

Paolo Marchetti

“Perchance to dream”

Personality modifications and criminal liability: a nineteenth-century debate between psychiatry and law

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ABSTRACT: At the end of the nineteenth century, psychiatry “discovered” some new pathologies, such as split personality, that questioned the reassuring idea of the human being able to rule his own behaviour. The present article tries to evidence how the surfacing of these disorders of behaviour seemed to dispute the unitary view of man, which law and medicine had shared until then. Even in the case of non evident mental illness (asserted some psychiatrists), several actions seemed to be decided by the unconscious forces of a person. These observations collided with the idea of the criminal liability asserted by most of the juridical world and opened up an ardent debate between the two disciplines.

KEYWORDS: criminal liability - history of penal law - history of psychiatry

1. Double personality and criminal liability. The Felida X case

Felida is a girl of Bordeaux. Intelligent, anxious, melancholic. When she is fourteen, we are in 1858, she begins to show strange behavior. Suddenly she falls into a torpor from which she cannot be roused. Later she wakes up again and her personality seems totally changed. She looks more good-humored and extrovert. But this state (that Eugène Azam will call “second condition”) lasts only for a few hours. In the same way this new personality had showed itself, it goes away. And the previous Felida resurfaces. The phenomenon repeats itself with daily constancy. Over the years, the periods in which the girl falls into her second state grow longer, until they last several months. The strange fact is that the two personalities communicate in a non symmetric way. Felida, in her second condition, remembers all that happens in her normal state, but when she comes back to her habitual life she has absolutely no memory of what occurs in her parallel existence. Nevertheless, in both situations the psychological state of the girl does not demonstrate any alteration. Her mind is intact, only her character is different.

The Felida case is one of the best known and quoted in medical literature between the nineteenth and twentieth century. Every book that deals with personality alterations, refers to it in a more or less detailed form. This is the case to which Eugène Azam (the physician who treats her for a long time) owes his fame. Without Felida (to be more precise, Felida X, since Azam called the girl in this way) it is very probable that no one would have remembered the name of this, all things considered, obscure physician from Bordeaux.

Azam brings the clinical story of his young fellow citizen in 1876 to the public, through an article published by the “Revue scientifique”¹. He will treat the same issue again, several times, until the publication in 1887 of the volume entitled *Hypnotisme, double*

¹ E. Azam, *Année périodique, ou doublement de la vie*, in “La Revue Scientifique de la France et de l'étranger”, V (1876) 47, pp. 481-489.

conscience et altérations de la personnalité in which the story of Felida occupies most of its pages².

Even if the Felida case is not the first one of which the public has knowledge³, the subject of split personalities, after this work of Azam, begins to be studied in depth by the psychiatric science of that time, in spite of a certain initial mistrust⁴. And not only by the psychiatric science, because the subject of the “double” became a fashionable narrative pretext in late nineteenth-century literature. Some novels (among which the *Strange Case of Dr Jekyll and Mr Hyde* by Robert Louis Stevenson represents the best known tale) made use of this strange pathology to invent stories able to arouse public curiosity⁵.

The importance of this stylistic mixture between description of clinical cases and novels cannot be totally ignored. The narration of the bizarre existential vicissitudes that involve the life of several patients seems to refer to a literary dimension that will reach the highest point in the really successful narration of the Freudian clinical cases, written as if they were detective novels. In the same way, but changing the point of view, fiction literature, which was inspired by this kind of psychiatric vicissitudes, will often be like the account of a clinical case⁶.

Beyond this charming confusion of genres, we have to point out the fact that in the medical literature of that period (but not only in the medical literature, because the jurists who intervene in the cases that will arouse their interest will be forced to imitate this narrative style), the story of the case (or of the cases) considered assumes a non secondary role in the narrative strategy of the author. As if the stories told were called upon to uphold not only a supporting role of the scientific hypothesis under discussion, but itself became an integral and unavoidable part of an elaborate reasoning that, deprived of its novelistic dimension, would have resulted ineffectual and lightweight. A story, moreover, referred to countless times by all authors who will write on the same issue. To give to the modern reader that sense of boredom in coming face to face with the same facts, if not the same words. Still, in spite of this seriality of case histories, the narration of the most sensational episodes referred to by the specialized literature at that time is an inescapable passage for whoever is interested in rebuilding, from a historical point of view, the conceptual universe that links itself to these small clinical or experimental dramas. As if the stories of these petty existential vicissitudes were the indispensable set of ideas that

² E. Azam, *Hypnotisme, double conscience et altérations de la personnalité*, Paris 1887, prefaced by J. M. Charcot.

³ H.F. Ellenberger, *La scoperta dell'inconscio. Storia della psichiatria dinamica*, Torino 1976, I, pp. 147 ff. (or. *The Discovery of the Unconscious. The History and Evolution of Dynamic Psychiatry*, New York, 1970). The first case of split personality known in scientific literature is that one edited by Eberhardt Gmelin in the first volume of *Materialien für die Anthropologie* in 1791. As Adolfo Francia and Eleonora Alberici (authors of the chapter given over to dissociative identity disorder in the book by U. Fornari, *Trattato di psichiatria forense*, 4th ed., Torino 2008, pp. 344 ff.) right till the end of the eighteenth century, these behaviours did not appear in medical treatises because they were considered to be the competence of exorcists rather than physicians

⁴ Regarding the fresh interest that psychiatry reveals on pathological dissociation, as being included into the nosographic category, see U. Fornari, *Trattato di psichiatria forense*, cit., pp. 347 ff.

⁵ W. Mintorn, *Le somnambule*, Paris 1880; P. Lindau, *Der Andere*, New York 1893; L. Hennessee, *Minnie Brandon*, Paris 1899; J. Claretie, *L'obsession. Moi et l'autre*, Paris 1908. Charles Richet, the Nobel prize-winner for medicine in 1913, published (under the name of Charles Epheyre) two novels about the themes of split personality and hypnotism: C. Epheyre, *Soeur Marthe*, in “Revue des Deux Mondes”, LIX (1889), 93, pp. 384-431 (later, Paris 1890) and *Possession*, Paris 1887.

⁶ See S. Ferrari, *Psicologia come romanzo: dalle storie di isteria agli studi sull'ipnotismo*, in “Studi di estetica”, XIII, (1985), pp. 49-96.

come to life behind their development.

There is another reason that makes the case of Felida X very interesting (or, at least, makes it interesting within the discourse that we want to deal with in these pages). Azam did not need a long time to realize that the strange behavior of his patient did not show only an authentic dilemma for the medical science at that time. The curious existence of Felida posed serious questions regarding the juridical plane, and in particular the question of penal liability⁷. Indeed, if the ill-fated girl (or every other person in this situation) had committed a crime in her second condition, would she have been called to answer for it in court? The curiosity of Azam was not without basis. If they had not considered the case well, they could have come to the absurd conclusion of punishing a person for a behavior of which he/she had no memory at all; a behavior that belonged to him/her only in the material sense. So, in this way they would have obscured the deeper sense of penal punishment connected with, by common opinion, both a reproach that the community directs towards the person who commits an action against the rules of civil coexistence, and the function of deterrence that the punishment itself is able to exert on the condemned person.

To provide an answer to this question, Azam consulted several judges and jurists of Bordeaux who answered, in general, that the criminal liability of such a subject had to be considered in a less heavy way. After all (and this was the meaning of one of the answers that Azam quoted in full), in both conditions Felida maintained an intact mind and her action was led by conscious will. And these were the necessary and sufficient conditions for considering a subject legally liable (even if in a partial way). Anyway, the anonymous lawyer quoted by Azam, did not deny that the case was not so easy to solve. For instance, there were crimes such as misappropriation in which the awareness of the things belonging to a different person was an indispensable condition for the punishment of the offender. And in this case, the total absence of memory had to play a justifying role. He did not even deny that a lot of psychiatrists disputed the idea that a partial mental illness could exist. The profound alteration of some faculties, for these physicians, necessarily involved the whole psyche of a person. With prudence, the author of the reply inclined, like the majority of his colleagues, towards the recognition of minor liability for the subject who had committed a crime in this condition. Nonetheless, he suggested leaving the solution of the specific judicial occurrence to the judge who would treat it on a case-by-case basis.

However, these conclusions did not obtain a general consensus⁸. Azam himself quoted in his book the opinion of Jean-François-Charles Dufay who, reasoning just on Felida's case and on the question of split personality, declared himself for the full unaccountability of the persons suffering from such a pathology, in any condition of personality at the moment of the crime⁹. After all, the French physician and politician asked himself, how was it possible to establish which of the various personalities of a subject were normal

⁷ E. Azam, *Hypnotisme, double conscience et altérations de la personnalité*, cit., pp. 184 ff.

⁸ Georges Gilles de la Tourette remembered how, during the Congress of the French Association for the Development of the Sciences, given in Paris in 1878, the issue had been discussed in detail and they had not found a common point of view concerning the criminal liability of a person suffering from split personality. G. Gilles de la Tourette, *L'Hypnotisme et les états analogues au point de vue médico-légal*, 2th ed., Paris 1889, p. 257.

⁹ E. Azam, *Hypnotisme, double conscience et altérations de la personnalité*, cit., pp. 190 ff. The issue has been discussed by Dufay in an article which appeared in the "Revue Scientifique" in 1879.

and which pathological? It was hysteria that dominated the whole existence of these persons and for this reason they had to be declared mentally ill, thus unaccountable in legal terms.

2. Chargeability and pathologies of the will

Let us leave, for the moment, the case of Felida in the background and let us try to broaden the field of observation of our analysis. The problems that a phenomenon like split personality arouses from the medico-legal perspective are not of little importance, but we are able to understand them only if we put them into a wider context.

At the beginning of nineteenth century, psychiatric science has started to develop its observations making continual interferences with the legal world. The plane on which the two knowledges tend to be superimposed is not only that one of liability, that is to say, that one of the individuation of the borderline that separates normality from madness. As Michel Foucault said, during this century psychiatry will tend to become more and more medical-judicial. The object of its analysis will continuously oscillate between the description of rules of conduct and the medical analysis of the abnormalities. It will develop, essentially, as science and technique of the abnormal behaviors, determining in this way a permanent link between crime and madness. And from that moment this connection will no more be the outer limit of the interest of psychiatry, rather, the norm¹⁰. But beyond this observation, medicine and law will converge and will often be in conflict just on the topic of liability. Again, the birth itself of a discipline like criminology (original product of the last stages of nineteenth-century) may be understood only as part of a process of constant interaction between different social groups and their diverging approaches to the question of liability¹¹.

In any case, the surfacing of new pathologies, that collided with the usual way by which alienists of the Ancien Régime had secluded the space of mental illness, made the topic of liability more complex. After all, until medical science had considered madness as a temporary or permanent absence of the faculties of reason, medicine and law had not known points of friction. The mad man was an easily recognizable subject (even by whoever had not got particular clinical skill) because his reasoning and behavior showed themselves as lacking any connection with reality. But this manner of conceiving mental illness had met with a lot of problems when strange pathologies like monomania, initially, or moral insanity, later, had started to become object of observation and research by psychiatric science. In these cases, indeed, it was not so difficult to observe that, despite the examined subjects having an intact mind, they were unable to restrain their impulse to commit actions contrary to rules of behavior whose social value was generally accepted.

The debate which developed, over all in France, regarding monomania (that over time lost the interest of people, to be replaced by that one regarding moral insanity)¹² is the

¹⁰ M. Foucault, *Gli anormali*, Corso al Collège de France (1974-1975), Milano 2007, pp. 147-148 (or. *Les anormaux. Cours au Collège de France 1974-1975*, Paris 1999). See also P. Marchetti, *Le "sentinelle del male". L'invenzione ottocentesca del criminale nemico della società tra naturalismo giuridico e normativismo psichiatrico*, in "Quaderni fiorentini per la storia del pensiero giuridico moderno", XXXVIII (2009) 2, pp. 1009-1080.

¹¹ R. Harris, *Murder and Madness: Medicine, Law and Society in the Fin de Siècle*, Oxford 1988, p. 3.

¹² About this subject see U. Fornari, *Monomaniaomicida. Origini ed evoluzione storica del reato d'impeto*, Torino, Centro Scientifico Editore, 1997, Id. *Concetti vecchi e nuovi in psichiatria forense: dalla monomania al disturbo borderline di personalità*, in "Rivista sperimentale di freniatria", CXII (1988) 6, pp. 1257-1270 and V.P.

most evident demonstration of the fact that legal categories were substantially inadequate in giving an exact position, at the level of criminal responsibility, to some behaviors whose morbid nature was not so easily graspable¹³. Article 64 of the French penal code («There is not crime nor punishment if the defendant is in a state of madness when he committed the action, or if he was pushed by a strength to which he was unable to resist»), by which almost all the penal legislations of continental Europe were inspired, when it defined the terms of individual responsibility, established a close correlation between responsibility and rationality¹⁴. In this context, a behavior like that of the monomaniac (characterized by a lack of delirium and a peculiar clearness of mind) seems to go beyond the sphere of application of the rule; even considering that the mentioning of the «irresistible strength» to which the article referred, was generally intended as external irresistible strength, and this to avoid that the reason of the non punishability could be invoked to justify a crime committed because of the force of passion. But psychiatric science developed in the direction of the admission of the full pathological nature of monomania, abandoning even the notion of partial insanity that had characterized this illness at its beginning¹⁵. In this sense the mental illness, however, was localized in a symptom, it could happen only in a totally insane person¹⁶. This conclusion placed itself on the opposite side in comparison with several legislative choices that began to allow reduced degrees of chargeability (and therefore punishability) as regards partial insanities¹⁷.

In the eighties of the nineteenth century, the subject of monomania was almost completely marginalized from scientific debate and the issue of moral insanity took centre stage. But also on this new pathology, medicine and law were not able to speak the same language. Beyond the difficulties of psychiatric science to agree on the nature itself of this behavioral disorder¹⁸, this pathology appeared hardly definable in the judicial field. The morally insane man was a lucidly wicked person, aggressive, violent, lacking in moral scruples and insensitive to common human sentiments. His mind, in other words, remained totally intact, even if he was unable to control his behavior through the means of the will. But also in this case, justice addressed the same question to medical science invariably, that is to say it wanted to know if the morally insane persons were responsible for their own actions, plotting in this way a boundary line between the criminal and the non responsible person.

The sense of disorientation that the “discovery” of these new psychiatric pathologies

Babini, *La responsabilità nelle malattie mentali*, in V.P. Babini - M. Cotti - F. Minuz - A. Tagliavini (cur.) *Tra sapere e potere. La psichiatria italiana nella seconda metà dell'Ottocento*, Bologna 1982, pp. 153-154.

¹³ On this subject see the article published by Carlo Livi concerning monomania and sent “A’ giurisperiti piuttosto che a’ medici” (C. Livi, *Della monomania in relazione col foro criminale*, in “Rivista sperimentale di freniatria”, II (1876), pp. 394-415 and 639-660).

¹⁴ R. Castel, *L’ordine psichiatrico. L’epoca d’oro dell’alienismo*, Milano 1980, chapp. 3th and 4th (or. *L’ordre psychiatrique. L’Age d’or de l’aliénisme*, Paris 1977).

¹⁵ See A. Tamassia, *Il nuovo codice penale italiano e la pazzia parziale*, in “Rivista sperimentale di freniatria”, II, (1876), pp. 177-206.

¹⁶ M. Foucault, *Gli anormali*, cit., pp. 142-143.

¹⁷ As in the case of the Italian penal code of 1889 (V.P. Babini, *La responsabilità nelle malattie mentali*, cit., pp. 153-154).

¹⁸ About the Italian debate on moral insanity see V.P. Babini, *La responsabilità nelle malattie mentali*, cit., pp. 167 ff.

produced into the juridical world is testified to by the difficulties that the legislators, who reformed penal law of their countries, met in the attempt to give an adequate legislative form to the theme of chargeability. All the old definitions seemed unable to give the right importance to the role that the will (in its various sick expressions) had in the beginning and in the manifestation of pathological behaviors. As Carlo Livi reminded us in an article published in the “*Rivista sperimentale di freniatria*” in the 1877¹⁹, the forms until then proposed did not consider one of the central elements of madness, that is to say the loss of will of his/her own actions that affected the insane person. According to him, whoever tried to reassert the exclusive centrality of the loss of reasoning as criterion on which to value the chargeability of a subject, reaffirmed the past prejudice which proposed that the premeditation and the preparation of a crime always involved culpability, not realizing that the essence of madness lied in a lesion of the will rather than of the consciousness. And the admonishment of Livi did not seem totally unwarranted, seeing the difficulty of Italian psychiatry selling the judges on the pathological nature of a behavior that seems more the fruits of a lucid wickedness than of a mind defect.

Livi’s worry did not involve only Italian psychiatry. Krafft-Ebing himself used a lot of pages of his *Treatise of forensic psychopathology* (a kind of Bible of forensic medicine at that time) to confute several opinions that circulated concerning the symptoms of madness; opinions upon which he suggested, for a lot of time, grounding the diagnosis or the suspicion of insanity²⁰. As the idea that the action of a madman never had a reasonable and specific cause, as happened for healthy persons, or the opinion that such an action could be isolated in the life of a man, in contrast with all the other displays of his behavior, or yet another one for which the “crazy” action excluded, by its nature, the premeditation, the calculation and prudent ploy, the awareness of his/her own guilt and repentance, or the idea that in madness it was impossible to carry on reasoning discourses.

In any case, even if in Italy they arrived at the wording of an article (article 46 of the penal code of 1889) in which they distinguished between awareness and will of an action, without emphasizing the controversial notion of free will²¹, the legislative openness to these new positions of psychiatric science was very prudent. In fact, in some way it left unsolved the main issues that medical science of the late nineteenth century had started to face some decades ago, showing how hard it was for the law to accept the pathologization of a sector of human life like that one of the will, for which the psychiatric categories showed themselves as not always being conclusive.

This short analysis of the difficulties that law, more than medicine, met in evaluating the volitive function as fundamental element of the issue of chargeability lets us understand with how much difficulty a case like that of Felida X could be approached in the judicial field. So, in situations in which there was a split of personality the mental

¹⁹ C. Livi, *Osservazioni critiche sul progetto di nuovo codice penale*, in “*Rivista sperimentale di freniatria*”, III (1877), pp. 120-130.

²⁰ R. von Krafft-Ebing, *Trattato di psicopatologia forense*, It. ed., Torino 1897.

²¹ «He who is not punishable, at the moment he committed the action, was in such a state of mental illness as to deprive him of the consciousness or the will of his own acts». On the origins of article 46 and regarding the influence that the Tuscan penal culture had on the final wording of the rule, see E. Dezza, *Imputabilità e infermità mentale: la genesi dell'articolo 46 del Codice Zanardelli*, in “*Materiali per una storia della cultura giuridica*”, XXI (1991) 1, pp. 131-158 (now in Id., *Saggi di storia del diritto penale moderno*, Milano 1992, pp. 281-316).

faculties remained intact, but even the capacity of these persons to decide seemed not to be injured in any essential way. At most, it was necessary to decide which was the subjective core to whom to attribute the action done. And this problem was closely linked to that of establishing if an anomaly, like split personality, could be considered as a behavioral disorder able to damage overall those mental faculties of the person who suffered from it. After all, as Krafft-Ebing had asserted, speaking about the role assigned to the physician examinant in the trial, in cases like these, the function of the psychiatric examination was not that to express a judgment on «responsibility [nor] free will, but [on] the determination of the integrity or of the mental illness, by means of the scientific analysis»²².

From this point of view, the attempt of defining a clear demarcation line between health and madness was a task on which psychiatric science practiced the better part of the nineteenth century. And the obsession of Cesare Lombroso for the discovery of some biological and behavioral marks that were able to manifest the difference between normality and abnormality in an undisputable way is only a sign of a more general trend²³.

But, beyond appearances, even this issue met several difficulties. Modern psychiatric science, already at its beginning, ran into a problem which was not so easy to solve. According to Esquirol (who, with his master Pinel, can be considered at the origin of the definition of a new disciplinary dimension of psychiatric science), for instance, it was impossible to distinguish the condition of the madman from that of the healthy man in a clear way. Between the two tendencies existed a barely separable line of continuity. It is true that this idea of a *continuum* between normality and insanity was almost immediately denied by Georget, the most highly regarded pupil of Esquirol, who will develop his discourse about insanity complying with a strictly organicistic option of mental illness. But it is also true that Georget himself was not entirely able to reverse this “scandal” evoked by the assertion of the existence of a line of continuity between normality and madness, and so, this kind of heuristic perplexity characterized psychiatric knowledge (even if in an underground way) since its origins²⁴.

3. The Ego in pieces

The case of Felida X and the phenomena of split personality (more and more studied in later years) let us understand how the attempt at tracing out a clear demarcation line between normality and pathology was destined not to bear the clash of a dimension of human psyche until then unknown. A dimension that seemed to dispute, not only in the case of evident mental disorders, the oneness of the Ego and the predominance of the conscious activity in the field of human behavior. In other words, a new way of conceiving the mind, based on the dual nature of the psychic processes conscious and unconscious, was growing. A way that already had had philosophical settlement in the

²² R. von Krafft-Ebing, *Trattato di psicopatologia forense*, cit., p. 27.

²³ About Cesare Lombroso see P. Marchetti, voce *Cesare Lombroso* in *Enciclopedia Italiana di Scienze, Lettere ed Arti. Il contributo italiano alla storia del pensiero*, Ottava Appendice, *Diritto*, Roma 2012, pp. 366-370 and Id., *Cesare Lombroso e l'Archivio di psichiatria*, in L. Lacché - M. Stronati (cur.), *La 'cultura' delle Riviste nel dibattito penalistico tra Otto e Novecento*, Macerata 2012, pp. 69-96.

²⁴ On this subject see M. Galzigna, *Gli infortuni della libertà*, introduction to E.J. Georget (1826), *Il crimine e la colpa. Discussione medio legale sulla follia*, ed. Milano 1984, pp. IX-XLIV.

doctrines of Schopenhauer and Hartmann²⁵.

Phenomena like the change of personality or hypnosis (of which I will talk in one of my next works) allowed us to see how small the difference between pathological and normal condition was, which both could be ruled by non conscious processes. To this conclusion, for instance, the Nobel prize-winner for medicine to-be, Charles Richet, had arrived²⁶. And Gabriel Tarde himself (who always showed a great interest in these subjects) did not omit stressing the possible repercussions that this new model of the human mind, proposed by a significant sector of nineteenth-century medicine, could produce with regard to the issue of criminal liability²⁷. The discovery of multiple personalities caught the imagination of the scientists at that time so much as to push both young researchers like Pierre Janet in France²⁸ or Max Dessoir in Germany²⁹ and well-known scholars such as Alfred Binet (for whom in the case of split personality the subject lost his own consciousness and responsibility to become a kind of automaton, a blind tool in the hands of his brain)³⁰ to progress into these kinds of searches.

The explanation given to these phenomena swung between two interpretive lines. Initially, (but this position lost effectiveness over the years) they advanced the hypothesis that every person was occupied by different personalities. In the theory of Jules Janet³¹ (who had examined the case of Blanche Witt., a hysteric with a split personality), for instance, everyone was endowed with a double Ego. The health state was characterized by a condition of equilibrium in which the underground personality was not able to prevail. Rather, this equilibrium having vanished for several reasons (like the onset of an illness), the second personality could surface forcefully. And so, exploiting the first personality's weakness, wrote Jules Janet, the second Ego could catch a train, go to London and kill a man without his first personality having had any memory of it³². But the hypothesis of Pierre Janet (Jules's brother, destined to greater fame) had greater credit. For Janet in all persons some psychic automatism existed, out of the control of consciousness, and in presence of particular circumstances they could enter into action in the life of every individual, conditioning his behavior³³.

In any case, in both hypotheses they assumed that a certain degree of mental break-up was constantly present in the life of every man, even if it remained not so easy to establish when this breakage could give rise to a real split of personality³⁴. So, the idea of the existence of a subconscious level inside every person, which is able to give origin to

²⁵ H.F. Ellenberger, *La scoperta dell'inconscio*, cit., p. 366.

²⁶ Ch. Richet, *L'homme et l'intelligence*, Paris 1884.

²⁷ G. Tarde, *Le crime et l'épilepsie*, in "Revue philosophique de la France et de l'étranger", II, 1889, pp. 449-469. On this subject see L. Chertok - R. De Saussure, *Freud prima di Freud. Nascita della psicoanalisi*, Roma-Bari 1975, p. 210 (or. *Naissance du psychanalyste De Mesmer à Freud*, Paris 1973).

²⁸ P. Janet, *L'automatismo psicologico. Saggio sperimentale sulle forme inferiori dell'attività umana* (1889), It. ed. Milano 2013.

²⁹ M. Dessoir, *Das doppel Ich*, Leipzig 1890.

³⁰ A. Binet, *Les alteration de la personnalité*, Paris 1892, p. 43.

³¹ J. Janet, *L'hystérie et l'hypnose d'après la théorie de la double personnalité*, in "Revue scientifique", XXV (1888) 15, pp. 616-623.

³² J. Janet, *L'hystérie et l'hypnose d'après la théorie de la double personnalité*, cit., p. 621.

³³ P. Janet, *L'automatismo psicologico*, cit., pp. 133 ff.

³⁴ F. De Sarlo, *Sull'inconsciente: ipnotismo, spiritualismo, lettura del pensiero*, in "Rivista sperimentale di freniatria e medicina legale", XVI (1890), p. 378.

impulses out of the control of the consciousness, seemed to crack a reassuring unitary view of the human psyche. And «from the legal point of view it was impossible not to consider this breaking of the unity of the *Ego* for the delimitation of the moral liability»³⁵.

In the legal field, the idea of the existence of different psychic forces not controlled by a person (healthy or ill, as he/she was) could not be easily accepted. Medicine and law were able to speak the same language only if they made reference to an identical view of the human being. The unity of the *Ego* and the dominance of the consciousness had represented, until then, a shared anthropological model, and beginning from this model the request made during judgment to locate, through the dichotomy normality/madness, the dividing line between liability/unaccountability could obtain a suitable answer. From this point of view the “discovery” of new pathologies as monomania and moral insanity (with their claim to pathologize the volitive function in the human behavior) had stretched the margin till breaking point, within which law could accept the new course of modern psychiatry in the courtrooms. However, the emersion of a new unconscious dimension in the psychic activity of the human being inevitably collided with the view of a person who is able to determine his own actions with consciousness, to whom law, in its punitive claim, had always made reference³⁶.

4. “Is it true or am I dreaming?”. The criminal sleepwalker

The question posed by Azam regarding the criminal liability of Felida will find a first answer resorting to the sleepwalker state. It will be precisely the condition of the sleep (and of the dream) that allowed us to face the issue of the split personality with a certain coherence (at least on the psychiatric plane). Anyway, as Foucault writes, the equation madness/dream had been proposed by Jules Baillarger towards the mid nineteenth century and this position had caused a radical change in the epistemological organization of psychiatric science at that time. The element that characterized the behavior of a madman, asserted Baillarger, was the fact of living in a dream condition. But in this state, it was not the approach to the truth to be distorted in the person who acted. It was, rather, a question of lack of will. As source of involuntary processes the dream became the model of every mental illness, so moving the barycentre of the madness diagnosis from the truth/untruth equation, previously accepted, to that voluntary/involuntary one³⁷.

In this context the recourse to the dream, to the dream acted out by the sleepwalker, will represent not only the point of reference to which to anchor the phenomenon of the splitting of the *Ego* (Azam calls Felida a «total somnambulist»³⁸), but also every other condition of alteration of personality. The hypnotic practice itself will be defined as “induced somnambulism”, almost as if they wanted to stress the common root of the behaviors that, out of the control of the will, pushed a person to a conduct decipherable

³⁵ J.S. Morand, *Le magnétisme animal (hypnotisme et suggestion). Étude historique et critique*, Paris 1889, p. 385.

³⁶ This hypothesis here pointed out represents one of the two extreme views of the human being with which law could not agree. The other one (that does not occupy the present work) was the Lombrosian conviction of a man born criminal. This idea, built as a real anthropological hypothesis (more than a psychiatric one), necessarily clashed with a view of a man having, if not exactly the fullness of free will, at least a chance to chose the actions to do during his life.

³⁷ M. Foucault, *Gli anormali*, cit., pp. 142-143.

³⁸ E. Azam, *Hypnotisme, double conscience et altérations de la personnalité*, cit., p. 185.

only through recourse to a kind of dream automatism. So, this opinion will be stressed by Jules Liégeois, the French jurist who was the one who devoted himself most fully to the subject of personality modifications and their relationship with law. The persons like Felida, according to the opinion of Liégeois, when they passed onto the second condition they went in a kind of sleep, whose distinctiveness consisted in having all the appearances of the state of wakefulness. And for this reason they could not be considered responsible for the deeds done, at least, not for those ones done in the second condition³⁹. The same thing happened for subjects under hypnosis. After all, asserted Liégeois, the sleepwalker like the hypnotized subject was a dreamer. The only difference between the two conditions was that the natural sleepwalker did not receive any order from the outside world. His will was not forced by any alien strength. On the contrary, in the artificial sleepwalker it was possible to seize his will and, in this way, direct his actions⁴⁰.

Of course, the phenomenon of split personality posed more complex problems, in the medico-legal scenario, than those ones aroused by the somnambulism. Azam himself showed not to share Dufay's opinion, for whom, because the persons who showed split personality were suffering from hysteria, they had to be considered unaccountable for the crimes committed (in the first, just like the second condition). If nothing else, wrote Azam, due to the fact that a great number of women were affected by hysteria, and it was really impossible to acquit them all because they were mentally incompetent⁴¹. A lot of doubts crowded around the problem of the relationship between first and second personality. Was it possible, a lot of authors asked themselves, always to consider the first as the normal condition, seeing that in many cases the modified state of the personality in a subject could greatly exceed, in temporal terms, the previous condition?⁴² In spite of these perplexities, it was precisely somnambulism to become the paradigmatic condition to refer the phenomenon of split personality on the medico-legal plane. After all, the issue of the crimes committed in a sleepwalking state was a subject on which law and morals had been practising for a long time⁴³.

The recognition of full unaccountability of the sleepwalker, in reality, had not happened without some conflicts. At the beginning of nineteenth century two prominent authors like François-Emmanuel Fodéré and Johann Cristoph Hoffbauer had expressed several perplexities on this point. So, the first one had excluded the liability of the sleepwalker only in the case in which his/her behavior was the consequence of an illness. In absence of this morbid condition, the sleepwalker's action had to be considered the fruit of the bad principles and the bad ideas that a person cultivated in the state of wakefulness, and for this reason he/she could be not excused from any reproach⁴⁴. For the second one, the sleepwalker's liability did not originate from the integrity of his/her intelligence, but because he/she, even if he/she knew his/her condition, had not taken the necessary steps to prevent harmful events⁴⁵.

³⁹ J. Liégeois, *De la suggestion et somnambulisme dans leurs rapports avec la jurisprudence et la médecine légale*, Paris 1889, pp. 611-613.

⁴⁰ Ivi, p. 439.

⁴¹ Ivi, p. 201.

⁴² G. Gilles de la Tourette, *L'Hypnotisme et les états analogues au point de vue médico-légal*, cit., p. 258.

⁴³ B. Alimena, *I limiti e i modificatori dell'imputabilità*, Torino 1896, III, pp. 122 ff.

⁴⁴ F.E. Fodéré, *Traité de médecine légale et d'hygiène publique*, Paris 1813, I, pp. 256 ff.

⁴⁵ J.C. Hoffbauer, *Médecine légale relative aux aliénés et aux sourds-muet*, Fr. ed., Paris 1827, p. 169. Esquirol and Itard, annotating the French edition of Hoffbauer's book – here quoted – asserted that some thoughts,

During the nineteenth century these positions (influenced without doubt by the legal tradition of the Ancien Régime and linked to a unitary view of the human personality) lost their importance, even if they continued to have some isolated supporters⁴⁶. Like Claude Joseph Tissot, for whom, if the sleepwalker had killed a sworn enemy of his/her, he/she must be punished, but with a lighter sentence⁴⁷. Or Joseph Briand, for whom, liability, at least culpable, could not be excluded a priori⁴⁸.

In any case, the sleepwalker behavior will be, in the medical field, compared more and more to that one of a subject whose actions are directed by automatic impulses to which it was almost impossible to resist. And on the basis of these conclusions the non punishability of the sleepwalker will be generally recognized. Psychiatry often, in the final decades of nineteenth century, will resort to this theory of automatism to explain a number of criminal hardly explicable deeds. Or better still, it will use precisely the sleepwalking paradigm to define several states of torpor of the consciousness that seemed to take on the aspect of a real animated dream.

So, criminal deeds, committed by persons in somnambulistic condition entered into the courtrooms and will become emblematic episodes, repeated countless times in the medical and legal literature of those years. As in the case of the young D., arrested in France for offence against decency, sentenced to three months of detention and saved in extremis by Dr Auguste Motet. In fact, during the judgment of appeal, Motet wrote a psychiatric examination for the defendant aimed at showing his state of unconsciousness at the moment of the deed against decency. Motet had known the young man before, at the Saint-Antoine hospital, where his colleague Ernest Mesnet used to hypnotize him. But the two policemen who arrested him insisted in considering that D., at the moment of his arrest, was committing an act against decency. The public prosecutor himself, developing his conclusions, recognizes that the subject lives sometimes in a condition of absence of consciousness, but does not consider provable that this condition was present when the defendant was seen by the two representatives of the law. And it is at this moment that Motet demands to perform an experiment to show the defendant's liability to be influenced by the Court. So, the judges and the lawyers retire into a secluded room and watch a real show put on by the physician-expert. After having hypnotized D., Motet asks him to repeat the same gestures that he was performing at the moment he was arrested. D., in an evident state of trance, does not hesitate to unbutton his trousers. The defendant is immediately stopped, but it is enough to acquit him of the charge of the crime he was sentenced in the judgment of first instance⁴⁹. Or the case of the young thief (studied by Mesnet), arrested because he was caught stealing some furnishings from a shop close to his home. Despite the flagrancy, he protests his innocence, but his behavior is manifestly incoherent. Even during questioning, the attitude of the thief seems bizarre. For this reason the police sends him to the Hotel-Dieu, directed at that time by Mesnet. The physicians who have him under observation immediately realized that the young man is often seized by attacks of somnambulism, during which he even thinks of suicide. At

during the state of wakefulness, could find their realization in the somnambulistic phase. For this reason the sleepwalker could not be treated indulgently by justice (p. 171).

⁴⁶ About this subject see B. Alimena, *I limiti e i modificatori dell'imputabilità*, cit., p. 124.

⁴⁷ C.J. Tissot, *Le droit pénal*, Paris 1880, I, p. 40.

⁴⁸ J. Briand, *Manuel de médecine légale*, Paris 1821.

⁴⁹ A. Motet, *Accès de somnambulisme spontané et provoqué*, in "Annales d'hygiène et de médecine légale", V (1881), pp. 214-225.

this point, it is Mesnet himself who obliges him to several hypnotic experiments from which he comes to the steadfast belief that in presence of particular conditions the subject loses his own will, becoming a blind means to the service of an idea that dominates him⁵⁰. Or still, the case of the girl of Macerata (in Italy), Teresa G., who in a somnambulistic fit kills her son, but is acquitted because she is considered absolutely lacking in her own volitional capacity at the moment of the crime⁵¹. And this story, with all its human tragedy, will be related in the specialized literature at that time to reassert the total unaccountability of the sleepwalker toward the crimes committed during the somnambulistic condition⁵².

⁵⁰ E. Mesnet, *Étude médico-légale sur le somnambulisme spontané et le somnambulisme provoqué*, Paris, G. Masson, 1887 (published also in “Revue de l’hypnotisme”, XVI, 1887).

⁵¹ G. Laponi, *Di un caso di omicidio in sonnambulismo: studio medico-legale*, Bologna, Gamberini e Parmeggiani, 1883 (before published in “Bollettino delle scienze mediche di Bologna”, X, 1883). Concerning the present-day debate on somnambulism and criminal liability see U. Fornari, *Trattato di psichiatria forense*, cit., pp. 427 ff.

⁵² G. Gilles de la Tourette, *L’Hypnotisme et les états analogues au point de vue médico-legal*, cit., p. 211 and J. Liégeois, *De la suggestion et somnambulisme*, cit., p. 595.