman (2012: 304-305) states that as well as being a transparent research method, it is often favourably referred to as being unobtrusive. This entails that the researcher is not taken into account by the participants of the study, and is therefore a non-reactive method. However, while the content analysis itself does not induce a reactive effect, the documents may have

been at least partially influenced by such an effect upon their creation. He asserts that this method is highly flexible, and can be applied to a wide variety of different kinds of unstructured textual information. Moreover, it is readily used for generating information about social groups to which it is difficult to gain access.

Julie W. Cox and John Hassard (cited in Kohlbacher 2012: par. 73-74) claim that qualitative content analysis provides means for *triangulation*, in the sense that the weaknesses in a single method can be compensated for by the counter-balancing strengths of another. Kohlbacher explains that triangulation takes place on two levels: On the first level, data is triangulated by the integration of different material and evidence, as well as by integrating quantitative and qualitative steps of analysis. On the second level, triangulation takes place when methods of analysis that have not been particularly developed for a purpose are applied to a different research design – like the case study. In sum, these aspects are what may lead to a “thick description” or a holistic approach.

To use documents as sources is hence useful to analyse and extract relevant information related to the phenomenon in focus (Grønmo 2004). However, Bryman (2012: 306-307) claims: “A content analysis can only be as good as the documents on which the practitioner works.” According to him, documents should be assessed in terms of such criteria as authenticity, credibility and representativeness. I will therefore elaborate on this in the next sections, by first explaining how I proceeded to locate the sources that became the base for the analysis. I will then point out the considerations that were made involving the relation between the data and my position as a researcher, where the validity of my sources will be evaluated too. Finally, I will discuss the quality of this study and determine how well it addresses my thesis.

3.1 Generating data

As I reviewed the possible outcome of the research in this study, I considered using a qualitative method as the most feasible – much because the themes I was interested in might not be easily captured through quantitative methods. There was also an abundance of available material through printed articles and electronic databases, and content analysis offered a suitable framework for capturing the larger professional discourses that relate to my thesis. Most sources in the data material contained a discussion of forensic psychiatry on a societal level, and I sorted out those that lay closest to the research question. I chose to focus

on both published articles in newspapers, and on published articles in periodicals affiliated with departments of law and medicine. I also included public government documents. The reason why I did not focus solely on for instance periodicals is that I wanted to compare public viewpoints with expert opinions. This can be seen as a step taken towards increasing the quality of my findings. All in all the study has given me an insight to how forensic psychiatry is perceived through the public and professional eye, and provided a scope for detecting professional dilemmas.

3.2 Collection of data

I chose to retrieve and analyse documents. Halvorsen (2003) refers to secondary data, as data that is already produced by somebody other than the researcher. This approach clearly has limitations, but also advantages. Working with secondary data increases the time needed to get familiar with the data set, and it is often demanding to reduce the complexity of all the available information. However, according to Bryman (2012: 313-315) re-analysis may offer new interpretations and the researcher is able to spend more time on the actual data-analysis, and it is favourable in the cost/time-perspective. With this in mind, I found it necessary to select data systematically based on explicit criteria, in order to address my thesis accurately and not end up with a skewed representation. I also chose to include data that related to the same professional dilemmas, but from different angles and from different actors. The intention was here to avoid one-sidedness and to be more objective. I considered that to capture a broader perspective in the analysis would increase the value of the discussion in chapter 5.

The type of secondary data I have used can be referred to as process-generated data (Halvorsen 2003). This data is in a dynamic relationship to the sender and receiver, in the sense that it was not originally processed for this analysis. The data herein surfaces in connection with various phenomena occurring in society, and can be viewed as discourses presenting certain attitudes on given topics. Discourses tied to the Breivik-scenario are plentiful, and have been frequently presented through (newspaper) articles, public debates and interviews because of the severe impact on society and individuals. This type of process-generated data is commonly divided between personal sources, institutional sources and public sources.

For this study, the two latter were of interest. Public sources, such as Official Norwegian Reports (NOUs) provide a government-ideological perspective in addition to Norwegian laws that shed light on several aspects of the legal system and forensic psychiatry. Strictly speaking, newspaper articles are not easily placed into these categories, but they convey information from senders to the public, from politicians, debaters, knowledge workers and so forth – which is information that is sometimes not easily accessible, and hence useful. It is also fair to assume that many voices would not have been heard, had it not been for the media channel. In my aim to include more perspectives, including newspaper articles was an obvious choice.

It occurred to me that it was hard to locate “pure” supportive sources for forensic psychiatry after the beginning of 2012, and I became interested to find the reason. The answer could be consensus in favour of criticism, but also for instance the result of a sensationalist editorial bias in media caused by the tension around 22nd of July. After all, the media is sometimes referred to as *the fourth estate*, as it conveys a lot of influence and power. One could also consider “mainstream opinion” to have a discouraging effect on others who disagree, and it may thereby prevent others from entering the public debate. Nonetheless, I found too little information to analyse this aspect in a satisfying manner (although non-information is valuable too) – and the angle falls outside of my thesis. The few viewpoints in support will still be included and compared with the criticism.

3.3 Filtering and coding

I decided to focus on data from 22nd of July 2011 and onward, and as of now, topics related to forensic psychiatry and the Breivik-scenario are still frequent. Over time, these topics have decreased in popularity, but forensic psychiatry is still problematized through media in connection with other court trials with similar characteristics, suggesting that professional dilemmas tied to their expertise have not yet been resolved. Therefore, analysing material from the whole spectre of time was a plausible approach. Yet, December 2011 serves as a central departure point for criticism, as this was when the first evaluation report was leaked to the press.

In terms of authenticity, the sources are publically available through trusted sites and publishers, and are as such not likely counterfeit. In addition, they are time stamped and themselves include (external) sources, thus increasing their legitimacy. The Norwegian laws

and government statements originate from trusted official documents and websites, and are a direct source for what government ideological guidelines forensic psychiatry must follow. In line with capturing an array of expert and public discourses, the sources consist of expert interviews through different media channels, by representatives from forensic psychiatry, psychiatry, the judiciary, psychology, political science, neuroscience and so forth; as well as articles written by various journalists, debaters and other knowledge workers. In chapter 5 I reflect on the weight given to certain speakers/actors, based on what professional field or social entity they represent.

I treat the different sources as either *academic* or *non-academic*. I define an academic source as written by someone with credentials, often in a periodical that is reviewed by peers or research. I define non-academic sources typically as newspaper articles, magazines, blogs and websites that do not end in .gov or .edu and so forth. This is my first stage to determine the weight of a speaker, where the second is to review the speakers' academic or non-academic affiliation. The consequences of different weighting and its sociological interpretation is discussed in chapter 5 in connection with symbolic violence and Habermas and Kompridis' schema of rational argumentation and the way to desirable solutions.

Once I gathered an extensive data set, I created categories in order to filter them. I started out with approximately 71 sources, and discarded 45 of them because I did not consider them relevant, and because some content was highly similar. I ended up with 26 in total. My categories were initially based on a prediction of which professional dilemmas could be directly tied to forensic psychiatry, but I moved away from this approach, since I considered it too specific and distanced from my research question. My new categories were instead:

1. *Criticism of the first evaluation of Breivik – 5 sources*
2. *Criticism of the second evaluation of Breivik – 5 sources*
3. *Supportive of contemporary forensic psychiatric work – 5 sources*
4. *Implications of ideology and politics on forensic psychiatry – 4 sources*
5. *Indications of an emerging paradigm shift (within expert systems that cooperate with the court) – 7 sources*

These categories were designed to capture information that supports the existence of professional dilemmas, coded by relevance of theme and were hence more in line with the guidance of the research question and theory. The category "Supportive of contemporary

forensic psychiatric work” fulfilled a different task, to provide a counterbalance for the other categories, and to provide a more comprehensive scope for the discussion in chapter 5.

3.4 Contextual aspects

According to Idar M. Holme and Bernt K. Solvang (2003), the content of a source is subject to a dynamic relationship with the historical context of which it exists in. They explain that sources as such represent partial information about a context, which can lead to a more full understanding of the historical situation. The data material is intended to portray the larger contemporary discourse surrounding forensic psychiatry. This angle enables a direct approach to the Breivik-case, and the fact that the terror attacks happened over two years ago, means that it is possible to hold a more broad approach to the scenario; compared to if a similar study was conducted immediately after the incident. I base this on the assumption that fewer opinions would have been voiced, the data would have less time to mature in analyses and people may have been emotionally biased by the severe impact of the terror attacks on society. In 2013, the memories are still fresh, but the social tension in this context is slightly different. To a certain degree, this allows a more objective approach.

It has been important for me to pinpoint who utters what, in which way, where and why, because all pieces of information are related to one another for a comprehensive understanding. It has hence been important to show how the content is interpreted to ensure a high quality of analysis. Additional research was performed to gather information on the (academic) background of the speakers, as it was not always stated in the source. I mainly used the internet to crosscheck this information. In addition, the content of the sources can convey information to both a normative and a cognitive degree. According to Holme & Solvang (2003), both elements are present in a text, and one may dominate over the other. For example, cognitive sources can measure the effect in practice of laws and similar, while normative sources convey intentions and attitudes. Both elements are reflected upon in the text.

The five newspapers from the data material are *Aftenposten*, *Verdens Gang*, *Dag og Tid*, *Morgenbladet* and *Klassekampen*. *Aftenposten* is former right wing and culturally conservative, but it is now considered mainstream and liberal-conservative. It is the largest newspaper in Norway and is distributed daily and nationally. *Aftenposten* is owned by the same company that owns *Verdens Gang*. This newspaper is the second largest in Norway,

tabloid, politically independent and distributed daily and nationally. Dag og Tid and Morgenbladet are politically independent and distributed weekly and nationally. Klassekampen is left wing and socialist, distributed daily on a national basis. The periodicals used represent different areas of expertise within the academic fields of psychology and psychiatry.

3.5 Ethical considerations

I have not conducted interviews or produced primary sources, and there are hence certain additional ethical considerations that must be made. Tove Thagaard (2003) states that the utterances of individuals in the sources must be respected. She says the analyst must preserve authenticity in such a way that was originally intended by the sender, and although there has been no direct contact between informant and analyst, the representation of the information must keep the same standard as if that was the case. This is important because the represented individuals do not have the option of controlling how their interests are taken care of by the analyst. Overall, this increases the credibility of the study, since the conclusions made by the researcher must retain as high as possible standards that result from an impartial analytical process.

A perfect foundation for analysis would be to gain access to *all* available and relevant information. Although that was not achieved, I still gained access to a lot of useful information, that enabled me to indicate certain tendencies within the professional fields related to this case, and to locate recurring views from individuals and groups. I also recognize that the different actors have separate reasons for fronting their views and that will be discussed according to the conceptual and theoretical framework of this study. Lindsay Prior (2004) emphasizes that documents can be interpreted differently depending on the analyst and context. That is why I have strived towards a more exploratory and general approach, while analysing the data systematically. The findings may well in consequence be transmissible to similar phenomena concerning forensic psychiatry or related expert systems.

Chapter 4

Analysis

In light of the 2011 Norway Attacks the experts systems of law and medicine, as well as the conception of accountability, were disputed in most media channels. This eventually gave rise to numerous professional dilemmas that the discipline of forensic psychiatry must face.

4.1 Consequences of the 2011 Norway Attacks

One contributor to the debate, Professor of history of ideas Gudmund Skjeldal (2012a), states that the case of Breivik puts the complete academic field of psychiatry to the test. He critically asks (my translation):

“Should someone who develops a hostile worldview *not* be punished, even though he makes a fertilizer bomb? Even when he prepares mentally by listening to ideologically motivating music, like some sort of athlete? Even when he seems to be reluctant to shoot someone at point blank range? Does this not remove his responsibility and thereby his human dignity?”

Skjeldal (2012a) pronounces that psychiatry’s position in society was disputed after the first mental evaluation was made public, and that the principles for accountability are currently at stake. He is surprised by the fact that a large part of the contributors to the critical debate, consists of psychiatrists and psychologists themselves. He says that some forensic psychiatrists, like Anders Gaasland, are even refusing to work because they reckon forensic psychiatrists have too much power in court. Gaasland (cited in Skjeldal 2012a) hence wants new principles for the evaluation of accountability, instead of abiding to the prevailing principle of medicine. Skjeldal claims that professors of psychology in Oslo have wanted this debate to surface, and he refers to Forensic Psychologist Grøndahl who holds such views. According to Skjeldal, Grøndahl reckons the background for the Norwegian approach is related to a methodological pragmatism, where an evaluation is made easier for forensic psychiatrists if they do not have to present a causal relationship between psychosis and the criminal act.

Skjeldal points out a significant problem where moral righteousness is in conflict with Norwegian law and ideology, and where the principle of medicine acts as a central obstacle between them. He is surprised by the active participation in debates by psychologists and

psychiatrists, something that can be seen as a sign that they wish to take the criticism seriously, but in a Bourdieuan (1988) and Foucauldian (1991) view, it can be seen as an attempt to retain the existing power relations within court now that they have been challenged. Whatever the motive, comments from Grøndahl and others suggest that the methodological pragmatism that allegedly hinders the quality of psychiatric work must be critically revised in order to move forward.

Forensic Psychiatrist and former member of DRK Randi Rosenqvist (2011) claims in a featured article that much of the public criticism is misguided. She says many have confused the conception of punishment, and according to her, it is thus a logical flaw to discuss whether unaccountable perpetrators *can* be punished; it is rather a question of *how* they are punished. In this context, she emphasizes the importance to define the term unaccountability. She gives examples of how mental definition is an ongoing process, and that since 1842 the definitions have changed for the better and have enabled a better and more optimistic framework for treatment. She argues that the government has ignored certain requests to change and improve the formulation of laws, because they reckon it would complicate the communication between court and appointed specialist. She does however point to the fact that the department of justice is working on a legislative amendment that will ensure that unaccountable perpetrators (who have committed small enough felonies to avoid punishment) will get necessary treatment, compulsory if necessary. As regards serious felonies, she puts forward the suggestion to build prison hospitals, but then a completely new set of regulations would have to be discussed.

Rosenqvist points out some flaws within legislation that hinder the development of forensic psychiatry, and refers to resistance from the government. She insists that language and communication is a concern when it comes to adopt changes into the system. Seen through the viewpoint of Bourdieu (1988) and Foucault (1991), the court has mainly relied on psychiatry since 1842 to produce the knowledge needed to deal with the mentally ill and criminal deviant. While the accounts of Rosenqvist show signs of willingness to improve the system of evaluation, it also reveals steps taken to extend the grasp psychiatry has on the unaccountable criminal deviants. This can thus be interpreted as a power struggle between the government, law and psychiatry, which is seemingly justified by an obligation to help the borderline psychotics.

According to Rosenqvist, the government hesitates to adopt amendments to law on grounds of communication. In line with Habermas (2006) and Kompridis (2006), communicative action begins with rational argumentation that may only be possible if each actor speaks the same language. The initiative from the government can thus be seen as a positive consideration, but it is not obvious why psychiatry should have such an impact on the definition of this particular type of criminal deviance – when psychology and other fields of competence have knowledge that could shed further light on the subject. Part of the public criticism against (forensic) psychiatry is directed against the inadequacy of the psychiatric language, and hence Rosenqvist fails to address this major issue.

4.2 Two psychiatric evaluations

During the court trial of Breivik, two pairs of forensic psychiatrists were appointed, and two separate conclusions were presented as evidence to the court. Only the first was approved by DRK, and was the one that deemed him insane and unaccountable for his actions. Opinions were thus split on the matter, and this became a feud and a chief concern in the nationwide public debate.

4.2.1 First evaluation by Synne Sørheim and Torgeir Husby

Amongst other serious issues, the first evaluators and court were accused of not including a broader academic competence. According to Journalist Hanna Haug Røset (2012), Sørheim said that it is unusual for specialists to involve other fields of expertise. Researcher of defence and terrorism Anders Romarheim (cited in Røset 2012) claims that the approach used in the second evaluation of Breivik was more useful, because it included the political aspect, where the first evaluation defined away anything that could be remotely associated with politics. District Court Judge Wenche Arntzen asked Sørheim about the effectiveness of potential treatment of Breivik, in which Journalist Åse Brandvold (2012, my translation) quotes the response: “[...] there is no doubt that to treat delusion is the hardest part when medicating schizophrenia. However, we are optimists of treatment. We have plenty different medicines, and it would take much to not be able to reach the goal of treatment.”

Compared to the approach used in the second evaluation, the methods of Sørheim and Husby represent a conservative view where psychiatry is responsible for treating any kind of mental

illness, as the involvement of other fields of expertise is considered unnecessary. Through Bourdieu (1988) and Foucault (1991), we can trace this behaviour to similar phenomena apparent in their research, which may indicate a strategic unwillingness to embrace alternative practices. In such a case, the applied clinical act of Sørheim and Husby implies a form of symbolic violence, if its nature stems from different aims than to aid the patient and assist the court by advising the judges on a fair and correct judgment of the perpetrator. Consistent with Habermas (2006) and Kompridis (2006), it is fair to assume that their validity claims are not particularly founded on rational argumentation, as they resemble a one-sided view seen only through the eyes of psychiatry.

Bourdieu (1988) described the faculty of theology as the third member of the higher disciplines. Theologians were not particularly active in the public debate, but in a debate in *Dag og Tid* with Journalist and Author Jon Hustad, Dean of Western-Aker Prosti Trond Bakkevig was accused of characterising psychotic persons as persons without human dignity. Bakkevig (2012) denies this view, and claims he instead meant that such a view is held by those who wish to distance Breivik from themselves and the society we live in. He states that this is a way to deny responsibility for the perpetrator's actions. Bakkevig holds firm that a person should be able to stand responsible for his own actions if he or she wishes. Hustad claimed Bakkevig had lost his moral compass as a priest. Bakkevig in response declares character assassination as a part of Hustad's debate-technique. He asserts that responsibility, verdict and punishment are not interchangeable terms, and that the verdict should be given by the court and the punishment should be determined by both the judicial system and appointed forensic psychiatrists.

These reactions can be interpreted as a disagreement between which roles are assigned in the judicial system and between what moral consequences the procedures have for the defendant/perpetrator. Bakkevig suggests that forensic psychiatry is expected to do more than just evaluate the mental health of a subject, namely determine punishment, although this is not required by law. This may indicate a common belief amongst Christians in Norway that the higher discipline of psychiatry has an authority, which is linked to a moral obligation to punish, in line with the duties of court and God. A way to interpret this power constellation could be to compare it with the Trinity of Christianity. In a Bourdieuan (1988) and Foucauldian (1991) perspective, the three disciplines are in this context able to control customary practice, produce knowledge and authority and thereby assert *more* social power across the whole field when united, which could explain why Bakkevig supports forensic

psychiatry. The connection between theologians and psychiatrists was also evident in Foucault's studies of madness, and he showed how the two faculties once competed for social control of the mad and gained influence on government.

While most accounts in media criticised the first mental evaluation of Breivik, some cherished it. In an expert interview in *Dag og Tid*, Einar Kringlen (Nestor and Professor Emeritus of psychiatry) raises no doubt about his opinion on Breivik's mental health (Gjerdåker 2012). He states that the initial forensic psychiatric report is founded on comprehensive police documents and a series of conversations with Breivik. He adds that the specialists have information from his mother, half-sister and others that verify the impressions given in the conclusion. According to Kringlen, this information along with their observations led to the diagnosis of paranoid schizophrenia. Kringlen emphasizes that the central issue is that the perpetrator was psychotic while he committed the crimes, thus deeming him non-accountable in accordance with Norwegian law. He supplements this claim by establishing that one can have paranoid psychosis without inner voices.

When confronted with the public criticism of forensic psychiatry, he replies that journalists, authors, historians, and other experts without a background in medicine or psychology have a pre-determined view on the evaluation (Gjerdåker 2012). He agrees that the report itself was not a "literary pearl", but that it maintained the essence of quality through its conclusion – psychosis. He is then presented with the views of Swedish Psychiatrist Johan Cullberg, who was very critical to the report. Kringlen sweeps his arguments away and says that he probably wants to be in a new committee. Finally, he responds to a question whether Breivik should be accountable for his actions even though he is psychotic, and replies, "You may claim such a thing. However, you must then change Norwegian laws. Paragraph 44 of the penal code clearly states that an action is not punishable when the perpetrator is presently insane or unconscious" (Gjerdåker 2012, my translation).

Kringlen holds a stern belief in forensic psychiatric work, and reckons that in spite of Husby and Sørheim's poor execution when they created the report, they did everything by the book. He implies that they took all necessary precautions and did the needed research to accomplish their task. Based on his response to criticism, the opinions of those with a background in medicine or psychology are held in higher regard – a scenario that bears similarities to how Bourdieu (1988) describes the reproduction system of academia and the "higher disciplines", and practice closure in order to prevent intrusion and reduce competition, as is also explained

by Foucault (1991). Interestingly, Kringlen disagrees with a Swedish colleague in a way that suggests there is an ongoing professional power struggle between experts who abide to the principle of medicine versus the principle of psychology. When asked about whether Breivik should be held accountable even though he was considered psychotic, he avoids a direct answer, and instead refers to contemporary Norwegian laws. This can be interpreted as a conservative stance, and it may again show signs of little interest in the value of other expert opinions.

In an article in *Klassekampen*, Brandvold (2012) gives an account of Breivik's first mental assessment, where Sørheim and her colleague Torgeir Husby claimed that it was necessary to give Breivik a low score on the GAF-scale (Global Assessment of Functioning), based on his danger to society. According to Brandvold, professionals compare the lowest score levels with someone who can barely tie his or her own shoelaces, and Prosecutor Svein Holden confronted them with this. Husby replied that they needed to give him the score of two because it relates to the danger of enacting harm to himself and others, which we have already witnessed on 22nd of July, in spite of his cognitive function.

In this context, Husby and Sørheim justified the placement of a very low score on the GAF-scale, by claiming that Breivik was a risk to society. Foucault (1991) showed through his research that the mad were treated on grounds of protecting society, and that psychiatric work is legitimized by addressing public needs and moral obligation (of which according to him has not solved anything), and is similar to this scenario. Sørheim and Husby's actions can be viewed as a means to protect society, a perceived need that may have been invoked by the crisis of the terror acts themselves. Bourdieu (1988) speaks of situations like this, where medical personnel may be hasty and presuppose a diagnosis, given the circumstances of an emergency – and their clinical action can thus be seen as symbolic violence on behalf of the patient, whether intended or not.

Some think the scale of the crime should be separated from the perpetrator himself. Doctor and member of Minotenk think-tank Wasim Zahid (2011) claims in a featured article that although Breivik bears similarities to other terrorists, he is still different because his beliefs are founded on false premises and a serious mental illness. He holds that no matter how bizarre an ideological conviction, it does not necessarily relate to a serious mental illness. However, he sees paranoid schizophrenia as an organic disease with clear diagnostic criteria. He claims that the expert evaluation (the first report) is based on an established judicial

practice, which is agreed upon by a wide public and political consensus. Zahid asserts that if the diagnosis is correct, the principle of medicine must stand in the Breivik-trial even though it might seem highly unfair. He stresses that the severity of the mental illness decides the evaluation of accountability, and not the seriousness or brutishness of the crime. He concludes, by giving a reminder: Had Breivik only killed one person; we would not have reacted on a national scale – as it is the scale and brutality of the case that challenges our principles and notions of justice.

Zahid has described the status quo of the relationship between court and psychiatry, and cherished its ideological background. In doing so, he supports the contemporary system of appointing forensic psychiatrists and thinks it necessary to work by the principle of medicine. His opinions were voiced before the second pair of forensic psychiatrists concluded that the actions of the perpetrator were founded on beliefs that are in contact with “reality”, as opposed to beliefs that exist based on hallucinations, delusions and constrained insight. Bourdieu (1988) and Foucault (1991) would be cautious of establishing a “disease of the mind” as the cause of an action, as the very knowledge that gave life to such a concept originates from the language of psychiatry alone, but Zahid’s view may yet represent the commonsensical belief in how these expert systems work.

4.2.2 Second evaluation by Terje Tørrissen and Agnar Aspaas

District Court Judge Arntzen was cited in an article where she claimed that the 22nd of July case was particularly difficult to handle (Peters 2013). During the trial, she experienced Breivik as calm and focused, and explained that he commented on the witness statements and related his comments to the specifics of the case. Arntzen pointed out that this provided important information on his ability to stay focused, and helped determine if he could be held accountable for his actions. According to her, the prosecutors, forensic psychiatrists, lawyers and counsel performed their duties as expected, even though the first report was leaked to the press. She also pointed out that the two first expert psychiatrists performed well, considering that they were under extreme media-pressure. Yet, two additional psychiatric experts were appointed who arrived at a different conclusion.

Arntzen (cited in Peters 2013) was presented with the claim that the status of forensic psychiatrists as experts was challenged and that they apparently found themselves amidst a

crisis, because of the two different conclusions. She declared that the disagreement between the parties was merely an advantage to the court:

“As legal practitioners we are used to disagreements, and base our work and lives upon them. We experience dissent in the Supreme Court all the time, which does not mean at all that jurisprudence is in a crisis mode. Therefore, I believe that the fear of disagreement between the forensic psychiatrists is unfounded” (Peters 2013, my translation).

Arntzen (cited in Peters 2013; Andersen 2013) put forward the main reasons why they decided to appoint two new specialists. One was because the employees of Ila Detention and Security Prison, where Breivik was being held, had not witnessed signs of psychosis. The second was because of the public debate, and the third was because there were no significant arguments against doing so. Last, but not least, she asserted that the core of any court proceeding is to do things right, both in the conclusion and in the argumentation leading up to it.

As Judge, Arntzen had the final say and was final authority in the case. Her statements thereby show signs that the court is still autonomous from other expert opinions, but it does not clarify if the court is concerned with addressing all issues about forensic psychiatry that have been brought to attention. Seen through Bourdieu (1988) and Foucault (1991), how she portrayed the scenario can be viewed as a means to bring closure to the Breivik-case, and avoid to cast doubts on the verdict he was given. Her opinions on disagreement can be seen as an indirect openness to input from experts other than forensic psychiatrists, especially because she acknowledged that public opinions were important for the court decisions, something that is not stated in legislation. Arntzen depicts a picture where both authorities from law and medicine are in total control of the situation, something that Bourdieu describes as a necessity – as they lose power if they present themselves in a state of disarray. That is thus one way to explain why she chose those words, to avoid a further investigation into the realm of their expertise. This can further be linked to how someone in her position likely experiences much social pressure to appear in control of situations, as failing to do so might compromise trust in the legal system and the government.

Forensic Psychiatrist Terje Tørrissen and his colleague Agnar Aspaas were appointed for the reevaluation of Breivik. In a featured article after Breivik was sentenced, Tørrissen (2012) reckons that his field of expertise was widely unknown before the first mental evaluation was completed, and hopes that the broad commitment from the public debate will lead to

necessary improvements of the system. He puts forward that the Breivik-scenario was a natural stage to discuss a transition to the principle of psychology, until he was sentenced and deemed accountable. He thereby regards the verdict as a clear statement that such a discussion is unnecessary, because Breivik is, and was, accountable for his actions in the eyes of the law. Tørrissen holds that the principle of medicine is a good principle in many aspects, even though it builds on a dichotomist principle (sick – not sick). He reasons for this by saying: If a person has a serious mental illness; he or she should be given the necessary treatment and not be punished. Another argument, he claims, is that there is a broad consensus over which conditions constitute the principle. However, he asserts that the quality of the evaluations must be improved – and that is the core of the challenge forensic psychiatry is facing.

Tørrissen (2012) declares that there are good reasons for implementing the principle of psychology too. He says there are many people who walk around with serious mental illnesses, but who are not active psychotics and who understand what they do and have done. According to him, these people get away with punishment based on the doubts of their accountability with the result of dismissing the case (based on the principle of medicine). Tørrissen states that this group of offenders usually commit small felonies, but still pose a formidable threat to society and the police in particular. He reckons the mental health care does not want to treat these people, because it requires many resources and often the patients do not want to be treated. He thinks that an implementation of the principle of psychology entails that perpetrators become jailed, and frequently visit mental health care institutions.

Tørrissen (2012) proclaims that any improvements of forensic psychiatric evaluations will mean a significant increase in public spending. He deems this necessary, as for instance observations in secure psychiatric wards are scarce, given little attention and underdimensioned. In light of the debate involving the autonomy of the court versus trusting appointed specialists, he emphasizes that the court should trust their own judgment as over 80% of the conclusions in forensic psychiatric evaluations result in “accountable”. He proposes that the threshold for calling in expert witnesses by the defence or prosecutions should be raised significantly before they request observation. Conclusively, he desires a cost-benefit analysis separate from whichever principle is valid, because everything coheres; and without a broad analysis of consequence, the result is more than often bad and victimizes the patients.

Tørrissen is generally positive to forensic psychiatry, but disagrees with certain aspects of the contemporary system. He pointed out several good reasons to keep the principle of medicine, and to abolish it. Further, he acknowledged that to improve the contemporary system would be a costly process, but that this stage is long overdue. He admitted that there are some weaknesses in forensic psychiatry, but mainly argues that the cause lies solely in the hands of the politicians. He also blames the court for not trusting its own instincts, and prosecution and defence for frequently resorting to forensic psychiatric observation and evaluation, which is often unnecessary and in turn leads to a victimization of patients.

In the perspective of Bourdieu (1988), Tørrissen and his colleagues of medical practice exercise social power, and are thus influential in the outcome of the scenario – but they are not autonomous from the laws in effect, and hence rely on the government and jurists to bring forth a change in the system. This is in line with how Tørrissen points out political and bureaucratic flaws that affect their work, but he and his colleagues may ultimately affect their decisions. In addition, how the methods of the first evaluation can be considered symbolic violent acts invoked by the emergency of Breivik's attacks; the methods of Tørrissen, Aspaas and Arntzen can equally be viewed as influenced by the extreme media pressure directed specifically towards them – a kind of public trust emergency. We may hence identify two separate symbolically violent clinical acts.

4.3 Professional power struggles

In an expert interview in *Journal of the Norwegian Psychological Association*, Stålsett stated that she was particularly critical to the first psychiatric report on Breivik's mental health (Helmikstøl 2012). She reacted when they did not consider the context he was a part of, and how the specialists attributed words that are already used by others to his idiosyncratic reality. She states that decontextualized psychiatry is antiquated, and that is why the second report is better – because Breivik becomes closer to us all. She denounces how some people mark him as both evil and sick, as it redeems him of all guilt and human dignity. She reckons, that one cannot simply write off evil as belonging to the domain of mental illness, because it removes the perpetrator from our society in which he is a part. She points out that Breivik is a deviant, but also a reminder of and a symbol of certain aspects of contemporary society. Stålsett (Helmikstøl 2012, my translation) proceeds to challenge psychologists in Norway: “Do we have a language yet that accommodates the existential?”

Stålsett sees Breivik as an extreme exponent of tendencies in the Norwegian culture; where shame, strive for perfection, the little extra, the grandiose, the fight for acknowledgement or the romanticizing of individuality is what might characterize us as modern Norwegians. In her perspective, we may not yet have a language that is able to describe Breivik's attributes in a satisfactory way. With this in mind, Stålsett does not consider the discussion on Breivik and psychosis finished. She highlights the shortcomings of forensic psychiatry, and pinpoints a recurring explanatory problem: Language. As described by Bourdieu (1988) and Foucault (1991), the language of psychiatry has been largely uncontested for over 200 years, something that sheds light on the importance of Stålsett's views. In their perspective, language and dominating discourses can be regarded as key factors and differentiation mechanisms that ensure the authority required by psychiatry to remain in their current position in society.

To exclude psychologists from the practice of forensic psychiatry can therefore be interpreted as an act of closure to prevent intrusion. In line with Habermasian (2006) and Kompridian (2006) thought, pure objectiveness and "truth" can only be achieved when each party has equal circumstances for rational argumentation. Compared to the accounts of Psychologist Anne-Kari Torgalsbøen (2012), this court situation appeared to fall short of such conditions. She claimed in a periodical that the judges deliberately chose to ignore psychological expertise in the Breivik case. According to her, this is serious as the official reason for disregarding psychologists was inability. She acknowledges that inability concerns must be taken seriously, but that objectivity must be taken equally serious.

In her opinion, the legal system did not try hard enough to ensure a broad enough academic competence in the special case of Breivik. She thus asks how can we safeguard the legal protection of a person, and give the correct sentence when psychologists might not arrive at the same conclusions. She goes on to say, that judges should prefer competence to accessibility, even in today's busy workdays. Torgalsbøen exclaims that she is often accused by psychiatrists of fuelling a power struggle with representatives from psychiatry. In response, she points to a problem in legislation, that states when experts are appointed to the court, it requires one psychiatrists to be present at all times, but not necessarily psychologists. She claims that the laws need to be changed to elevate the status of alternative practices, in order to promote a better legal system for everyone.

Through the utterances of Torgalsbøen, psychiatrists appear to use accusations of professional power struggles to defeat criticism. In a Bourdieuan (1988) and Foucauldian (1991)

perspective, this may be signs of defence against opposing expert systems that challenge their elevated position in court. Torgalsbøen insinuates that the judges act similarly – but this may simply be a sign of ignorance or disinterest. Nonetheless, she argues that in the midst of the power struggles comes the deterioration of the legal system, as she describes how a broader academic competence will aid everyone involved in the legal system, from judge to defendant. She also argues that we live in times of stress and busy workdays, and that competence should be preferred to convenience. She proposes that the laws be changed, so that to achieve objectivity in forensic psychiatry becomes a main goal.

As explained by Habermas (2006) and Kompridis (2006), this is in line with achieving communicative action. However, in the viewpoint of Mercier and Sperber (2010), the confirmation bias is considered heightened when people are in a defensive stance, which may thus be applicable to this scenario where professional power struggles are apparent. Opinions voiced in this context may hence be considered less valid. This may thus lead to a less chance of arriving at desirable solutions, because the different parties are less likely to incorporate criticism and instead support their own beliefs and claims.

Bourdieu (1988) described the higher disciplines of law and medicine typically as not being autonomous from the government, but that the former have intertwined interests with each other. In an expert interview one day before Breivik was sentenced, chief physician Anne Kristine Bergem at Dikemark Psychiatric Hospital announced that they might not treat him even if he is considered non-accountable and psychotic by the court (Dommerud & Foss 2012). She argues for this, by saying that it is unthinkable for them to treat someone based on someone else's forensic psychiatric report, as it is their responsibility at Dikemark to diagnose their own patients. According to her, they only treat patients who need treatment. She states that her arguments apply even if the court transfers Breivik to involuntary psychiatric treatment, and refers to the observation her colleagues had already performed which showed that Breivik was not psychotic. She admits that they must keep him there by law, but they are not obliged to go against their principles, and hence they will not treat him unless necessary. Conclusively, she adds that they are still open for revaluations and disagreements of earlier reports.

Bergem's remarks show that Dikemark operate by strict principles that allow them to have a kind of veto against court decisions. To a certain degree, they are thus autonomous from the court and the government – something that indicates that there are several “factions” of

psychiatry within the discipline as a whole. When she referred to their own evaluation of Breivik, she was confident that he is not psychotic. Bergem's unwillingness to treat him, even if the first evaluation were accepted as proof by the court, clearly signals that she does not automatically approve of the work done by *other* (forensic) psychiatrists. Even though she has stern opinions on the subject, she recognizes the value of disagreement between experts, which through Habermas (2006) and Kompridis (2006) can be understood as a prerequisite to pursue communicative action and solutions that are more desirable.

4.4 The border between psychosis and accountability

Central to the Breivik case and forensic psychiatry is the conception of psychosis and accountability. In an academic journal for mental health care, Philosopher and Author Lindstrøm (2012: 176) wrote a lengthy and critical article where he puts forward the question: "Can a person be held responsible for his or her actions, when they are closely tied to psychotic delusions?" He claims this perspective is of increasingly more topical interest – especially after Breivik was initially diagnosed "paranoid schizophrenic" and thereby considered unaccountable for his actions. Lindstrøm argues that many psychiatric experts had trouble settling down on that conclusion. After observing Breivik in court, forensic psychiatrist Henning Verøy (cited in Lindstrøm 2012: 176) exclaims that he did not appear to be psychotic. However, he argues that the societal and worldview of Breivik is not easily reconcilable with how the world *de facto* is. According to Lindstrøm, the question remains: Where is the limit between normal-extremist nonsense and psychotic delusion?

Lindstrøm (2012: 176) points to the Diagnostic and Statistical Manual of Mental Disorders DSM-IV, which states delusion is characterised by views that are held alone, and are not usually accepted by the culture or sub-culture of that person. He argues that if for instance a religious sect leader has an immediate congregation supporting him at all times, his doctrine will not be considered a psychotic symptom or disease of the mind, no matter how haughty or vain the comparison might be when compared with common sense and science. Lindstrøm criticises the conclusion of Sørheim and Husby, because they did not include facts about how other people and groups *shared* the views of Breivik. He defaces the wording of DSM-IV too, since the very definition of psychotic madness rests on how legitimate the view of someone is; based on if the majority supports such a view – a claim that according to him sounds speculative at best.

Lindstrøm (2012: 177) exclaims that many of the so-called “new” words that Breivik uses have been incorrectly interpreted as symptomatic (for example “national Darwinism” and “Knights Templar Justitarius”) as they are commonly used by radical right wing (internet) debaters. To hate Islamic people and “cultural Marxists” is also common in many other communities. Historian Øystein Sørensen (cited in Lindstrøm 2012: 177) claims that the perpetrator’s manifesto is permeated by a “totalitarian mentality”, which resembles the political ideology of Hitler, Stalin and Khomeini – and as such should not be diagnosed by psychiatry at all. In his opinion, they are simply political deviance. Professor in philosophy, Arne Johan Vetlesen (2011) voiced much the same views in a public debate, and underlined the danger to base the verdict on the first evaluation – as it may comprise a similar diagnosis of thousands of mass-murderers with ideological motivation.

Lindstrøm (2012: 177) claims it is hard to deny that Breivik was driven by political motives. From a theoretical-medicinal perspective, he asks whether it is possible that a political view is pathological or at the very least a symptom of an underlying disease. He imagines a veritable pandemic of pathological irrationality, where the members of a political movement “infect” each other with the same hopeless delusions. If this is possible, Lindstrøm claims that the only difference between contemporary society and the Maoist wave of the seventies is that the “great pandemic” that sweeps our land is associated with a distinctive right-wing symptomatic worldview. He supplements this, by adding that many people held a radical political view in their youth, only to become more “centralised” as time goes by. He claims that the lack of political success and ambitions to start a family usually dismantles radicalism, although some people persist and succeed. Lindstrøm argues that our most valued and established political views in society belonged in the past to the political wings of extremism, and that the political context should no doubt have been included in the first psychiatric report.

From a moral- and forensic philosophical point of view, Lindstrøm (2012: 189) claims it is not obvious why cases of psychotic delusion should exempt a person from taking responsibility for his or her actions. If so, he reckons delusions are not to be considered pathological or symptomatic *per se*. According to him, a series of psycho-pathological conditions like personality disorder can be subsidiary to perform criminal acts, without the perpetrator automatically being acquitted of his or her crimes. However, Lindstrøm explains that psychosis is unique in the sense that it involves “a lacking ability to realistically evaluate ones relationship to ones surroundings”. As stated by him, the word *ability* is key in this connection. He elaborates and states that medicinal “normal” people, as most ideological

extremists are, can make irrational choices that harm themselves or others – and as long as their sense of reason is intact, they can be accused of abusing it from time to time. On the other hand he says, if Breivik really is inept at realistically evaluating himself in relation to his surroundings, then it is hard *not* to think that he believes *his* terror actions would contribute greatly to the war against Muslims (Lindstrøm 2012: 178).

Lindstrøm (2012: 178) draws on this line of thought, and links a parallel to how we react in different situations. If a “normal” person is late to a meeting, he or she will get a reprimand, and maybe even an ultimatum. He states this reaction is unacceptable if a person with senile dementia did the same. Still, Lindstrøm declares there is a big difference between dementia and psychosis. According to him, one is usually diagnosed with dementia after endless and repeated forgetfulness over a long period, whereas you can be diagnosed with psychosis based on one or a few delusional events. He asks, can we thus conclude that a person suffers from a *general* cognitive deficiency based on *one* fatal misjudgement? Many psychotic delusions are clearly defined conceptions of what a person considers valuable, and in this manner, Lindstrøm sees psychotic delusions to have more in common with political extremism and religious superstition than with meaningless cognitive *errata*.

Even if Breivik suffers from some psychotic delusion, Lindstrøm (2012: 178) claims there is little evidence that supports the fact that he generally lacks the ability to interpret reality realistically. If he did not have this ability, Lindstrøm asserts it is highly unlikely that he would be able to calculate and enact such a complicated “master plan”. He also states, that Breivik anticipated he would be universally hated after his actions, which he to a large extent was – but that some of his predictions and fears were wrong, like for instance becoming tortured in prison (unless of course long-term isolation is being tortured). Lindstrøm additionally points to that Breivik has shown the ability to change his prejudiced opinions on certain aspects.

Lindstrøm (2012: 179) concludes, by stating that if Breivik had been the leader of a right-wing extremist terrorist group, he would have been able to voice far more severe views on society than he has done so far, and still not be diagnosed as psychotic. He reckons a lot would depend on his charisma and whether the group accepted his “Führer”-image. According to him, Breivik never tried to establish his own *Dunkelblaue Armee Fraktion*, partly because he was afraid that it would attract too much attention and subsequently lead to

arrests by the surveillance police. He asks, how can such a calculating man be considered anything else than responsible for his actions?

Lindstrøm dissected all the validity claims of the first psychiatric report. In light of Habermas (2006), the argumentative quality of their work hence fails to meet the standards of communicative action. Lindstrøm raised awareness of all the logical failures that are associated with the categorisation system of DSM-IV and its implications on how society is “supposed” to view madness, and this can be linked to Bourdieuan (1988) thought on how psychiatry produces knowledge to control customary practice and belief. Breivik was compared to people who are known as terrorists and dictators, but who are not considered psychotic and unaccountable for their actions.

Lindstrøm also pointed out that language comprehension was not a strong side of Sørheim and Husby’s evaluation, as the wording Breivik used turned out to be rooted in reality. Through the description by Lindstrøm, psychiatry thus falls short on nearly all counts of validity, as the integrity of their work appears to lack substance. In reference to Kompridis (2006), one can see Sørheim and Husby in this context as “locked” within their own presuppositions and unable or unwilling to think outside the box.

Lindstrøm also pointed out how psychiatry diagnoses psychosis based on one or few behavioural incidents, whereas dementia is first constituted when certain patterns occur regularly. In this context, it does not seem obvious why psychosis can be ascertained based on so few observations – as the criteria of psychosis seem arbitrary compared to that of dementia. Moreover, Lindstrøm problematized the borders between psychosis and politics, and argued that the difference between them is separated only by a very thin line. He claims that proof for one or the other is randomly based on if the majority considers a societal or worldview as legitimate. This can be compared to Foucault’s (1991) descriptions of how the elite expert systems decide what is normal and legitimate through their leading discourses, spoken in a language they created themselves.

Lindstrøm is a philosopher and author, and does thereby not fit into the criteria of the higher disciplines. Through Kant (cited in Bourdieu 1988), we understand that the right wing of the parliament of knowledge holds authority, whereas the left wing holds the freedom to examine and object. With this in mind, I interpret representatives from the left wing (Lindstrøm et al.) as competent and important contributors to the debate that regards the right wing, and that their opinions should consequently confer weight in the public debate. The issues Lindstrøm

and others raised awareness of can be understood as important to overcome in direction of achieving communicative action, and are key to understand the professional dilemmas in the aftermath of the 2011 Norway Attacks.

4.5 Controversies of the principle of medicine

The principle of medicine has so far proven to be an obstacle between traditional-conservative forensic psychiatric work and more dynamic approaches. Before the second evaluation was completed, Institute Leader and Psychologist Ingunn Skre and psychiatrist Vidje Hansen (2012) wrote a featured article titled “Abolish the principle of medicine”. They state that the time has come to move away from this principle, where psychosis allows indemnity in the Norwegian court of law. They say that the case of Breivik shows the importance to detect mental illness early and to use good psychiatric diagnostics, as his current psyche and background is clearly placed into a familiar psychiatric context. In addition, they claim many tragic fates could have been avoided if the health services could intervene and help at a much earlier stage in life, and this would rely on the quality of psychiatric work.

Skre and Hansen (2012) agree that this is not the only shortcoming of contemporary psychiatric practice, as forensic psychiatry is impaired in court too because of the relation between the principle of medicine and indemnity. They thus refer to the first evaluation of Breivik and the conclusion. They say that since Breivik was aware of his actions, he would only be punished if the principle of psychology were implemented. Skre and Hansen claim that even though the court makes the final decision, it is unlikely that they could deem Breivik non-psychotic, even if the next two psychiatrists make that conclusion. They state that the reason for this is that the court would have to base their decision on the benefit of the doubt, which likely supports the claims that he is sick.

Skre and Hansen stated that early warning signs need immediate psychiatric attention, to avoid a further psychotic development. They further problematize that in clear psychotic cases such as Breivik, the principle of medicine would always redeem the perpetrator of guilt and punishment. The way they point out these facts, can be seen as a desire to incorporate a more efficient, accurate application of psychiatry, where they give a conception that psychiatry is not taken seriously enough, and that the principle of medicine obstructs a logic court proceeding when the perpetrator is aware of his or her actions. In the perspective of Bourdieu (1988) and Foucault (1991), it can also be seen as a method of increasing their social power

relations and jurisdiction, by arguing for the (social) necessity of their work. The court scenario Skre and Hansen depicted is one where the court appears to have little psychiatric insight, and is therefore more or less forced to base their decision on the first evaluation, which indicates a communicative problem and lack of transparency. Indirectly, I interpret this as a view where the court is not autonomous from expert opinions. Because it is a perpetrator's right to be given the benefit of the doubt, they hence claim that the principle of medicine prohibits the court from punishing a perpetrator if there are any signs at all of psychosis. Altogether, the ideology behind the principle has elements related to the judicial system, psychiatry and the government – and can as such be understood as one of the most obvious and influential connections between them.

Skre and Hansen (2012) state that to move towards the principle of psychology is a step in the right direction, if the court and forensic psychiatry is to be taken seriously. They acknowledge that Sørheim and Husby might be wrong in their analysis, but that whichever quibbling relates to the accuracy of his diagnosis matters little if we incorporate this alternative principle – where the important issue is whether the perpetrator is aware of his or her action, and if the psychosis somehow led directly to its execution. According to them, it is of utter importance to make these changes, so that the court is better positioned to do their job, and so that forensic psychiatrists can focus to determine any link between the perpetrator's mental state and the criminal act. They also desire a better functioning health care system that can treat patients at an earlier stage to quench psychosis before it develops further.

Skre and Hansen (2012) refer to the police chief Truls Fyhn, who was a strong opponent of the principle of medicine. According to them, he saw criminals daily, who were found non-accountable because of psychosis, and who committed minor crimes, anti-social behaviour and violence regularly, well aware of its legal consequences. They also refer to a public hearing for the Norwegian Psychiatric Association (NPA), which announced in 2009 that the socio-political climate of today emphasises the independence of the individual, including those who have psychotic conditions. NPA stated that there in some cases are contradictions regarding the indemnity of patients with psychosis, but who are aware of their actions. In this connection, NPA said there are many reasons to start a debate to challenge the usefulness of the principle of medicine. Skre and Hanssen reckon the time has come to take it further.

They depict a perspective, where many express a misbelief in and perceived dysfunction of the principle of medicine, and criminals who exploit the system become an important

contribution to that argument. Except from how they propose psychotic criminals (who are aware of their actions) should be punished, it is not clear how they want to treat their mental illness – as an implementation of the principle of psychology prevents them from being taken into custody and care by a mental health care institution. Moreover, they state that Breivik would certainly be punished if it were the principle of psychology that was the frame of reference. Unlike most professionals, Forensic Psychologist Grøndahl (cited in Thorvik 2012) says the psychological principle would not exempt him from punishment, because he considers his actions to be in direct connection with the delusional world in which he sees himself involved in a civil war, where the extermination of his own people is at stake.

According to Grøndahl, this allowed Breivik to give himself the power to decide who lives and who dies in Norway. Once more, expert opinions are split on the question of accountability, and as a result, many wish to abolish the principle of medicine to enable change. However, the larger legal discourse on psychosis contains more elements than simply to improve forensic psychiatric methodology, and in light of Habermas (2006) and Kompridis (2006), one would thus expect a reflection on this by the experts from psychology and psychiatry. Communicative action and reflective disclosure in this context requires and entails the inclusion of viewpoints exterior to psychology/psychiatry or at least for these experts to consider that neither of these professions are able to depict the full explanation of psychosis and its relation to criminal acts, something that they do not appear to do.

PhD-candidate of philosophy Mathias Slåttholm (2012, my translation) stated in a debate “If we are not prepared to say the action was caused by psychosis, we cannot excuse the action on grounds of psychosis.” He chooses to explore the options if the principle of psychology were to be implemented. Currently without exception, Norwegian criminal law decides not to punish persons who were non-accountable at the time of the crime, according to him. He holds much the same views as Skre and Hansen, but adds that if to detect a link between psychosis and criminal act is going to have a larger role in future court cases, we must not only look for *a* link, but for *the* link. He fears that a too weak framework revolving around this issue may lead to unfair evaluations, or that it may allow perpetrators to simulate a psychotic link to their crime.

Slåttholm points to an important aspect that is likely to play a big role if the principle of psychology is implemented. He also stresses the importance to stand by ones words, in connection with the relationship between morals and law, something that is perhaps presently

unachievable when the court abides to the principle of medicine. In line with Bourdieuan (1988) and Foucauldian (1991) thought, Slåttholm points to important argumentative aspects in the public debate, as he urges us to reconsider the morals behind our “taken for granted” beliefs. New knowledge produced by new laws and ideology needs to be validly justified, and as he suggests, the framework to determine the link between psychosis and crime must be thoroughly assessed.

In the perspective of Habermas (2006), such a scenario appears partially positive in terms of potentially increased validity on behalf of their claims and arguments. However, through Kompridian (2006) thought we may view these circumstances as non-satisfactory as a move towards the principle of psychology simply entails a shift of social power relations with the court, from psychiatry to psychology, and may not solve other underlying social problems related to the case, accountability and trust in expert systems. Comparably, Foucault (1991) stated through his research that psychiatric treatment of the mad never solved any underlying social problems and in spite of this their methodology and ideology has remained largely static. The procedures of the first evaluation of Breivik can therefore be interpreted as highly illegitimate compared to the second, but even this more dynamic approach fails to diagnose the perpetrator accurately and convincingly.

4.6 The rebuttal to criticism

As an academic response to all the public criticism directed towards forensic psychiatry, prominent spokespeople from the expert systems of law and medicine produced concrete suggestions for improvement. In a periodical for the Norwegian Doctor’s Association (DNL), clinical psychologist Pål Grøndahl et al. (2012: 1727) thus recognize that forensic psychiatry is under pressure, but not in a crisis. They state that much of the criticism needs to be taken seriously; and therefore several suggestions had been put forward to improve the standard of it, and criteria were set for requirements of an appointed specialist in the court of law. They emphasize that since to change this part of the system may have big consequences for whomever is being evaluated; it is crucial that any changes made are based on scientific knowledge grounded in the methodology of evaluation. Grøndahl et al. add that psychiatry should review its academic background and perhaps lose some of its pride when it comes to academic prominence, experience and contemporary status in the field.

Their plan for improvement was developed by the renowned professor of law Ulf Stridbeck together with four experienced and renowned psychologists and psychiatrists (Grøndahl et al. 2012: 1727-1728; Foss, Johansen & Færaas et al. 2012):

1. *A golden standard*: Introduce a more wide usage of standardised and scientifically accepted methods of fact finding and testing, as the Norwegian method is seen as peculiar, since brief and simple conversations between specialist and subject is considered sufficient, compared to other Scandinavian countries that include other tests.
2. *Council of colleagues*: Appoint a council of peers who have good competence with psychic evaluation within forensic psychiatry, especially through diagnostics and evaluation of personality and risk.
3. *Specialty*: Ensure higher standards of expertise by introducing specialties or sub-specialties for both psychiatrists and psychologists. This entails systematic and educational courses, followed by approval in order to provide services for the court.
4. *Organizational attachment*: Create an organizational framework that resembles that of other branches within medical jurisprudence. The new layout and structure should illustrate and clarify the interdisciplinarity of the field, in the section where clinical psychology constitutes a natural part of forensic psychiatry.
5. *Clinics of forensic psychiatry*: Observation should be done in standardised environments, such as clinics or policlinics dedicated to forensic psychiatry. This will allow examinations that are more thorough and thereby minimize the risk of error. As it stands today psychiatrists travel between prisons, psychiatric wards, the homes of the subjects and their own offices. In addition, they have lots of time-consuming administrative work – like collecting information and various writing tasks. This takes away the time they should be using on their main task, examination. We propose that other branches or professions could assist in retrieving important data, as they already do in Sweden and Denmark. In Sweden and Finland, you have separate clinics with hospitalization possibilities, and in Denmark, you have polyclinics.

6. *Transparency*: Forensic psychiatrists should automatically be given access to vital journals and health-related information. This should be included in legislation, in connection with serious crimes where misjudging is has big consequences (minimum six years in prison). It is clear that when important documents like these are omitted from a psychic evaluation because the subject refuses to release them, that there is a risk of faulty work, which leads to misjudging.
7. *Accountability*: Narrow down the criteria for being considered non-accountable, by reducing it to two groups: The first group includes a core group of people who have clear signs of psychosis. The second group will fathom people who are severely mentally challenged. We see it as non-relevant and unnecessary to include conditions that impair consciousness. A narrowing down of the criteria will allow the specialists and lay judges to more easily and accurately interpret and consider the advice given from forensic psychiatrists. Importantly, this can allow more people to be given the human dignity, which is implied when one has to take responsibility for ones actions. It will also mean that the power and influence that forensic psychiatrists are accused of having in court is reduced.
8. *Implementation of mixed or psychological principle*: The principle of medicine, as it stands, has dire contradictions. A perpetrator is automatically unfit to plead and considered non-accountable even if he or she is aware of the criminal nature of an act. If we introduce a mixed or psychological principle, it can lead to a concrete evaluation in each specific case. We desire to implement a sub-criterion, where the defendant (with a psychotic condition) is asked whether he or she knew what they were doing, and/or if that action was illegal. This is similar to the “M’ Naghten”-rule, which is used in many English—speaking countries. Another sub-criterion is to consider a possible connection between the defendant’s psychotic condition and the criminal action. It is likely that to implement sub-criteria, will decrease the number of people who are considered unfit to plead and non-accountable for their actions.
9. *Change the mandate*: We reckon that it is a good idea to change the existing mandate, so there is a more explicit division regarding the roles and expectations of the different parties involved in a court trial. This will in turn provide the court with more independent means of performing juridical resolution. One way to do this is by letting

the forensic psychiatrists determine if the subject fulfils a set of clinical criteria, which are related to the most serious mental disorders stated in the International Statistical Classification of Diseases and Related Health Problems (ICD-10). This can be done without translating the terms into suited juridical categories listed in existing legislation. The court itself must then translate psychological/psychiatric/medicinal terms into whichever juridical categories that conform to the criteria that decide unfitness to plead and non-accountability.

Another way is to keep the existing mandate, but change the question that the court must answer; for example, like they have done in Denmark. In Denmark, the specialists are expected to advise the court about the possible presence of specific conditions – like mental disorder (primarily psychotic conditions), and then the court will decide whether they find the defendant guilty. We now look at a marked divisive language between the juridical issues of a) what the specialists are there to examine and evaluate (mental disorder) and b) what the court has to decide (fitness to plead and accountability). We do not have a separate language in Norway, thus we are in a weaker position to determine precisely the nature of the perpetrator's actions at the time of the criminal act, and it is accordingly uncertain if the final verdict is accurate and fair.

10. *Analytical evaluation by the Commission for Forensic Medicine:* When the commission oversees and analyses the statements of the specialists, it should give a concise, but accurate overview of how they evaluated the content and the conclusion they reached. Today, if there are no objections, they will simply put “There are no (major) remarks to the report”. Such brief formulations could give rise to doubts or uncertainties regarding how they concluded, and thus how they evaluated the report. We believe these problems can be overcome by introducing explicit criteria and standardised methods of evaluation. In comparison, the Danish version of the commission produce a written statement and overview of the evaluation. The advantages of this goes two ways: First, you get an insight into the thought process of the commission and can therefore detect any disagreement. Second, research on decision theory shows that feedback is essential for professionals, so that they can adjust their judgment and learn from experience. In a best-case scenario, this can lessen future imbalances in opinions and misjudgement.

According to these ten points by Grøndahl et al., our legal security can be improved and the quality of specialist work can be increased. By implementing standards of evaluation and setting explicit criteria for forensic psychiatrists, they reckon one can reduce the risk of misevaluation that may in turn lead to misjudging. They also desire a creation of an organizational fundament and the establishment of separate clinics dedicated specifically to this field of work, in addition to a delegation of duties, which they claim will decrease the workload. They consider the languages of law and psychiatry a barrier to a comprehension of forensic psychiatry, and they have made suggestions to overcome them by altering legislation. Grøndahl et al. put forward that this may also increase the autonomy of the court, and there will be more proposals in the future.

Their response to criticism can be interpreted as a show of humbleness, independence, creativity and a will to accommodate the desires of others, while they base their ethics and proposals on the intention to benefit the judicial system; and to make sure psychiatric evaluations are partaken in a humane way, thus cherishing legal protection and human rights. In a Bourdieuan (1988) and Foucauldian (1991) view, this can also be interpreted as a meta-solution on how to improve the professional field on near all points they have been criticised on. They appear to have scrutinised their own expert system and solved the professional dilemmas that face forensic psychiatry – but have done so by avoiding addressing certain other important aspects of the criticism, such as psychiatry and psychology's inability to justify their knowledge and authority on psychosis and its relation to crime.

It may be unintended, but their list of proposals bears symbolic similarities to the ten commandments of the Bible, which for Christians signifies moral and authentic obligation and may per se indicate how the expert system views its status and obligation to society. Their ten-point list of improvements dictates numerous changes that they wish to implement, which mostly look like a rearrangement of existing power relations. Its authoritative structure and wording suggests an intention to steer the public discourse in a predetermined course set by themselves, and can as such be viewed as symbolic violence.

Grøndahl et al. (2012: 1728) address the viewpoints of some, who think that scientific research related to forensic psychiatry is insufficient and therefore represents a genuine problem related to the alleged “crisis” that they face. As a response, they claim that all necessary research is presently done by the three major competence centres for security, prison and forensic psychiatry in Norway. They instead emphasize the importance to focus on

the proposals they laid out, but recognize that it will be a costly process to implement the changes. Nonetheless, they look to the politicians and ask if they are willing to make firm decisions and sacrifice more money, in order to secure the principals of legal security that are so highly esteemed in Norwegian morals. Compared with Mercierian and Sperberian (2010) thought, Grøndahl et al. shape their arguments by reasoning that *enough* research is presently done, when criticism suggests otherwise. Their arguments also focus on proposals that are mainly related to modify existing structures, instead of considering alternatives. In this argumentative setting, their wording and reasoning makes sense because it supports traditional belief in their academic discipline, in line with what Mercier and Sperber refer to as the confirmation bias.

Based on the perceived nature of their claims and intentions, and the academic background of the speakers, Grøndahl et al.'s statements can still be seen as credible. However, it is not obvious if their proposals will actually solve anything. For instance, others have argued that the court can benefit from having a broader academic competence in its array of specialists, and not only forensic psychiatrists. Grøndahl et al. do not appear to consider this in their proposals, and in this setting, their approach may as such be viewed as a defensive stance. To introduce other academic fields into the judicial sphere will no doubt invoke a comprehensive legislative process, and challenge the status of both psychiatry, psychology and the court – but it is previously untried and there is therefore no concrete evidence for downplaying the possible outcome of such an event. In line with Bourdieuan (1988) and Foucauldian (1991) thought, the arguments of Grøndahl et al. promote closure and defence against letting other academic disciplines into their sphere of power relations with the court.

In a Habermasian (2006) perspective, they are not including all discourses into their arguments and claims of validity, which is thus more similar to a monologue. The presence of forensic psychiatric expertise in court has big consequences on perpetrators who are tried by the judicial system, and a thorough walkthrough of all aspects of the criticism is important and necessary. Ironically, Grøndahl et al. state that their field of expertise should lose some of their pride and tradition. In Kompridian (2006) thought, a productive way to do this could be to rethink the necessity of psychiatric dominance in court-advisory situations, and consider including other available and untried expertise from other areas of academia. Where they claim, “much of the criticism needs to be taken seriously”, a justification of what criticism they choose not to address is missing. Until such criteria are met, the statements by Grøndahl et al. can be interpreted as hidden aggression in an ongoing professional power struggle.

4.7 On the verge of a paradigm shift

Through the media, some have voiced the desire for significant change in the existing expert system that advises the court. In a featured article, Doctor, Journalist and Historian Henrik Vogt (2012) does so, by first deconstructing the legitimacy and quality of psychiatric work. He then dissects the methodology of diagnostics, and discusses how psychologists and psychiatrists attempt to portray themselves as representatives of a trustworthy professional field. However, he reckons that we must be sceptical when they use the diagnostic manual as a cover for objectivity. Vogt thus refers to the philosopher Plato: “[...] anyone who leaves behind him a written manual, and likewise anyone who receives it, in the belief that such a writing will be clear and certain, must be exceedingly simple-minded...” Vogt first points out that diagnoses are not diseases, but linguistic units whose function are to describe what is considered to be sick. He explains that diagnoses are not something that people “have” or “are”, they are simply written in a book. Diagnoses change when the diagnostic manuals change according to him, and humans are like landscapes in constant change and without set borders – where diagnostics are like a static map with borders. He explains that maps are useful, but they are a hinder for orientation if one does not lift one’s eyes.

Vogt (2012, my translation) draws attention to Sørheim’s utterance during the court trial against Breivik, where she said: “We never attempt to draw psychological interpretations from someone’s earlier experiences, what they have been thinking or what this has led to. We gather information. To do diagnostics.” He claims their diagnostic manual is already full of rules-of-thumb, and has a hard time understanding how psychiatrists cannot think about how human lives are mutually connected and only look at pre-defined diagnostic criteria. He goes on to say, that Sørheim and Husby both concluded that there was no solid evidence that supported the claim of significant mal-development during Breivik’s childhood and youth. According to Vogt, psychiatrists and psychologists already proved them wrong in 1983 when serious failure of care was detected in Breivik’s family. He explains that the seriousness of the parental deficit even led to attempts to remove him from his family, but none of this was reflected upon in the first report from 22nd of July. He asks; why did they leave this out? Was it because such reflection is poorly suited for today’s psychiatric framework?”

Vogt (2012) argues that psychiatry attempted to explain the background of suffering in the 1970s, and it saw no clear border between sick and healthy. He reckons that this led to much disagreement amongst themselves about the cause and diagnose, and the result was less financing from the public and the industry of medicine. He asserts that the latter party was

most interested to place suffering in clear set categories to test their medicine, and the same interests were held by insurance companies, welfare institutions and the court as they all wanted simple answers; sick or healthy? For Vogt, this forced psychiatry to advocate more “descriptive” diagnostics through the 1980s, which inevitably led to a strategy of checklists – where a disease is considered present when certain criteria of the manual are fulfilled. He illuminates that the focus to set clear borders in diagnostic areas, made forensic psychiatrists set “psychosis” as their border between accountable and non-accountable, for non-obvious reasons. He declares that the methods used were never problematized, because they never asked “why” and expected answers to be self-fulfilled by the placement of symptoms in categories. Vogt characterises the standardisation and downplay of interpersonal relations as a step towards embracing a common language for professionals. He quotes the doctor and historian Mitchell Wilson where he calls this: “a constriction of psychiatry’s outlook”. In addition, Vogt claims that the diagnostic manuals were at first disputed, then became curriculum and finally taken for granted.

Vogt (2012) debates whether Sørheim and Husby’s disregard of Breivik’s childhood and youth was a strategic choice, because the findings from then were not specific enough for the criteria that the diagnostic manual demands. He ties this to how psychiatry used to operate differently decades ago, and he remarked that Tørrissen and Aspaas instead acknowledged that their checklists were not “reality”, and must not be treated as such. Even yet, Vogt stresses that the latter forensic psychiatrists used seven diagnoses in total when they attempted to evaluate Breivik. This, he sees as a frustrated effort to match their “maps” with the “landscape”. Vogt points to a growing base of research literature on brain development that indicates a clear correspondence between what a subject has experienced in his or her upbringing and what diagnoses they may be given.

Conclusively, Vogt (2012, my translation) quotes a comment Forensic Psychiatrist Pål Abrahamsen gave to *Dagsavisen* on June the 8th: “The childhood is irrelevant. We must soon quit asking why.” He also quotes Professor of Psychiatry Ulrik Fredrik Malt, who together with his colleague Svern Torgersen introduced the checkpoint list-system in Norway and exclaimed in court “Diagnoses must be separated from psychological interpretation” (my translation). Vogt asks; must you still *not* ask why in order to appear scientific in 2012? He ends the featured article with a claim that internationally, the public debate sees forensic psychiatry as crawling from one ditch to another, from mindless speculation to checklist monomania.

Vogt paints a picture of (forensic) psychiatry as an expert system that struggles to find its true self. He describes scenarios dating back to the 1970s and 1980s, where they moved towards a descriptive method of diagnostics because of bad economy, pressure from the industry of medicine and lack of trustworthiness. In his view, the latter appears to stem from internal disagreement on how to reach their conclusions. He declares that psychiatry attempts to increase their legitimacy when they constantly refer to their diagnostic handbook with clearly set criteria, but that it is by no means obvious why this should improve the accuracy of their work – on the contrary, he reckons that this “blinds” the psychiatrists. Compared to the ‘70s and ‘80s, psychiatry does not only face internal disagreement, but also disagreement from external academic disciplines and a disbelief in their diagnostic methodology. This suggests that psychiatry’s prominent position in society and judicial system is challenged, and according to Vogt, a solution can only be found if more people ask “why”.

Vogt quoted three prominent psychiatrists who boldly claimed that psychology has no part in diagnostics. This can be viewed as yet another participation in power struggles between competing factions of academia. He problematizes that they never ask *why* something has come to be, and instead focus persistently to find criteria that can place the observant in one or more categories to declare a disease, which may be viewed as a sign of a clinically symbolically violent act. He also problematizes the way psychiatrists tend to treat diagnoses as synonymous with diseases, when according to him people are in constant change, just like the landscape – and that a static map or diagnostic is hence insufficient to give an accurate picture of the brain.

I interpret his criticism of psychiatry as a warning that the existing system fails entirely to meet the expectations of their work, and that they must choose a new path to regain trustworthiness. Vogt does not clearly state how psychiatry can “repair” the damage, but he appears to point out that the specifics of the psychiatric expert system (in its current state) cannot function as it is. To ask “why” can be seen as essential in a Habermasian (2006) and Kompridian (2006) context, if the aim is to pertain communicative action by reflective disclosure.

Doctor and former Forensic Psychiatrist Arne Thorvik (2012, my translation) made a suggestion in an expert interview to how the wording of §44 in the criminal could be improved to elicit a broader competence in court: “He or she, who is not capable to comprehend guilt, shall not be punished.” He states that such a wording promotes the wide

array of approaches that are feasible, from psychiatrists and psychologists, but also theologians, philosophers, sociologists and historians. He argues for this, by emphasising that the problem Breivik represents is more philosophical than medicinal. By opening up the landscape of insecurity and interpretation, he reckons that for instance the philosophers may play an important part in connection with expert remarks. He explains that experts from additional academic fields may function as a buffer for psychiatrists, and force them to clarify the terms they use. Not least, Thorvik claims this approach can problematize the premises on which our conception of responsibility, guilt, accountability and danger is built upon. This he states, will raise the court's awareness of how uncertain we can be on such questions.

Skjeldal (2012b) wrote a chronicle, where he on forehand had asked experts from different academic fields to give advice based on the first evaluation, on how to understand Breivik's mind. His intention was to simulate a discussion with psychiatrists in relation to the findings of the report. These experts had a background in hermeneutics, philosophy of language, religious science, sociology, philosophy/ethics, school of authorship and history/rhetoric and each gave their contribution in form of comments on experts from the evaluation. Each contributor managed to find different points that could be commented on in light of their respective academic field. Each one made remarks that held valid points according to their point of views, and appeared to shed further light on the findings of Sørheim and Husby.

Thorvik and Skjeldal tell us that when a broad academic framework works together on the same issue, it will usually be able to elaborate more on the subject, than a limited framework. This was merely their example of what the Breivik evaluations could look like, if §44 in the criminal code was altered and if the conception of accountability was based on something else than the principle of medicine. Nonetheless, the fact that real alternatives to traditional forensic psychiatry is introduced into the public debate shows that the contemporary paradigm of criminal justice is being challenged. Through Habermas (2006) and Kompridis (2006), this can be viewed as a positive development. Through Bourdieu (1988) and Foucault (1991), this shows that psychiatry (and psychology) no longer have the authoritative monopoly to explain everything that has to do with criminal-psychotic deviance. If the setting for discussion Skjeldal organised were real, it would in addition serve as an ideal point of departure, for cancelling out the negative effects of the confirmation bias, seen through the perspective of Mercier and Sperber (2010).

In an article on neuroscience, Journalist Jon K. Time (2011) cited several viewpoints from renowned scientists and experts on criminal behaviour in relation to the brain. According to Psychologist Simon B. Cohen, we should rid ourselves of the conception of “evil”, and instead focus on errors in what he terms the “circuits of empathy” in the brain. Neurophysiologist Colin Blakemore states it is scientifically pointless to differentiate between actions that are the product of a conscious reflex or caused by disease or brain damage. According to Time, our behaviour cannot be separated from our biological brain, which is created by evolution. Another spokesperson states that neuroscience already plays a role in American courts and as the discipline becomes more accurate, it will become more common on a worldwide basis.

Neuroscientist and Professor of psychology Michael S. Gazzaniga and Forensic psychiatrist Pål Hartvig (cited in Time 2011) warn us that neuroscience is still at a very early stage in development, and that it has been introduced into courts prematurely. Other representatives from law and medicine refer to this statement, and show that many findings of neuroscience only show correlations between the brain and our behaviour, not causal relationships. At this point, some claim neuroscience is foremost used as a rhetorical tool in the debate on criminality, and that any utilization beyond this is premature.

Yet, Neuroscientist David Eagleman (cited in Time 2011) imagines a justice system that is based on *science*, where question of guilt and blame is subsidiary. In this context, he presents what he terms the most important questions: How dangerous will the perpetrator be for society in the future and can he or she be helped. He proposes that *each* individual case is evaluated, by considering these questions, instead of asking them once every three years. According to him, this can be made possible by advances in neuroscience. He reckons that an understanding of the relationship between the brain and behaviour gives us the opportunity of a customized sentence, adapted rehabilitation and a chance to build social programmes that work on the level of the population. In his words, it is possible to utilize evidence rather than bad intuition when we shape our politics.

Eagleman (cited in Time 2011) admits that in extreme cases like Breivik, neuroscience will produce the same conclusion; that he is considered so dangerous that he must be removed from society indefinitely. According to him, the *neuro law* justifies harsh punishment for extreme cases like this. This law is concerned with exploring the effects of discoveries on legal rules and standards, which draws on neuroscience, philosophy, social psychology,

cognitive neuroscience and criminology. He states that the finesses of this approach become apparent when there are brains that can be more easily helped. He claims that brains are as different as fingerprints, and that Breivik by no means is a “sign of the times”. Eagleman’s hypothesis can be strengthened by the theory of Mercier and Sperber (2010). According to them, humans are equipped with a strong confirmation bias, which remains active through argumentation until a sufficient amount of counter-arguments balance it out.

In this viewpoint, Breivik may not be a sign of the times, inasmuch that his ideology became confirmed and uncontested through communication led predominantly with like-minded people. In such a case, his actions and beliefs are more a warning sign of the effects of isolation, “brainwashing” and apathy than a sign of the times. In the same logic, the confirmation bias can be used to weaken their arguments, because their methodology is not the centrepiece of this public debate, but since the discipline of neuroscience is currently not in a defence mode the bias is not likely inducing major influence on their argumentation.

The perspective from neuroscience provides a clear alternative angle, on how to address criminal behaviour. The different contributors to this field have voiced the opportunities that this science holds for courts in the future, but that it is currently at a premature stage where it is best left as a rhetorical tool in the debate on criminality. Interestingly, they appear to provide a scope for a complete re-thinking of how politics shape legislation and our view on deviance, which is positive when compared to Kompridian (2006) thought. For example, Eagleman arrives at the opposite conclusion as Stålsett, when he claims Breivik is *not* a sign of the times. In addition, neuroscience appears to have broad interdisciplinary support from those affiliated with neuro law – which seen through Habermas (2006) should enable better chances for valid arguments and rational discussion to reach desirable goals. In a Bourdieuan (1988) and Foucauldian (1991) perspective, neuroscience is seen as a prominent competitor to become a leading discourse on mental health and its correlations with deviance, as their scientific knowledge is expanding and according to them, becoming more accurate.

Coming back to the Breivik-trial, Political editor Harald Stanghelle (2012) claims that the court procedures were both orderly and strange. He explains that District Court Judge Arntzen ensured dignity and correctness of procedures, but that the case was characterised by an intense professional power struggle between experts. He argues, that there has never been so many high profile jurists of varying quality that have so publically discussed the juridical foundation for possible outcomes of a criminal court case. He goes further and says that never

before have psychiatrists and psychologists so loudly discussed the mental health of an individual by name. According to him, it is no wonder that it has been dubbed “Norwegian Championship in Psychiatry”.

Stanghelle (2012) refers to one of the second evaluators, Aspaas, who stated that Breivik is considered a unique case that challenges both regular frameworks for interpretation and psychiatric criteria of quality assurance. Aspaas (cited in Stanghelle 2012, my translation) exclaims, “The border between jurisprudence and psychiatry is challenged. We, the psychiatrists, must take a step back and realize that we cannot explain all human behaviour. Many aspects are atypical here.” Stanghelle claims that these aspects are not fortunate for a court that desires clarity, and does not give the court the answers they need. He concludes, by stating that it is of the utmost importance that the final verdict reflects these important contradictions, and that it is written in a language that is comprehensible for everyone. Only then can this court case serve as one of the most important milestones, on the road where we can move on as a society, according to him.

Stanghelle sums up the main lines of the court case and highlights the important aspects that were related to it. He noted the apparent power struggles that were dominant throughout the case, which he considers to jeopardise the legitimacy of mainstream psychiatric work. Aspaas declared that the case marked a decisive and problematic point in psychiatric history, and Stanghelle proclaimed the importance to learn something from it. I interpret the scenario they describe, as one where psychiatry has lost some of its power in the explanation of human behaviour. In a Bourdieuan (1988) and Foucauldian (1991) perspective, psychiatry is fully aware of the scenario and is forced to make a decision. Stanghelle has made it clear that this expert system alone is not capable of depicting the full truth that is required by court. He insinuates that if the academic discipline of psychiatry is to be taken seriously, it has no choice other than to address the criticism and accept the fact that their expertise alone is insufficient in court.

As a response to the criticism of forensic psychiatry, the Norwegian government assembled a public commission, which assesses the conditions of the Criminal Code on the accountability of a perpetrator. They are also tasked with analysing the contemporary custom to appoint forensic psychiatrists in criminal cases. Many have voiced that this decision is long overdue, since former Minister of Justice Faremo proclaimed that it would take place shortly after the Breivik case. The commission consists of a broad academic spectre of experts, and it is

scheduled to publish its conclusions by September 2014 (Aftenposten 2013; Justis- og Beredskapsdepartementet 2013).

This tells us that the criticism of forensic psychiatry has been taken seriously by the government, and it is likely that we will see some changes when the conclusion is published. It also shows how the media and public opinion affects the government, just as it affected the court in the Breivik case. In a Bourdieuan (1988) and Foucauldian (1991) perspective, the media are a significant actor in the public debate, and they are able to influence decisions made on higher levels of government. A reason for this, is how they can unveil “truths” we have learned on the way, and through Habermasian (2006) and Kompridian (2006) thought they are thus important contributors for promoting communicative action and re-thinking the scenario in a desirable way. The commission is composed by broad academic competence and as such symbolises aspects of the criticism. This composition might be a clue to how the expert systems related to the department of justice might be reorganised – a view that according to Aftenposten (2013) is realistic.

4.8 Summary and main findings

In chapter 4.1, the core issues of the Breivik-case were highlighted and problematized.

In chapter 4.2, aspects of the two different mental health evaluations of Breivik were actualized and placed into the context of public debate and criticism. The first evaluation was considered far less valid, more static, de-contextualised and conservative compared to its second counterpart, which in the public eye performed better. DRK only approved of the first, the court agreed with the second, but neither were considered satisfactory. The disagreement between experts was seen as a serious issue, but the role of the judge was portrayed as firm and independent. The court was still placed in a mutually dependant relationship with psychiatry.

In chapter 4.3, professional power struggles were identified between psychiatry and psychology, but also against other academic disciplines that did not share the same symbolic capital. Several accounts of symbolic violence were detected in this context, and attempts were made to legitimize the contemporary system based on reference to law and status. Many fronted views that they wished to discard traditional psychiatric practice in favour of

incorporating a system based on broader academic competence. Several arguments were considered less valid because of the confirmation bias.

In chapter 4.4, Lindstrøm scrutinised the validity claims present in the first psychiatric report of Breivik. He showed that the legitimacy of forensic psychiatric work rests on premises that are far too de-contextualised and arbitrary to be trustworthy. He also points to DSM-IV as the anchor point of psychiatric work. He describes it as antiquated, and shows how many problems with diagnostics originate from crude popular belief based on academic consensus (mainly from the school of psychiatry).

In chapter 4.5, the principle of medicine is portrayed as a central obstacle between traditional forensic psychiatry and for the development of an improved expert system. Law, language, ideology and definitions are central terms that mark boundaries that separate the elevated position of psychiatry from psychology and alternative academic disciplines.

In chapter 4.6, prominent spokespersons from law and medicine proposed what looked like a meta-solution to solve the issues they face in light of public criticism. While much of the criticism was addressed, it is not clear why for instance the desire of a broader academic competence was ignored. As a result, doubt was cast on the effectiveness of their approach and it was compared to a setting where the higher disciplines practice closure to reduce competition. Their approach was partially explained in relation to protecting interests of social standing, and in relation to the confirmation bias.

In chapter 4.7, the backbone of psychiatric expertise was criticised by comparing it to practice from the 1970's, and onward. Through this comparison, it was put forward that the development of their methodology was biased by commercial and socio-political interests. It was hence shown that neither of the two Breivik-evaluations were satisfactory, and that the quality of them could have been improved through assistance from other academic disciplines. Static diagnostic criteria and definitions of disease thus proved unrelatable to the dynamic human brain. A re-thinking of forensics and accountability was hence proposed through the practice of neuroscience, and through promises launched by the government of an extensive improvement of the contemporary judicial system. The confirmation bias strengthened viewpoints from neuroscience, but the same logic could also downplay their arguments.

In sum, there was overwhelming public and academic evidence that people desire a change from the contemporary expert systems that assist the court. Evidence suggests that the principle of medicine will fall, and that the court will likely be assisted by a broader academic competence. However, it has not been made clear if this will include expertise from other professions than psychiatry and psychology. Legislation will most likely be changed in order to accommodate these changes.

Throughout the analysis, several professional dilemmas that face forensic psychiatry were made apparent. Based on the evidence for these, here are the main findings:

- 1. The principle of medicine proven an obstacle likely to be out-phased.*
- 2. Crucial aspects of the criticism against forensic psychiatry are not convincingly addressed; likely cause is ongoing professional power struggles.*
- 3. The language of psychiatry is losing its explanatory power; the conception of accountability must be redefined.*
- 4. Public trust in expert opinions has decreased*
- 5. Clear indications of a coming paradigm shift towards an inclusion of a broader academic competence in court.*

Chapter 5

Discussion

Pre-Breivik Norwegian society is often depicted as a peaceful, liberal and open democracy, with an ideology that praises transparent politics and active cooperation between the private, professional and public sphere. The terror attacks on 22/7, and the extensive media coverage of its legal aftermath, changed our outlook on the judicial system. Until then, the professional discipline of forensic psychiatry had more or less performed their duties unnoticed behind closed doors, and its mechanics were widely unknown. Suddenly, everybody had an opinion, forensic psychiatry was scrutinised and experts were forced on their knees to explain their secrets about how they work, and how they define psychosis as the border between normality and unaccountability.

The consequence became as clear as it was brutal; general trust in expert opinions weakened, moral and ethical questions never asked before confronted the knowledge we take for granted, and awakened a public need for a complete reevaluation not only of Breivik, but also of crucial aspects related to our legal system and expertise. Shocking facts were discovered about the inconsistency and inadequacy of expert work and the ongoing professional power struggles, and the public image of (forensic) psychiatry soon resembled that of glass shattered into pieces. In hindsight and reflection, some of the shards may signify illegitimate power constellations and deceitful truths, which were hidden from plain sight, and once revealed, may possibly never be pieced together again.

5.1 The principle of medicine and statutory law

In reference to the analysis, many speakers wished to change the laws that involve the principle of medicine. The principle is pointed out as the most visible link to the existing system of forensic psychiatry, and the laws based on it assert the roles psychiatrists (and sometimes psychologists) play in this practice. The laws or their wording must change in order to accommodate a broader academic competence in future court, and much indicates that to instead follow the principle of psychology, is a suitable option. Thorvik (2012, my translation) suggested that the law instead read “He or she, who is not capable to comprehend

guilt, shall not be punished.” This, he reckons, promotes a wide array of approaches, and not only from psychiatry or psychology.

According to the evidence that supports this issue, statements from psychiatry’s own headquarters read “Abolish the principle of medicine” (Skre & Hansen 2012), together with similar voices from other fields of expertise. As pointed out in the analysis through Bourdieu (1988) and Foucault (1991), a possible reason for why psychiatric spokespersons shape their arguments in such a way, is that their position as “top dog” is threatened, and they thus respond by attacking their own discipline to reorganize both social position and power relations. It would otherwise seem strange why they should undermine their own position in court without putting up a fight. As they argue that such changes may lead to better legal protection for the perpetrator and society, it is a viable thought, but it is also perhaps naïve given the circumstances of other criticism. My interpretation is that psychiatrists are aware of the change that will come, and particularly in reference to Grøndahl et al. (2012), want to be first out to define on what new platform the reform should be placed. This shows both a power struggle, to sustain or reorganise power, and a play for the public to regain trust.

However, the tactics they may have employed to promote their arguments, also emit signs of possible professional inadequacy and a lack of insight. If this lack of transparency and communication between the two main pillars of the judicial hierarchy really have such shortcomings, then I do not believe the battle is won simply by abolishing the principle of medicine. As much as a big part of my evidence scrutinizes the practice of forensic psychiatry, I find it a paradox that so few fingers have been raised at the actual head of the judicial branch or government. No evidence is also evidence, and it is therefore interesting that some voices were less active in the public debate.

If the blinds are opened and the head is lifted, we may review the outcome of a transfer to alternative principles, and objectivity when choosing experts to fill the roles will be essential. According to a Habermasian (2006) view, one would have to strive for communicative action, where contestants converse on equal grounds, to achieve this. Through the mind-set of Mercier and Sperber (2010), the inclusion of many participants would possibly get rid of the confirmation biases, and by that discover where the balance of the judicial crib should be placed. In a Kompridian (2006) manner, we should not rest until every stone is turned in order to get rid of old and useless practices, and by the many inputs be able to refocus on new possible solutions previously untried.

Compared with the research of Bourdieu (1988) and Foucault (1991), the ideology behind the principle of medicine dates back hundreds of years. The institutions of medicine and law have gone hand in hand ever since psychotic abnormalities were defined as a mental illness, and since it became a perceived threat to society. Through the ages, leading professional discourses have convinced the public that these experts are capable of treating the mad and unaccountable within the legal system, under the guise of contributing to the greater good. Bourdieu and Foucault have shed light on the mechanisms of power that reproduce these power relations within the academic system, and how knowledge, titles and positions confer authority as banks of symbolic capital. However, they have also shown that their discipline is made possible through acts of symbolic violence, and that psychiatric expertise does not necessarily solve any underlying social problems, neither those related to crime. Such a view raises doubts about the principle of medicine.

Internationally, Norwegian ideology has become a symbol of high moral and ethical standards, and this is reflected more or less throughout each level of society. In modern democratic societies like this, people usually have access to more information, and are thus in a better position to evaluate the authenticity of expert work and authorities. In the case of forensic psychiatry, it may be said that the public showed little interest until the terror attacks of Breivik were launched. In that context, the attacks can be viewed as a revelation.

On the other hand, much indicates that the expert systems have strategically withheld information in order to retain their prominent position in society, which could be one explanation for the lack of public interest. Nonetheless, the principle of medicine, once analysed, stands as a symbol of a past where authority and knowledge was not necessarily based on merits or truth. The question arises whether other fields of expertise are similarly based on unsteady ground. Countries we often like comparing ourselves with, such as Denmark and Sweden, have already moved away from this principle, and have adopted a mixed or psychological principle with seeming success. Why has Norway clung onto the principle of medicine?

Spokespersons from forensic psychiatry struggle in many instances to justify their claims of validity, likely because they are based on the principle of medicine. Habermas (2006) points out that truth may only be pursued through objective argumentative circumstances, which reasoning on behalf of this principle does not help. Through the public debate, various suggestions for moving away from this principle were voiced, and simply because of the array

of competing arguments, there is a greater chance of producing desirable results. In the view of Mercier and Sperber (2010), this setting also reduces the confirmation bias. Since the academic field of forensic psychiatry was unexpectedly under a lot of pressure, their defensive stance may explain why particularly some of the first arguments were stern, conservative and showed little interest in incorporating criticism. However, accepted knowledge relies on if the majority supports it, and hence the concept “truth” is relative to such circumstances – and hence in the same logic, the production of knowledge does not guarantee truth. One may thus consider traditional psychiatric expertise and worldview to be subject to the same criteria as Breivik; both parties front views that are not shared by the public, but are exchanged within circles of associates who share the same type of symbolic capital.

Kompridis (2006) expresses the importance to re-think scenarios and make something that was previously unintelligible, intelligible. This thought-process can be compared to the direction that the public debate has taken, but it can also be extended. What if the diagnose psychosis eventually becomes replaced, in the same manner female hysteria no longer is regarded as legitimate. If this occurs, neither the medicinal nor the psychological principle appear to capture the relationship between our brain and criminal deviance. In such a scenario, surely other academic disciplines should play a larger role in deciding a causal relationship leading up to the criminal act.

5.2 Professional power struggles

Professional power struggles were described as a dominating and highly visible part of the public debate, in which Stanghelle (2012) dubs it Norwegian championship in psychiatry”. There is reason to believe that throughout history, most fields of expertise continuously compete for power, which can be seen as an important element of adaptation and evolvement. However, in Norwegian society competitiveness is a feature most commonly not associated with the traditional institutions of forensic psychiatry and law, as they can be described as solid institutions entrusted with power for consistently handling issues of public interest. Forensic psychiatrists are expected to have knowledge on mental illness, perform their duties required by law, protect society and individuals by their application of knowledge, rehabilitate psychotic offenders and go about it in a professional way. When the public bear witness to

power struggles of this magnitude, the focus shifts to their unprofessional conduct and raises doubts about the overall worth of expert opinions and expertise.

Frequently, the professional parties involved in the debate argued on a macro level. In this setting, the fact that psychiatric expertise has a clear consequence for how individuals are treated in court, was often ignored by some representatives from the field who were apparently more interested in discussing matters of prestige and legitimacy, and instead discussed whose opinion was worth addressing or not. Kringlen (cited in Gjerdåker 2012) stated, “Journalists, authors, historians, and other experts without a background in medicine or psychology have a pre-determined view on the evaluation”.

In his view, I interpret professional titles and academic affiliation as the ultimate proof of legitimacy, in a desperate attempt to reinforce the status of his own specialty, when in theory someone with the title of Journalist should not necessarily be any less right than the Nestor and Professor Emeritus of psychiatry. Bourdieu (1988) describes how to defend certain types of knowledge from intrusion is common practice within academia, and that holders of prominent titles such as Kringlen may be viewed as an elitist and statutory authority within the hierarchy of his faculty, because of the amount of social and symbolic power invested in him. In light of Mercier and Sperber (2010), his arguments appear highly influenced by the confirmation bias, in particular because of the clear avoidance to address competing arguments.

Other spokespersons for the discipline of psychiatry held a more dynamic approach as they appeared to have incorporated part of the criticism, and fashioned their arguments in a way that suggested change in a positive direction. Repeatedly, the politicians were referred to as holders of real power and initiative to instate changes into the system. While this may be a fact, the view of Bourdieu (1988) and Foucault (1991) suggests that the social positions within these institutions are intertwined to such a degree that they exercise power across the whole field. This means, that we are misguided to believe psychiatrists hold no real power, because their opinions are highly influential in steering the discourses in desired directions. Once again, this can be related to the language of psychiatry and its implementation in the principle of medicine.

Overall, the public discourse on forensic psychiatry suggests that the academic discipline is not a unified group of specialists, but is more easily compared to several factions who hold different beliefs. In a Bourdieuan (1988) perspective, this has a negative effect in the sense

that authorities avoid states of disarray, and thus need homogeneity, unity and consensus to maintain the status quo of their operations. In a Habermasian (2006), Mercierian and Sperberian (2010) perspective, we may see this development as positive in the sense that a multitude of authorities have come together to discuss the outcome of the Breivik-scenario, which also includes the “layman” opinion that asserted influence both on the court trial and on the assessment of valid expertise. The media have played a major role in the creation of an arena where these diverse discussions could take place, and such arenas reduce the impact of biased argumentation. In Kompridian (1991) thought, this arena also allows a point of departure where we may expand the space of possibility for a change of the existing expert systems, and even attempt previously un-thought and un-tried solutions.

5.3 The language of psychiatry; conception of accountability

A core issue that concerns our conception of accountability is how its legislative wording is solely written in a language created by psychiatry. Inherently, this means that psychiatric knowledge is the sole explanatory factor we may refer to, to explain the coherence between the health of our brain and criminal acts. As much of the criticism has pointed out, it is not obvious why psychosis should exempt a person from responsibility in the eyes of the law. Moreover, it is not obvious why a person should be diagnosed as psychotic in the first place, given the sheer dichotomous and categorical nature of both DSM-IV and the law. Vogt (2012, my translation) cited:

“Diagnoses are not diseases, but linguistic units whose function are to describe what is considered to be sick. Diagnoses are not something that people ‘have’ or ‘are’; they are simply written in a book. Diagnoses change when the diagnostic manuals change, and humans are like landscapes in constant change and without set borders – where diagnostics are like a static map with borders. Maps are useful, but they are a hinder for orientation if one does not lift one’s eyes.”

This challenges our conception and common belief in insanity, as well as the definition of normality and the validity of psychiatry. Through this line of thought, psychiatry has had the power to define our understanding of this aspect of the social world, and until now, it has mostly been taken for granted. In reference to the first mental evaluation of Breivik, the appointed specialists gave him the score of two on the GAF-scale, which is normally assigned to a person who barely functions in any kind of context. Because Breivik de facto functions like most others in society, their decision is a paradox. This can thus be seen as a breach of psychiatric protocol and as an unorthodox utilization of the GAF-scale. In the words of Vogt

(2012, my translation), “Internationally, the public debate sees forensic psychiatry as crawling from one ditch to another, from mindless speculation to checklist monomania.”

Lindstrøm (2012) pointed to how deconstructing the wording of DSM-IV showed that the legitimization of defining psychosis rested on who held the majority vote and opinion on the matter, a practice that at the best could be seen as speculative and biased. Foucault (1991) showed that to diagnose, treat or punish deviants or criminally insane, more often than not were actions of control, or ways to get rid of unwanted elements that could pose as a threat to existing power structures. It seems evident, that to have the diagnostic handbook as main guide and framework, fails to aid their claims of validity. The handbook does not only need translation, but also needs to be reinterpreted and carefully analysed as to see if any hidden power structures of symbolic violence gave rise to its list of diagnoses.

Foucault (1991) sees the insane person’s communication with their surroundings as solely conveyed by a reason that is just as abstract for them – order, physical and moral compulsion, anonymous group pressure and conformity demands. This could just as well be a description of Breivik and his alternative worldview, as opposed to his encounter with the treatment by professional and public opinion throughout the scenario. Foucault explains how language plays a key part in the domination-technique of exploitation and misleading, and this may have been active tools for both Breivik’s rhetoric *and* the professionals’. In reference to Lindstrøm (2012), the definition of psychosis rests on the legitimacy of a subject’s worldview, based on if the majority supports such a view. Psychosis is thus relative to the societal context, which renders the definition of accountability in §44 (Straffeloven 2005) speculative.

Much of the evidence portrayed in the analysis points to that the language of psychiatry is outdated. Contemporary research, adaptive technology and diverse means for communication, as always evolve at great speed, while the psychiatric handbook almost seems so “out of sync” that its language is incomprehensible. In Habermasian (2006) thought, this would be more a hindrance to create an ideal speech situation, than a tool for reaching fair and unbiased verdicts that advice the court. Can this be blamed on the lack of competence in specialist education, the lack of schools, the lack of DRK’s quality control and guidelines for conduct, and the lack of faith and trust in opposing beliefs from other academic fields, that post other views than those taken for granted?

Compared to some narrow-mindedness witnessed in the public debate, it makes you wonder why there is seemingly so little space for reflection and more holistic thinking. A black and

white picture from forensic psychiatry is a sharp contrast to the colourfulness of Norwegian society! Language and discourse affects our interpretation of the world, but is not static. It can be compared to a living organism, which is kept alive by communication. If there is no communication, a language will vitrify and die. As for the long uncontested time in office for the language of psychiatry, what we may witness in the public debate is its death, unless psychiatry picks up the spirit to communicate back in a language we understand. In reference to this metaphor and Foucault (1991), the language of the “mad” may be revived if it is not already dead.

Comparative linguistics is a discipline often referred to by other disciplines, to study how language through communicative actions will adapt to the given field or society, and how it borrows and lends from its parts to adapt and develop further. As an example, the evidence in the analysis shows that only a small part of the speakers connected their arguments to why Sweden and Denmark changed their forensic psychiatric approach, let alone how they switched over. Why was this context barely touched and given such small weight by the panel of voices apparent in the analysis? If we look for answers in the viewpoint of Kringlen (cited in Gjerdåker 2012), perhaps Swedish and Danish knowledge is simply perceived as a threat.

In addition, my evidence shows that antiquated rules for conduct, whether from the forensic psychiatrists or DRK, lead to inadequate procedures for communication between the soliciting parts. The validity of this form of expertise can clearly be of concern for the outcome of a fair verdict. The lack of in-depth reflection on various communicative aspects, such as biased language, the lack of language, leading questions, (strategic) ignorance, de-contextualised answers and not least the handbook used as a bible for the one and only truth, paves way for unjust and biased uncommunicative action. When speakers like Lindstrøm (2012) reveal such obvious weaknesses, the scenario can ironically be compared with the boy who pointed out that the Emperor wore no clothes.

The study has so far provided means to reflect upon psychiatric language and its limitations, and we may thus through the communicative schema of Kompridis (2006) revert our mode of thought. What if §44 of the criminal code was written in an unaffiliated way or composed of several languages to accommodate a broader academic competence, so the diagnostic language of psychiatry does not dominate the discourse? Do we need a border set between psychosis and criminal deviance at all? What is the language of the mad?

According to Foucault (1991), the language of the mad is non-existent in contemporary society. So long as psychiatry holds the right to define madness as a disease of the mind, it will remain suppressed. He states that this act of symbolic violence occurred already in the 18th century – and where are we today? Where should we look for an answer? Who can provide the court with clear answers, when according to Stanghelle (2012) the advice given by appointed forensic psychiatrists is unclear? As Foucault claims, the only way the language of psychiatry, which is reason's monologue over insanity, can exist, is purely by exercising symbolic violence and suppression over the forgotten and silenced.

If spokespersons from psychiatry acknowledge this, the very aspect of the missing link in psychiatry's vocabulary can prove to be a dilemma, which if not seriously and professionally dealt with, no doubt will add nails to their coffin. There are many willing to bear the coffin, such as Lindstrøm (2012) who asks, "Where is the limit between normal-extremist nonsense and psychotic delusion?" Should we ask, "Is psychiatry's language based on reality, and if so, whose reality?" In light of the debate on the relationship between psychosis and an unrealistic worldview, perhaps we can think of psychiatry as a social entity, and conduct mental evaluations of it.

My evidence shows that the psychiatric evaluations of Breivik, and the aftermath coloured by the many public opinions, have been an ideal stepping-stone to call out the long overdue need for a paradigm shift of language control. In an eventual future transition, the unintelligible psychiatric conversation partner will have to abdicate, in order to join a linguistic revolution, where the laymen and experts together front a new discourse of communicative action. This simply shows the important role language and discourse plays in everyday life, and that it may have big political consequences. Stanghelle (2012) relates to these issues, and claims that until they are resolved, the court case cannot serve as one of the most important milestones, on the road where we can move on as a society.

Foucault (1991) showed through his research that there are plentiful discursive traces left in the past that provide an insight to how psychiatric language has dominated those deemed mentally ill and other kinds of social deviants. In an egalitarian society like Norway, most believe in social equality, and thus signs that psychiatry plays a dominant and symbolic violent part in the legal system will necessarily have to be dealt with. In a Habermasian (2006) and Mercierian and Sperberian (2010) perspective, the conditions for an improvement of the system has been made possible, now that the elevated status of psychiatric language has

diminished and other viewpoints contest it. Foucault described the world of the mentally ill as calm and silenced. Perhaps another public debate should include the voices of those who are actually termed psychotic, and the “borderline psychotics”, because their viewpoint appears to be the only ones missing in the post-22/7 discussion.

5.4 Public trust

The disagreement between the parties involved in the public debate may be the main reason why many expressed a weakened sense of public trust in experts. As Bourdieu (1988) explained, authorities cannot present themselves in a state of disarray without compromising their professional legitimacy. Moreover, experts rely on public trust in the sense that their social power stems from symbolic capital, which relies on consensus that their specific knowledge is useful and applicable. According to Bourdieu, academic systems such as psychiatry have their own defence mechanisms that reproduce power relations and social standing within their hierarchical structures and in a prestigious nature bestows its capital unto colleagues with elite titles and technical competence guaranteed by law. It seems ironic that their entire elitist structure crumbles once the public gain access to its knowledge, and once arguments from other experts are able to disrupt their academic discourse. In that context, public mistrust is well founded. If a rigid structure like psychiatry is so easily weakened, the worth of their knowledge appears all the less useful and legitimate.

Generally, most attention in the public debate was given to the professional discipline of forensic psychiatry and the academic field of psychiatry. However, the impact suffered on their behalf can be interpreted as the initiation of a domino effect for other expert systems. In an open democracy like Norway, with freedom of speech, transparency and openness becomes a key virtue for any profession or organisation. We are thus suspicious of closed expert systems, because it goes against the principles of the nation.

Interestingly, people showed little interest in forensic psychiatry before 22/7. Tørrissen (2012) stated that his field of expertise was widely unknown before the first mental evaluation was completed, and perhaps public interest thus grew when the report was leaked to the press. Zahid (2011) claimed that it was the scale and brutality of the case that caught our attention, and reckoned that people would not care that much if Breivik had killed only one person. He might have a good point, but if so, why do people first start caring when an issue becomes addressed through the mass media? A possible explanation is because the Norwegian

population mostly has high levels of welfare, sense of economic security and social equality. Such conditions may lead to laziness, ignorance and indifference to what goes on in the surroundings, so long as it does not directly affect them. After all, the procedures of forensic psychiatry does not affect many people, but for those concerned, it has big consequences.

Nonetheless, it highlights that the Norwegian media, also commonly referred to as the fourth estate, have immense power to reveal issues of public concern, even when the public is not by default willing to address it. Thus, the media function as investigative eye-openers, which also have the power to support their claims by providing the public with an arena for dialogue with experts. A Mercierian and Sperberian (2010) perspective highlights the value and need for arguments and counter-arguments, otherwise discourses such as the one conveyed by psychiatry, may be biased.

Compared to Habermas's (2006) schema for rational argumentation and communicative action, Norwegians in theory thus have excellent conditions for affecting high-level decisions, and to challenge taken for granted knowledge, but only when it suits them. The media abides to the principle of freedom of speech, and even though this promotes equality and independence, the genuine power of the media may be abused from time to time – especially in nations that have a government-controlled press. This is important to consider, when basing ones assumptions on information relayed through these channels.

Maybe the lack of disagreement with psychiatric opinion kept the system online for hundreds of years. Foucault (1991) explained how psychiatry created the language of mental illness, and that its legitimacy depended on constraining the voices of the mad. According to him, when it joined forces with the judiciary, psychiatric competence was confirmed by legislation and its status promoted. As alternative voices attempt to comprehend the definition of madness and its language, psychiatry's dominance gradually diminishes. In the context of the Breivik-trial, the media made it possible, and psychiatric evaluations were thus given less weight on court decisions. Arntzen (cited in Peters 2013) stated that disagreement was common in the courts of law, and that it was merely positive for producing a good conclusion. She used the same statement to claim that the discipline of forensic psychiatry was not facing a crisis.

Conversely, if (forensic) psychiatric knowledge and practice were by this time common information and its usage justifiably applicable and without dubious origins and affiliation, there would likely be no major disagreement in the public debate. The point is that

disagreement expands the space of possibilities and enables development in a positive direction, and is hence useful. Arntzen (cited in Peters 2013) is thus correct in her interpretation of disagreement, but the specific large-scale disagreement in the public debate was undoubtedly linked to a crisis of legitimacy within psychiatric circles. There would not be an issue if the public and other experts had trusted the two mental evaluations of Breivik, and gained credence to the validity of their approach in forensics. More credence equals in this context less disagreement, and hence in such a setting, disagreement in the Breivik evaluations could have been a virtue and not a professional dilemma. Positively speaking, disagreement may very well be what is needed to provide durable experts, whose knowledge is more dynamic and valid, compared to conservative psychiatric expertise.

5.5 Paradigm shift

As forensic psychiatry was brought into the light, people saw the need to include a broader academic competence in court. As indicated in the analysis, the contemporary system must change to either simply incorporate a mixed or psychological principle, or to include experts from alternative academic disciplines other than psychiatry and psychology. The latter may include a larger role for sociologists, philosophers, neuroscientists, historians and so forth. There is no lack of experts; just no fixed answer to which experts may be suited for providing us with a satisfactory understanding of accountability. Even if we arrive at an answer, it will be relative to new knowledge we are confronted with in the future that might initiate another paradigm shift.

In that context, a paradigm shift can colloquially be referred to as a structured form of *Zeitgeist*. In comparison, Foucault (1991) mentioned the *Zeitgeist* of the classical age, where mass-incarceration was initiated by a public need to deal with poverty, economic problems, crime, unemployment and vagrancy. These were key features that concerned the treatment of social deviants, as well as providing a moral obligation to do so. The same public needs are topical today, but they mostly do not concern psychiatric treatment. When compared to Foucault's research, this is not surprising, because psychiatric treatment of the mad never solved any underlying social problems.

If psychiatry was designed to deal with these needs in the past, it brings about questions of its usefulness in contemporary society. According to Bourdieu (1988), the higher disciplines depend on controlling customary practice, and produce knowledge and authority. In light of

the post-22/7-debate, they are not in control of neither of these, at least not when compared to pre-22/7. Forensic psychiatrists have a technical competence, which is guaranteed by a law that will likely be changed in the near future. In fact, the very foundation of the academic discipline has been challenged, and all these issues can help avoid what Bourdieu refers to as “social determinism” by established institutions.

Contributions to the public debate from the academic discipline of neuroscience had interesting points related to the validity of forensic psychiatric work. According to Eagleman (cited in Time 2011), neuroscience will make it possible to utilize evidence, rather than bad intuition when we shape out politics. This principles of their discipline dismantles the principles related to psychiatry, but an implementation of neuroscience in forensics may bring about other crucial questions that should be discussed, such as: Will we face a future scenario where people are sentenced by machines, and where people can be “proven” criminal by brain scans even before they have committed a criminal act? Can a test of amniotic fluid show a prenatal criminal, and will it hence solicit lawful abortions?

Stålsett claimed that Breivik is a sign of the times and that the language of psychiatry is not comprised of the right elements to describe the existential aspects of him. The inadequacy of their language appears to be confirmed by various other sources, but according to Eagleman (cited in Time 2011); Breivik is not a sign of the times. In his perspective, the responsibility for Breivik’s acts of terror does not lie in his sick mind, or society at large; but in his susceptibility to input from societies that he was a part of – namely groups of people typically described as extreme right wing, nationalistic, islamophobic and militant. From this, we can deduct the following; public arenas for political discussions can be regarded as micro-societies with immense power of influence. The ones Breivik was associated with, typically convey one-sided information, are anti-government and not interested to accommodate other viewpoints. This can be understood as an ideology set out to oppose mainstream Norwegian ideology. In light of Habermas (2006), its predetermined goals cannot fit into the schema of communicative action.

Bourdieu (1988) elaborates on the reproductive power of academia. Like-minded persons to Breivik are commonly not included in academic circles affiliated with Norwegian government, but since the social field where they interact (through for instance online communication and separate social hierarchies) may be considered independent micro-societies, and thus may use similar tactics as they proactively affirm their beliefs, status and

prestige through (symbolic) acts of violence. Without active input from counter-arguments, what Mercier and Sperber (2010) refer to as the confirmation bias, will continue to reaffirm and strengthen such attitudes. Following, an interdisciplinary expert from for instance sociology or psychology, with a specialty in right-wing ideologies, would likely be able to contribute greatly to this argument in light of the evaluation of Breivik, to understand what “created” him.

Skjeldal (2012b) proved that numerous alternative disciplines could shed light on the evaluations of the first report from Breivik’s evaluation, and contribute to a broader understanding of his mental circumstances. There is no reason to believe that it would negatively affect the quality of specialist reports produced for the court. However, it will be a challenge to determine who should be given the privilege to conduct such advisory work. Perhaps we can compare the scenario to coalition governments, where a certain amount of representatives from each political party is voted into council and ministerial seats. Such a system is not necessarily optimal, but it ensures that different voices are heard. Moreover, it fulfils central aspects of what Habermas (2006) describes as criteria for pursuing communicative action. In light of Mercier and Sperber (2010), the confirmation bias will likely be cancelled out by the probable outcome of arguments and viewpoints that contradict each other.

5.5.1 “The layman principle”

Inspired by Kompridis (2006), Mercier and Sperber (2010) I imagined a future interdisciplinary congregation of experts in a joint review panel, who have specialised education and training for forensic work. These people are voted in for a certain amount of years, and are tasked with assisting the court on difficult cases that challenge our comprehension of causality, psyche and crime, such as the Breivik-case. In Norwegian District Court, the judge is often assisted by lay judges. These are randomly appointed people, who are typically given a crash course on law, but whose function is to let the defendant be judged by equals. This is seen as a guarantee for legal protection.

Part of the public criticism of forensic psychiatrists, was directed towards their relationship with the court, because they had too much power and influence on court decision. Hence, they may be seen as an extension of the legal system. If lay judges ensure legal protection from the judges, then “lay experts” may ensure legal protection from the joint review panel. Moreover,

if the lay experts were specifically tasked with disagreeing with the conclusions, he or she would stand a chance to explore untried routes and produce results that forced the other experts to review their conclusions. A layman conclusion would necessarily be authorised as legitimate if supported by the majority of the panel. In line with the theorists of inspiration, this should provide an ideal point of departure to pursue communicative action, expand the space of possibilities and cancel out the negative effects of the confirmation bias. Additionally, there is a good chance that such a panel composition may reduce the negative effects of “heavy expertise”, which in cognitive studies are commonly associated with simplification and automation of knowledge (Madsen 1999).

Chapter 6

Conclusion

The academic discipline of forensic psychiatry faces several professional dilemmas of great topical interest, as a result of the failure to convincingly depict and comprehend the complexities of Breivik through two separate mental evaluations. Because of the intricate relationship between psychiatric language and legislation, court decisions are strongly influenced by forensic psychiatric expertise. It is likely that the language of psychiatry may no longer hold a monopoly to define mental abnormalities in relation to criminal deviance. The public debate clearly indicates professional power struggles between the field of psychiatry and opponents. Public opinion points to distrust in experts and the legal system, which thereby compromises the foundation of legal security, conception of accountability and principles of transparency in an open democratic society. Strong indications suggest that a broader academic competence will assist the court in forensics in the near future as we approach a paradigm shift. The whole scenario would *not* be possible without media coverage and public opinion.

6.1 22/7 Hindsight

Based on the developments through the Breivik-scenario, we need to be wary of truths we take for granted and be cautious of whom to trust. Academic education is important for specialisation, but also a problematic term, as it may be closely tied to the indoctrination of one particular type of knowledge or symbolic capital. In a perfectly transparent society there would be no need for an analysis of power structures, but as this case has shown such analyses may lead to uncover aspects that are vulnerable to public exposure. As the complexities of Breivik have not been fully comprehended, the question remains, what causal relationship is there between this individual and his criminal actions? The question is not only relevant for a closure of the terror attacks, but also to understand what characteristics of the brain, society or ideology create what Habermas would define as highly uncommunicative action.

6.2 Critical reflection of this study

Selected discourses from the public debate on forensic psychiatry were analysed and discussed according to a specific theoretical frame of reference, to shed light on the mental evaluations of Breivik and to find evidence that the academic discipline faces professional dilemmas. Issues of societal significance, discursive aspects and impact on social structures were tied to the speech setting. Each contribution gave valuable insight to the speaker and his or her social context, but it is important to acknowledge that different interpreters may arrive at different conclusions than I. With respect to the contextual aspects of this study, the study itself can be viewed as a composition of several arguments, intended to enlighten the recipient convincingly on problematic themes related to forensic psychiatry. The study is thus a contribution to the overall discussion, and should accordingly be subject to careful examination.

In reference to Habermas (2006), each party in a speech scenario must have equal ground to front their views, to promote communicative action. My main findings and the discussion is based on a finite number of sources, which only represent a section of the public debate as whole, and may thereby only be proof of general tendencies within the discourses. Additionally, these written sources do not necessarily accurately depict views held by the speakers. Nonetheless, the fact that they are publically available means that anyone can read and interpret, and they may thus influence a large audience. As such, the written sources convey elements of social power and argumentation in themselves, which is also true for this study.

6.3 Implications for expert systems

In our conception and interpretation of the world, there will always be unanswered questions. As history has shown, science progresses and ultimately leads to a transformation of the way we think and of how we develop our society. This study was mainly concerned with Norwegian forensic psychiatry in relation to the Breivik-case, but the philosophical aspects of argumentation and trusting authorities are transmissible to a more general understanding of the mechanics of expert systems and power constellations. Expert systems are able to provide us with information designed in a language of their programming. We use this information to categorise, hierarchize and often to dichotomously label artefacts, entities and actions – a cognition process that is part of our daily life, and which helps us efficiently make sense of

the world. We depend on cognition, simply because we hardly function without. Hence, the language of the information we base our cognition on plays a major role and should not be ignored.

In reference to Foucault (1991), whomever produces the knowledge we confide in asserts immense power of social control and censorship through their discourse. Importantly, the concept “truth” is thus relative to the currently most accurate definition of something, and it should not be treated otherwise. In our modern age, with information readily available by the press of a button, we may learn new things every day, but in doing so, we may also unlearn knowledge we have previously taken for granted – if we are willing to revert our mode of thought. In the jungle of information, there has never been a guarantee for truth, and to be critical of sources is hence the best way to go about. To quote Vogt (2012), we must never stop asking why.

6.4 Further research

To analyze the legitimacy of other parts of psychiatric expertise would be interesting, since DSM-IV contains definitions of various other diseases of the brain and because psychiatry has a widespread application, and is not only restricted to forensic settings. I am also curious as to what main differences exist between the interpretation of the brain made by psychiatrists and neuroscientists, and as the latter claim, their knowledge is rapidly increasing. It could also be enlightening to examine public discourses and compare what Bourdieu (1988) terms higher and lower disciplines, to see if there are marked differences in the way they portray arguments. This could perhaps best be done through a thorough, word-by-word discourse analysis. To shed further light on the criticism portrayed here, a comparative study could be conducted between Sweden, Denmark and Norway to test the grounds of the mixed or psychological principle. Finally, the analysis showed some links between the institution of Christianity and psychiatry, which is also evident in Foucault’s (1991) research. A similar power analysis could thus illuminate a conception of religious institutions as expert systems that confer social influence.

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