



Pyromania in court: Legal insanity versus culpability in Western Europe and the Netherlands (1800–1950)

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ABSTRACT

This article provides an overview of medico-legal views concerning pathological firesetting in Western Europe and the Netherlands in the period 1800–1950. This article aims to answer the question how changing views on firesetting as either a culpable act or an excusable expression of pathology have influenced the actual court decisions over time. The focus will be on the notion of pyromania and its implications on criminal responsibility and relevant developments concerning pathological firesetting are placed in a judicial context. In particular, the legal effects of changing views on firesetting as either pathological or punishable are discussed and illustrated by relevant Dutch court cases. Results show a pendulum movement that can be linked to changing medico-legal views. In the first half of the nineteenth century pyromania flourished and the pathology of firesetters was emphasized, leading to a focus on treatment instead of punishment. In the second half of that century the diagnosis of pyromania was questioned and focus shifted to the punishability of firesetters. In the first half of the twentieth century the pendulum seemed to stabilize with (partially) insane firesetters oftentimes receiving punishment as well as treatment.

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1. Introduction¹

In modern history, the act of intentional firesetting has almost universally been seen as a serious crime, and as a consequence offenders could be severely punished by law (Imminck, 1861). Although it was commonly recognized that the completely insane could not be punished, it was not uncommon for the death penalty to be imposed even in cases where a firesetter could not be considered completely sane or at least mitigating circumstances could be seen. The criminal case of Johanne Friederike Roßwein by the Saxon Court (Germany) at the beginning of the nineteenth century is illustrative in this respect (Jaspers, 1909; Platner, 1801). Within one year, this fourteen-year-old girl who was sent away by her parents to work as a maid set fire on two occasions because she suffered from unbearable nostalgia and wanted to return home to her parents. Her lawyer claimed that her mental capacities were underdeveloped and her physical and mental development was disturbed. At the time of the first firesetting she had only just turned fourteen and was therefore not criminally responsible due to young age. However, for the second firesetting she was found fully accountable; not only was she older and more developed both mentally as well as physically, according to professor of medicine Ernst Platner, the minor menstrual disturbances that were seen had no proven influence on her mental condition. Subsequently she was given the death penalty (Henke, 1817; Jessen, 1860; Platner, 1801).

Although this harsh attitude towards firesetters continued well into the nineteenth century, a more lenient outlook on offenders arose since the beginning of the 19th century. The rise of modern psychiatry around 1800 with the important work of Pinel (1801) and Esquirol (1838a, 1838b) on monomania increased attention for pathology possibly driving firesetters and other offenders alike. With the realization that the insane should not be punished for their criminal behavior forensic psychiatry emerged (Mooij, 1991; Porter, 1997), first in France and Great Britain (Oosterhuis, 2014). Pyromania was introduced as a separate disorder and focus shifted from the punishability of the act of firesetting to the pathology of the firesetter. However, over time the existence of an insane form of firesetting that could exculpate the firesetter was questioned frequently. Over the years, the act of firesetting time and again highlighted the fundamental issue whether someone is guilty and can thus be sentenced or whether someone lacks criminal responsibility due to a mental disorder and should thus be treated. This characterizes the ongoing ‘turf war’ between legal and behavioral experts on punishability versus pathology (Van Ruller, 1991).

As noted by Andrews (2010a) in his review paper in *History of Psychiatry* to this date the subject of mentally disordered firesetters and their criminal accountability has received little attention from historians. In fact, his two-part article on medico-legal concepts of insane firesetting between 1800 and 1913 is one of few contributions to this theme (Andrews, 2010a, 2010b). Andrews describes pathological firesetting from a medico-legal perspective and focuses on developments in primarily Anglophone contexts. He outlines several dominant beliefs concerning pathological firesetting and associated criminal accountability and shifts herein. Other historical accounts on pathological firesetting and/or judicial responses to this offence can be found, but these are primarily the work of non-historians - in particular psychiatrists - who place their professional interest in this phenomenon in historical context. Exemplary is the work of Mavromatis, a psychiatrist

who dedicates attention to the history of pyromania and notes that different beliefs were held on pyromania and legal insanity in different countries as well as in different historical contexts (Mavromatis, 2000; Mavromatis & Lion, 1977). In a recent article, Sadler (2015) describes the historical concept of monomania, including pyromania, and its legacy for the current DSM-5. Nanayakkara, Oglloff, and Thomas (2015) focus on the mental disorders that have been empirically associated with firesetting, starting with a historical account of pyromania emphasizing the controversies regarding this diagnosis and the views on pathological firesetting.

In Germany, an important historical contribution from the field of psychiatry is made by Barnett (2005, 2015), who elaborates on the concept of pyromania within predominantly German psychiatric history, starting at the beginning of the 19th century and linking it to judicial issues concerning criminal accountability. The controversy surrounding pathological firesetting can be dated back to the year 1793 with the criminal case of Maria Elisabeth Kalinowska - a 17-year-old service girl who was believed to have set fire under influence of extraordinary excitement (Criminaldeputation des Königlich Preußischen Kammergerichts, 1794). This case is an early example of the recognition that criminal accountability could be diminished in firesetters (Barnett, 2015), and was re-evaluated during the 1800s by several German scholars, demonstrating the changing attitudes towards (seemingly) motiveless, pathological firesetting in predominantly female young offenders during the 19th century (Fleming, 1830; Henke, 1817; Jessen, 1860).

Another important historical contribution on medico-legal developments regarding pyromania from the 1800s onwards is made by Geller (1987, 1992). Focused on the US, Geller's work offers a clear insight into important conceptual disputes and changes in medico-legal views on pyromania and pathological firesetting. Notably, Geller and colleagues conclude with a description of pyromania as ‘a barometer of psychiatry's struggle with the individual's responsibility for his action’ and see it as ‘a measure of each generation's struggle with the definition of personal accountability’ (Geller, Erlen, & Pinkus, 1986:223). This article elaborates on this, and discusses the concrete influence of changing beliefs about pathological firesetting in court, predominantly in the Netherlands.

So, the scarce historical accounts on firesetting are primarily provided for by non-historian scholars working within the field of (forensic) mental health. Despite variations in focus, many of them do link the psychiatric developments concerning pathological firesetting, i.e. the existence of pyromania and its meaning, to judicial developments in the field of criminal insanity. However, the concrete influence of theories and beliefs about pyromania and pathological firesetting in court has not received much attention. This article fills this lacuna and focuses on the position of firesetting and firesetters in criminal proceedings in Western Europe and particularly in the Netherlands, from the nineteenth century to the second half of the twentieth century. Primary literature was found in Dutch, English, French and German starting with a broad search (i.e. forensic psychiatry, psychiatry and the court) and narrowing it down using the snowball-method. Case law was more difficult to obtain and was primarily found using newspaper articles and judicial literature. The aim of this article is to answer the question how changing views on firesetting as either a culpable act or an excusable expression of pathology have influenced the actual (judicial) court decision.

In order to answer this question, medico-legal beliefs about firesetting based primarily on the notion of pyromania and its implications on criminal responsibility during the 1800s to 1950 are examined to see whether ideas from the academic realm entered the field

¹ This is an edited version of a part of my dissertation (Dalhuisen, 2016).

of practical criminal justice. In doing so, relevant developments concerning pyromania and pathological firesetting in a broader sense will be reviewed and placed in a judicial context. The focus in this article is on concrete consequences of forensic mental health developments regarding pathological firesetting in court. In particular, this article focusses on the legal effects of changing views on firesetting as a pathological and therefore excusable behavior, or a criminal and therefore punishable act, as illustrated by relevant Dutch case law.

2. Medico-legal views on firesetting in the first half of the nineteenth century

2.1. *Pyromania, a new form of insanity caused by an irresistible impulse*

In early nineteenth-century France with the work of Pinel (1801) on mania without delirium (*manie sans délire*) and the monomania concept introduced by Esquirol (1838a), partial insanity was recognized (Goldstein, 1987). In his description of concrete forms of monomania, in which respectively the intellect, the emotions or the will are disturbed, Esquirol devoted a paragraph to incendiary monomania (*monomanie incendiaire*). Because of a lack of experience with this form of monomania, he borrowed the information from the extensive work of Marc (1833), who was the first to use the term pyromania to describe a propensity to set fire, which he believed was the result of a 'fire perversion' which could become very intense. In England, famous 'mad-doctor' Prichard (1835:404) also believed that lunatics could suffer from a 'destructive propensity to set fire', which he described as a form of 'moral insanity' caused by an irresistible impulse 'to commit injury or do mischief of all kinds'. He relied heavily on the work of Marc when he labelled this propensity to set fire an instinctive madness which he also called pyromania (Prichard, 1842).

Because of his pioneering work, Marc is viewed as the 'father of pyromania' (Lewis & Yarnell, 1951). However, many years earlier in Germany insane incendiarism was recognized and described (Andrews, 2010a). At the end of the eighteenth century, Platner (1797a) was the first to publish an article on firesetting (Jessen, 1860). In this and following writings in the early years of the nineteenth century, he gave case descriptions of persons suffering from, as he called it, a desire for fire (*Feuerlust*). He regarded it as a type of 'amentia occulta', a condition in which the intelligence is unaffected but the conduct and feelings are disordered, similar to the concept of monomania (Platner, 1797–1811). Although in the following years his alleged cases of pyromania were disputed, his work encompassed all the relevant intertwined elements of which pyromania was believed to consist in the early years of this diagnosis: the desire for fire as a form of instinctive monomania, the disturbed pubertal development, and the lack of motive for the act of firesetting (Jessen, 1860).

2.2. *'Fired up' teens, or firesetting caused by irregular development*

An interesting explanation for pathological firesetting in pubescent youth from both sexes was provided by German gynecologist and obstetrician Osiander (1818) who believed their lust for fire to be the result of an extraordinary desire for light caused by changes in blood flow due to puberty. Although Osiander at first described this disturbed blood flow and resulting desire for light as a danger for both sexes, in later work he put emphasis on the female sex, especially referring to the darkening of the blood which was believed to precede menstruation. The puberty theory with an emphasis on young women became highly influential in the first half of the nineteenth century, and was described by many scholars in various countries (Andrews, 2010a).

Henke (1817), a student of Osiander, elaborated on the connection between firesetting and puberty, noting the frequency in which children in their early teens set fires. He stated: 'The desire for fire and inclination to set fire frequently manifest in young people, is often the result of an irregular physical condition, particularly an irregular organic

development during the approach of or at the time of occurrence of puberty' (Henke, 1817:116–117). Henke acknowledged the importance of a good evaluation of the mental state of a firesetter in court and the value of a proper diagnosis of irregular development causing firesetting. Therefore, he gave five rules as a guideline for court physicians in the assessment of such cases. First, the firesetter is around 12–20 years of age. Second, the firesetter shows symptoms of irregular development, such as rapid or unusually delayed growth, glandular swellings, rashes and unusual fatigue. Third, there might be coinciding sexual developments indicating cerebral impairment at the time of the offence, especially the menarche or irregularity of menstruation. Fourth, physiological symptoms are frequently present as indicators of irregular pubertal development, i.e. symptoms of impaired blood circulation and disturbed nerve activity. These symptoms often co-occur with signs of impaired mental function, like sudden fluctuations in the state of mind with melancholy, crying without any cause and sleep disturbances. Finally, criminal responsibility can be lacking even if there are no signs of mental impairment and the juvenile appears to be sane and might even give a clear motive like revenge (Henke, 1817). Henke warned court physicians that even those circumstances are not sufficient evidence to prove that those persons possessed freedom of self-determination and are criminally responsible for their act. According to Henke, the desire for fire (*Feuerlust*) could be a single irresistible impulse dominating the person and arising instantaneously and unexpectedly.

The belief that the impulse to set fire was caused by disturbed somatic and psycho-sexual development, and that arson was therefore primarily an offence committed by adolescents, flourished among most early commentators including Masius, Von Vogel and Meckel (Andrews, 2010a; Donkersloot, 1855a). Meckel (1820) was the first to describe pathological firesetting as a separate disorder called instinctive firesetting (*Brandstiftungstrieb*). In the Netherlands, the Amsterdam physician Thyssen (1826) also described the connection between a desire for firesetting (*brandstichting-zucht*) and impaired sexual development, especially among young girls in whom the menstruation was overdue or irregular. A legitimation for this he sought in the work of Osiander (1818).

2.3. *Firesetting, an unexpected lightning strike?*

In these early years firesetting was believed to imply insanity when there was an irresistible impulse to set fire without any motive, making the lack of motive a distinctive feature of pyromania (Barnett, 2005; Lewis & Yarnell, 1951; Von Vogel, 1825). Masius (1821), a German medical professor, for instance believed that to determine whether an insane urge or desire to set fire existed, in addition to symptoms of irregular development, absolutely no motive like anger, wrath, vengeance, hatred or mood was to be discovered. He acknowledged the fact that those motives could be present in cases of firesetting. However, those motives distinguished more criminal firesetting from pathological firesetting due to an irresistible impulse (Fleming, 1830). Henke's fifth notion about 'Feuerlust', described above, took the belief in lack of motive a step further; even in cases where a person admitted to have acted out of a sane motive such as revenge, it was thought that this act could still be the result of pathological development leading to exculpation from criminal responsibility (Henke, 1817). Thus, this idea of absence of motive was strongly rooted in the early theories about pyromania. Even if understandable, sane motives were present, these could and would easily be discarded, as will be illustrated below in the first case.

2.4. *Criticism on the characteristics of pyromania*

With his observation in 1825 that firesetting is not in every case the result of a state of insanity, German physician Von Vogel opened up the discussion about the existence and appearance of pyromania. In Germany Fleming (1830) was the first to actually oppose existing beliefs about pyromania. He first discussed the assumed frequent

occurrence of firesetting in young, pubertal youth, especially girls, on which the whole puberty theory of pathological firesetting was founded. In addition, he described five other possible explanations for firesetting in youth that in the core come down to this: youths are often reckless, unable to fully understand consequences of their behavior and in addition are sensitive to insult, and want to make themselves heard, yet they are not fully developed in strength and courage. For them fire can be the agent of choice to gain their goals in a secretive, indirect manner. According to Fleming, an insane desire for fire caused by an irregular sexual development was unlikely. Rather, he linked the frequent firesetting in youths to psychological peculiarities of that developmental stage in general and characteristics associated with firesetting in particular. In the rare cases in which sexual development was linked to the setting of fire, there should be – according to Fleming – manifest bodily disturbances and irregularities, a complete lack of motive, and explicit signs of insanity.

Similar criticism can be found in the work of Brefeld and Siebenhaar in the 1840s. Brefeld (1842) believed a causal relationship existed between young age and firesetting; however, this was not the result of a mental disorder due to developmental disturbances, but the lack of maturity. According to Siebenhaar (1844), the fact that children with a disturbed sexual development set fires must be seen as an accidental manifestation of this illness, and not as caused by it. He referred to firesetting as a result of lack of self-esteem, manifesting itself through sensitivity to insults, pride and a desire for freedom, the wish to imitate behavior of others – which can explain the quick spread of firesetting in a certain area – and homesickness. Homesickness arises around this age because many young individuals leave their parental home to become servants and maids and use firesetting as a means to return to the parental home (Siebenhaar, 1844). So, criticism on pyromania focused for an important part on the puberty theory, providing other normal psychological and social explanations for the occurrence of firesetting in youngsters.

The notion that pyromania required the absence of an understandable, sane motive was also under discussion these same years. Casper (1846), a German legal physician, pointed out the importance of viewing motive from the perspective of the offender, and not of the general public. The fact that a serious act is motivated by an apparently insignificant reason does not imply that the perpetrator must therefore be insane. So according to Casper, firesettings are usually psychologically motivated, mainly by homesickness and revenge. In cases where no normal motive is found, the possibility exists and must be acknowledged that it lies hidden. If a diagnosis of pyromania is given too quickly, this hidden motive can go unnoticed. According to Brefeld (1842), this is especially a risk in the case of young firesetters, because this group of offenders acts out of vastly different motives than adults. From an adult perspective, the reasons underlying their act are so heterogeneous and unusual, that adults may not even recognize them. However, that does not mean that these motives are non-existing.

In Germany doubts also arose on pyromania as an irresistible impulse originating from a partly affected mind. Richter (1844) especially addressed this issue after re-evaluating published cases of pyromania and only finding one true case.² Contradictory to the childish, pathological subconscious instinctive drive which was believed to underlie pyromania, the majority of perpetrators showed some awareness of the act, structured planning, consultation, memories of what had happened, actively trying to avoid being caught and denial (Richter, 1844). Casper (1846) also denied the existence of an automatic and instinctive urge to set fire in cases where no apparent motive could be found. He pointed

out that those fires were motivated by self-assertiveness instead of an instinctive, blind, involuntary urge. Siebenhaar (1844) concluded his work on the existence of an insane urge for firesetting in developmental youth by stating that such an instinctive and irresistible craving to set fire could not be proven by experience or theory. This statement by Siebenhaar gains strength taking into account that he was previously a believer of the existence of an insane desire for firesetting in youth (Donkersloot, 1855b; Siebenhaar, 1838).

2.5. Pyromania as a cause of criminal irresponsibility

Academic work on the concept of monomania influenced legislation. Based on inter alia the work of Platner and Henke, around the beginning of the nineteenth century some German provinces ruled that monomania was legal proof of insanity. In France, a similar regulation regarding monomania was implemented in the Code Pénal in 1838, inspired by the work of Pinel, Esquirol, and Georget (Goldstein, 1987; Lewis & Yarnell, 1951). Pyromania, as a kind of monomania, was thus recognized as a possible cause of criminal irresponsibility. In addition, the widespread belief about the existence of an irresistible impulse to set fire especially in developmental youth resulted in an ordinance from the German Minister of Justice in September 1824 to all Prussian courts, requesting that in every case of arson committed by young persons, a medical report be made (Donkersloot, 1855b). With this decree, the puberty theory of Henke and others gained legislative value.

The first Dutch Criminal Code (1809–1810) recognized that criminal responsibility could be lacking under certain circumstances. When a person was completely deprived of his mental faculties, he could not be held criminally responsible. In the subsequent French Code Pénal (1810–1886) this exculpation was also recognized for persons in a state of insanity or forced to act by an irresistible pressure. However, at the beginning of the nineteenth century Dutch textbooks focused on physical rather than mental disorders and paid little attention to the condition of the mind of a person (for example Van der Meersch Bosch, 1814). In addition to criticism of the deplorable state of forensic psychiatry in the Netherlands, Moll – the first professor of forensic medicine – described several mental causes of firesetting in the first volume of his three-volume textbook of forensic medicine for physicians and legal experts, indicating that firesetting at that time was perceived as a possible reason to declare legal insanity (Moll, 1825–1826). Moll described firesetting caused by a distinct form of ‘melancholia’, a form of mental alienation (*verstandsverbijstering*). This form of ‘melancholia’ is characterized by insanity that initially is completely hidden i.e. not showing outer symptoms, but is nevertheless present. In some cases, it can be concealed until a person suddenly acts up and commits arson. According to Moll, this notion is similar to the ‘*amentia occulta*’ described by Platner in which the regular external characteristics of madness are missing (Moll, 1825a). Another mental cause of firesetting described by him was stupidity or ‘*imbecillitas*’ (*onnozelheid*). According to Moll, the simpleton is, among other things, thoughtless, careless, without imagination, timid, fearful, cowardly, full of self-love and complacent. As examples of this mental disorder, two cases of arson were given.

The puberty theory of firesetting also thrived in the Netherlands. Moll (1825a) referred to the morbid conditions of the mind which could arise from irregular bodily development, in both sexes, around the onset of puberty. This often led to a judicial medical examination, in particular with regard to the peculiar irresistible urge to set fire, which he believed to be frequent in persons of that age. It was around this time that Thyssen (1826) explained firesetting in young girls by their irregular development, describing several cases from his personal practice.

In the first half of the nineteenth century, unexplainable firesetting was therefore seen as a possible reason for criminal irresponsibility in Western Europe and the Netherlands. Moreover, this led to many judgments of insanity, especially among young offenders. However, towards

² This was the case of Magdalena Klein, a sixteen-year-old servant girl who seemed obsessed by fire, playing with it and spending much time at the fireplace, who set multiple fires at the place she worked. She suffered from irregular menstruation, and declared that after her period stopped completely, here fire madness started. After treatment, her menstruation restarted and her obsession with fire ceased. She declared to have acted out of an irresistible compulsion and was acquitted because it was assumed that her free will had been restricted by a physical illness (Settegast & Ulrich, 1825).

the end of the first half of the nineteenth century this almost automatic exculpation based on insanity was criticized. One form of criticism focused on the instrumental use of the insanity defense to avoid the typically harsh penalties. Antagonists of the puberty theory of firesetting explained the frequent diagnoses of pyromania by the severe criminal penalties which could be imposed upon firesetters, and not by the actual presence of a disorder. Siebenhaar (1844) for instance stated that out of compassion young persons, who in Germany could be fully punished from the age of fourteen, were declared irresponsible to save them from the executioner or lifelong imprisonment (see also Casper, 1846). In the first Dutch Criminal Code and the following Code Pénal, the act of deliberate arson was also punishable with the death penalty. Casper questioned the apparent humanity of physicians by emphasizing the sanity of arson offenders. Instead of lack of motive he introduced the motive of self-assertiveness, viewing motivation from an offender perspective. The fact that a serious act is motivated by an apparently insignificant reason does not imply that the perpetrator must therefore be insane (Casper, 1846). In the Netherlands, Thyssen (1826) also pointed out the risk that the law can be invalidated, if for every offence an innate urge is assumed to exculpate the perpetrator. However, his cautious remarks did not stop him considering some forms of arson a reason for legal insanity.

2.6. Pyromania and the Dutch courts

In the Netherlands, pyromania was seen as a possible reason for exculpation of criminal responsibility, especially among young female offenders. In this section, two judgments from Dutch courts regarding young female arsonists are discussed in order to illustrate the general view on firesetting and pyromania in the Dutch courts. The first case is the infamous case of Marretje Moonen, a judgement given by the Provincial Court of Justice in Utrecht on 29 July 1840 (Donkersloot, 1855c; Koenraadt, 2007; Vjseelaar & Bolt, 2012).

Case 1: Marretje Moonen

Marretje Moonen was a twenty-year-old maid employed by a farmer and his wife. In the evening of 23 July 1839, Marretje was fired after a disagreement with the woman she worked for. When she returned the 24th to gather her belongings, she went to the kitchen and took a piece of burning peat to set fire to the haystack. She confessed, was arrested and accused of arson, for which the Attorney General demanded the death penalty. She stated that when she returned, suddenly and unexpectedly the thought to set fire occurred to her. She claimed that she did not know why she committed the offence and lacked any motive, like revenge. She also reported the greatest remorse about her act. This was contradicted by witnesses who stated that Marretje had previously threatened that she would take revenge if she were fired. This allegation was strongly denied by her. Marretje was examined by two physicians, including the renowned professor of medicine Schroeder van der Kolk, who noticed that the act she committed was not completely voluntary and free, nor the result of revenge and evil intentions, but showed all the signs of an unnatural and involuntary tendency to set fire, which was accepted as a special kind of madness. The physicians found a 'sickly constitution and irregularities in the natural bodily functions, causing a more or less persistent flow of blood to the brain, as a result of which she has become very limited and impeded in the free use of her mental faculties and therefore has unthinkingly yielded to a pathological urge to commit arson'. Based on this conclusion, the Provincial Court of Utrecht judged that she had committed the act in a state of insanity, and pursuant to Article 64 of the Code Pénal she was discharged from any further prosecution.

That Marretje was exculpated, even though many circumstances like her previous vindictive behavior and mental capacities pleaded against insanity (Donkersloot, 1855c), confirms the dominance of the idea of

insane female arsonists driven to commit their act by an irresistible, pathological urge. Furthermore, this case illustrates the actuality of the belief on monomania in the Netherlands at the time (Vjseelaar & Bolt, 2012).

Another case of a young female who committed arson and was eventually exculpated, is the case of Antje van Harten by the Provincial Court of Justice South Holland, 24 February 1844 (Poelstra, 1996).

Case 2: Antje van Harten

Antje van Harten was a nineteen-year-old girl who was working as a maid. She tried to leave her employment, supposedly because of sexual advances by her master. She made several unsuccessful attempts to leave. The first attempt, on 11 October 1842, was foiled by the police who brought her back two days later after she tried to get work at a brothel, whether this was as a cleaning lady or a prostitute remains unclear. That same night she left once more and eventually ended up at the police station yet again and was brought back a week later. Five days later, 23 October 1842, she was suspected of drowning the two-year-old son of her employer, willingly throwing him head down in a muddy ditch. With this alleged act, she intended to deliver such a fright to his wife that she would die, so Antje could marry her boss. Later on, she withdrew this explanation of her motive. The wife did not die by fright and she left for the third time. Antje found other employment, but after four days she set fire to the hayloft of her new employer on 7 November 1842. She was arrested and interrogated by the police, whereupon she confessed the firesetting and the other crimes she had committed. Antje was tried for murder, robbery at the home of her master against a fellow servant and arson, committed in an occupied building. The trial took three days and twenty-four witnesses were heard, including her boss who admitted that he had kissed her and held her immorally. The prosecution demanded the death penalty by strangulation on a pole, because Antje had committed the act out of a passionate desire and could therefore not be deemed insane. A professor and a physician who were commissioned by the court to examine her, did not find an illness of the mind or the body and stated that she had acted voluntarily and with a healthy mind. However, her defense lawyer argued, in a three-hour speech, that she could not be held responsible because she was driven by passion. He referred to authors like Moll, Thyssen and Esquirol and pointed out similarities with Antje's case. He claimed that her actions were caused by insane passion, which he believed to be a mental illness and appealed to Art. 64 of the Code Pénal. Although the prosecutor and forensic examiners deemed Antje to be fully responsible, the Provincial Court of South-Holland discharged her from any further prosecution for the acts of arson and theft, because she was in a state of madness whilst committing those crimes. For the murder, she was acquitted because of lack of evidence. However, she remained in custody at the request of the Attorney General and was eventually placed in an asylum for the insane for initially one year (this placement could be extended if requested by the Court or deemed necessary to protect society).

Again, this case shows the significance that was attached to the possible insanity of young females who committed arson. This belief was deeply rooted: even if forensic medical examiners could not find evidence of insanity, the Court could still decide otherwise. How the severity of the punishment which could be imposed might have influenced this, cannot be determined.

3. A medico-legal background on firesetting in the second half of the nineteenth century

3.1. Growing doubts, pyromania as a distinct disorder

Early criticism focused on assumed characteristics of pyromania, like the puberty theory and a want of motive, rather than on the existence of

such a distinct disorder as a whole. In the second half of the nineteenth century, however, the existence of pyromania as a distinct disorder which could exculpate the firesetter was more widely questioned (Andrews, 2010b). One group of commentators still regarded pyromania as a separate mental disorder, though did not believe that all acts of pathological firesetting could be qualified as caused by pyromania. Another group of writers dismissed the diagnosis of pyromania completely, and believed that firesetting was caused by a more general derangement or that it consisted of a deliberate illegal and therefore punishable act. Antagonists and agonists of pyromania as a distinct disorder could not definitely win their plea and a third train of thought emerged, being more cautious in settling the question of the existence of pyromania as a distinct disorder. Based on the limited and in some cases even contradictory information about this subject, they refrained from making conclusive statements about whether or not pyromania was a distinct mental disorder (Geller et al., 1986). Although the controversy was never settled, interest gradually shifted away from the desire to classify firesetting as directly caused by pyromania or more general mental illnesses, to the question of the psychopathology behind the act of pathological firesetting (Lewis & Yarnell, 1951).

3.2. *Pyromania as a reasoned act*

German psychiatrist Jessen (1860) was critical about the existence of pyromania, but stated that on the basis of the current state of science it was impossible to deny it. Yet, he pointed at the meagre evidence for this diagnosis and the lack of clarity about what was meant by it exactly. In order to end the ongoing discussion about pyromania, Jessen explicitly chose to focus on healthy and psychologically impaired firesetting, and underlying disorders. Jessen (1860) believed that firesetting committed by sane individuals could be divided into firesetting out of normal, goal-oriented motives without strong emotions, like insurance fraud and covering up other crimes, and firesetting committed under the influence of emotions which limit or halt reason such as vengeance, fear and homesickness. Knowledge of these emotional motives is important to distinguish this sane firesetting from mentally disordered firesetting. Jessen explicitly pointed out the danger of the erroneous automatic deduction of a disorder like (instinctive) monomania, if the particular person did not confess his actual vengeful reasons for the act.

Like sane firesetting, mentally disordered firesetting could also be committed out of normal or abnormal motives. The presence of a normal motive could therefore not rule out a mental disorder. Jessen rejected the notion of instinctive monomania, because it was based solely on the absence of a normal motive and the lack of an unmistakable insanity, without real positive indicators of a pathological condition. Instead he used Fleming's classification of mental retardation and mental confusion to describe and classify types of mentally disordered firesetters. He did however accept the notion of pyromania as a type of reasoned monomania, with the need for fire as an *idée fixe*, but otherwise normal mental abilities. Other writers also recognized the fact that in most instances the act of firesetting appears to be reasoned, instead of instinctive (Baker, 1889). However, this reasoning form of insanity was not considered a distinctive diagnosis, as will be described in the following paragraph.

3.3. *Dismissal of pyromania as a distinct diagnostic category*

Griesinger (1861) was stronger in his criticism on previous writings and beliefs on pyromania. As one of the leading figures of psychiatry's biological movement in the second half of the nineteenth century, he described pyromania as a purely artificial classification. He believed that pathological firesetting is often committed by patients suffering from melancholia with mental anxiety and general disturbances. Firesetting is chosen as a way to express emotions or find relief, because this method of acting out is most readily available and easy to execute. Young people, especially young servant girls, have free access to fire in

their daily duties. Griesinger (1861) discarded the diagnosis of pyromania and instead pleaded for a careful psychological investigation in every case of firesetting behavior to explore where this impulse originated. With his firm statements, Griesinger influenced many European specialists and made them cautious in using the term pyromania (Andrews, 2010b).

In a Dutch textbook on forensic medicine for physicians and legal specialists, the existence of pyromania was also questioned. It was stated that firesetting can be a symptom of a more general mental illness, but that a morbid tendency to set fire could easily be simulated. Pyromania was seen as one of the most often wrongly assumed monomanias, undermining the legitimacy of this diagnosis (Koster, 1877).

At the end of the nineteenth century many prominent writers in Western Europe dismissed the diagnosis of pyromania and perceived firesetting behavior as a result of other forms of insanity.

3.4. *Organic pathology and degeneration*

The second half of the nineteenth century witnessed a growing interest in the biology underlying all kinds of mental diseases and insane behavior. This evolution is reflected in the development of biological explanations for the act of pathological firesetting. An important explanation was sought in epilepsy, a disorder that was believed to cause periods of insanity which could lead to firesetting as was shown in case descriptions (Baker, 1889; Von Krafft-Ebing, 1875). Apart from epilepsy, the neuropsychiatric disorder general paresis (caused by syphilitic infection) was also believed to be associated with firesetting (Baker, 1889).

The influential degeneration doctrine introduced in 1857 by Morel implied the passing on of increasingly pathological traits to subsequent generations (Morel, 1857). One type of mental degeneration associated with firesetting was impulsive madness. Von Krafft-Ebing (1875) characterized this state of mental degeneration by the mechanical, automatic acting of a person, without being fully aware of it. The act could come as a surprise, even to the actor himself and is impulsive, instinctive and somewhat compulsory. Known for his highly influential nosology of mental illnesses Kraepelin (1899) also paid attention to impulsive madness, which he classified as a psychopathic condition or degenerative insanity in which morbid inclinations and impulses developed, not unlike the accepted definitions of instinctive monomania. These pathological drives could emerge in a specific direction, e.g. setting fire which was especially observed in young girls before and during puberty. Kraepelin thus shared the beliefs of Von Krafft-Ebing (1875) that the act of firesetting was associated with impulsive madness and could be caused by degeneration.

3.5. *Pyromania as a cause of criminal irresponsibility*

The growing criticism on the existence of a distinct disorder causing firesetting behavior in the second half of the nineteenth century was reflected in legislative and judicial changes. The German ordinance of September 1824, requiring that the Prussian courts issued a medical report in each case of arson committed by youngsters, was questioned by the scientific deputation of medicine, of which Casper was a member. The decree was originally ordained at the instigation of that same committee. However, changing views on the existence of pyromania as a distinct disorder urged them to withdraw their earlier statements in October 1851. They announced that the existence of an irresistible urge to set fire with physical causes must be rejected as untenable. With this announcement, they explicitly changed their standpoint on pyromania. The Minister of Justice agreed with this announcement and responded with the withdrawal of the decree in November that same year, stating that no longer in every case of arson committed by persons aged twelve to twenty a medical exam was required. This was again left to the discretion of the court.

In the Netherlands, the waning beliefs in the diagnosis of pyromania also influenced the views on criminal responsibility of firesetters. In a twenty-part piece on pyromania, Donkersloot, a Dutch alienist and specialist in forensic medicine, extensively discussed the existence of pyromania and its relevance to criminal responsibility. In his opinion, monomanias did not exist as a cause of criminal inculpability, which should have legal consequences. From a practical point of view, Donkersloot (1855d) believed that punishing a person who committed a crime completely under the influence of an irresistible idea is less reprehensible than exposing society to the dangers such a person could inflict, if left unpunished. Donkersloot (1855e) concluded by stating that pyromania, after all a form of monomania, did not exist, and that cases of firesetting out of alleged pyromania were either deliberate acts or were a symptom of more general madness.

3.6. Pyromania and the Dutch courts

In the second half of the nineteenth century the views on pyromania as a cause of criminal irresponsibility changed remarkably. With the devaluation of the diagnosis of pyromania the almost automatically assumed criminal irresponsibility in cases of arson, especially among young girls, disappeared. Although the possibility of other disorders was recognized, this shift in perception did have consequences for those who committed arson. The trend in this period favored punishment over treatment, even if a person could not be held fully accountable for the act. This was the case in the criminal proceedings of Lambertus Coppelaars by the Provincial Court of Justice North Brabant, 27 April 1854.

Case 3: Lambertus Coppelaars

Lambertus Coppelaars was a 29-year-old man who committed several acts of arson in the winter of 1852 and 1853. The first fire, set to a shed on 5 January 1852 well over seven o'clock in the evening, spread to a nearby house, destroying it completely. He started the second fire on 18 January that same year at around seven o'clock in the evening. This time, Lambertus set fire to a haystack. This fire was discovered in time, and could be extinguished before the nearby house fell victim to the flames. With the third act of arson, Lambertus set fire to a house. Again, this fire started at around seven in the evening. The major of the town suspected Lambertus because he gave contradictory statements. To substantiate this suspicion, he hired Lambertus to secretly investigate what people thought about the fire and whether there were suspicions against possible perpetrators. He would have to report daily to the major. After a while, Lambertus stopped reporting his findings. The mayor subsequently confronted him with his suspicions against him, whereupon he confessed in tears that he had started the fires. The first fire he started out of revenge, because he did not get the wage he was entitled to. The second fire, again, was started out of revenge. This time because the owner, who was responsible for the care for the poor, did not give him what he wanted. The last fire he set out of poverty, to create an opportunity to steal something or earn something by rebuilding the destroyed property.

Although these motives seem plausible, the court felt that the acts of arson were committed without a specific or plausible purpose. The court believed that the reasons given by him, did not justify such a reaction. The fact that the fires all took place in winter combined with the peculiar appearance of the perpetrator increased the suspicion of insanity. Therefore, a medical examination was carried out. The physicians found no distinct mental disorder, but noticed little mental strength and limited willpower. According to them, although Lambertus had acted in a more or less vengeful manner, the reasons of his vengeance were so minor that only in persons with such a limited mental development and complete lack of morals as Lambertus, this could give rise to such acts. They took into account the fact that he had been neglected since

early childhood and did not develop any sense of morals, and found him to lack full criminal responsibility. The Provincial Court of North Brabant nonetheless convicted Lambertus Coppelaars for repeated arson and sentenced him to death. Lambertus appealed to the Supreme Court, but this appeal was dismissed because no memorandum of cassation had been filed. The King pardoned him, converting his death sentence into a workhouse sentence for 20 years.

This case was described by Donkersloot (1855f) as an example of a case in which an urge to set fire was suspected and medical experts believed that diminished responsibility was present, but the firesetter was still sentenced to death. This indicates the shift in paradigm with respect to the legal assessment of firesetters. Punishment gained importance over treatment.

More in general, the historical developments regarding forensic psychiatry influenced medical examiners. At the end of the nineteenth century Dutch physicians examining alleged criminals as commissioned by the court were heavily influenced by biological pathology and the degeneration doctrine, particularly by the writings of Von Krafft-Ebing (1875) and Kraepelin (1899) on impulsive madness, and the work of Dutch professor of psychiatry and criminal-anthropologist Jellgersma (1892) who emphasized the innate nature of crime. If a person deviated to some extent from the normal standards, he or she was considered to be a 'degenerative' and explanations for mental disorders were sought in abnormalities in the brain and nervous system. For instance, in a judicial report from 1896 physicians described the 'pathological cranium' of a subject who underwent a pre-trial forensic assessment, reflecting the then-influential beliefs on degeneration and criminal anthropology (Pouw, 1985).

4. A medico-legal background on firesetting in the first half of the twentieth century

4.1. Pyromania: shifting attention

At the turn of the twentieth century, consensus emerged about pyromania as a symptom of more general insanity, rather than a distinct diagnosis and as a result pyromania was rarely diagnosed (Andrews, 2010b). The search for psychopathy underlying insanity-driven firesetting that started in the second half of the nineteenth century continued, yet with significantly less scientific vigor (Barnett, 2005; Lewis & Yarnell, 1951). In addition, possible motives for firesetting were studied. Here we can speak of a marked change with respect to the first half of the nineteenth century, where many scholars considered pathological firesetting a motiveless act. From the start this idea had been questioned by several writers and in the second half of the nineteenth century the work of Jessen (1860) strengthened the belief that pyromania was a reasoned act. In the twentieth century, this generally accepted belief led to a growing interest in those reasons. Various motives were believed to underlie firesetting behavior, ranging from revenge to homesickness. Around this time, psychoanalytic theory emerged and attention was given to subconscious motives that might be present. What is more, various explanations and (single) causes of firesetting were studied.

4.2. Searching for underlying pathology and overt motives

The position of psychiatry regarding pyromania in the early twentieth century was generally clear. Overall, pyromania was seen as a possible symptom of varied mental conditions (Mönkemöller, 1912; Schmid, 1914). However, the question remained under which psychological conditions this symptom would occur. This led to a growing interest in underlying pathology and motives. German psychiatrist Mönkemöller (1912) criticized earlier 'unempirical' beliefs on pyromania and used a large sample of 240 firesetters including those that were seen as mentally 'normal' to gain insight in the psychology underlying

firesetting. He found little evidence for inner impulses or urges driving the firesetter. In most of the cases a plausible motive (mostly revenge) had been given, and although these motives were often very meagre and depended heavily on the pathological state, they produced effect without the existence of an inner, more automatic drive. Mönkemöller (1912) did not find one particular mental illness which could be considered typical for firesetting, the most frequent diagnoses were: imbecility/idiocy, dementia praecox, dementia paranoides, paranoia chronica, epilepsy, chronic alcoholism, hysteria and melancholia.

Another German scholar who studied pathology and motives in firesetters was Többen (1917), who studied 100 cases of firesetters. He found various motives with revenge and hatred and greed and distress being the most prevalent. The most frequent diagnosis Többen found was psychopathic inferiority. So offenders who were previously regarded as motiveless and pyromaniacs, were grouped under the concept of psychopathy instead of pyromania and their oftentimes understandable motives were studied (Barnett, 2005).

4.3. Single causes of firesetting

In the first half of the twentieth century literature mainly focused on single causes of pathological firesetting, describing homogeneous diagnostic groups of offenders like schizophrenics and alcoholics, or firesetting stemming from one motive like homesickness or suicide (Barnett, 2005).

The role of alcohol in cases of firesetting was considered by many writers (Gruhle & Wetzel, 1914; Schmid, 1914; Van Mesdag, 1931). Schmid (1914) tried to explain this association psychoanalytically, by referring to alcohol as a relaxer of the libido. According to him, alcohol is not the primary cause of firesetting, but can act as a trigger increasing the probability that the behavior occurs. Többen (1934) wrote an article on the relationship between alcohol and criminal firesetting distinguishing various forms of association with alcohol directly or indirectly influencing firesetting behavior.

Another influential single-factor theory in the first half of the twentieth century was the belief of homesickness as an important cause of firesetting behavior (Kraepelin, 1921). The belief that homesickness or nostalgia was associated with firesetting was not new. Already in the nineteenth century, homesickness was believed to underlie the occurrence of firesetting in puberty (Casper, 1846; Jessen, 1860; Siebenhaar, 1844). But in the twentieth century, theories regarding homesickness became more generally accepted. In his well-received dissertation, Jaspers (1909), the well-known German psychiatrist and philosopher, studied the association between homesickness and certain types of crime, namely murder and arson. The work of Jaspers influenced the belief in homesickness as a source of criminality, especially firesetting by young girls who were sent away to serve.

4.4. Pyromania and covert motives

The work of scholars like Mönkemöller and Többen not only specified underlying psychopathology but also emphasized motives for firesetting. This interest in motives revealed a problem which generated much attention. The question why firesetting was chosen as a way of acting out and discharging the psyche was not yet answered (Schmid, 1914). Moreover, a discrepancy between the mostly insignificant motive and the immense consequences of the act was frequently noted, in normal as well as abnormal firesetters, and the realization arose that there might be other, more hidden motives to account for that discrepancy (Mönkemöller, 1912; Stekel, 1922). For instance, Van Mesdag, a Dutch physician specialized in treating mentally ill prisoners, studied the motives of 106 firesetters and stated that conscious motives such as greed explain the act in only a small proportion of firesetters. Other overt motives like revenge provided no satisfactory explanation and underlying motives were assumed, such as primary drives and passions present in the unconscious and stemming from the lower brain functions (Van Mesdag, 1931). Van Mesdag (1931) explicitly

mentioned the work of Freud as being essential for a real understanding of firesetting behavior.

Freud's psychoanalytic theory, with its focus on the unconscious, was influential in the search for underlying, covert motives. Freud (1930) viewed firesetting as originating from unconscious, repressed sexual drives, linking those historically to the acquisition of power over fire by early man. In the view of Freud fire and flames represented a sexual desire and urinating on it represented a sexual act with another man. This association between fire and urination became influential in psychoanalytic circles (Storfer, 1930), but was also criticized (Erlenmeyer, 1932; Schaeffer, 1930). Followers of psychoanalytic theory, such as Schmid and Stekel, also studied firesetting looking for other subconscious explanations.

Schmid (1914), a Swiss physician, studied 263 firesetters making a distinction between conscious motives (i.e. revenge, mischief, anger, self-assertion and homesickness) and subconscious motives. In over half of the cases no plausible motive could be found or an implausible motive was given. According to Schmid (1914), firesetters gave sham justifications because of their need to explain their unexplainable actions to themselves and others. He believed that subconscious motives drove the firesetter and he began to search for these hidden motives. Schmid (1914) found the following main covert reasons: lust for fire and sexual drive (explaining the link with puberty and pointing at the co-occurrence of sexual delinquency). According to Schmid (1914) sexual drives were an important subconscious reason to set fire in many cases. He sought an explanation for this in psychoanalytic theory. Based on his observation that there had been a psychologically significant change in their lives, he described the setting of fire as a sublimation attempt, a way to release the ever-present accumulated sexual tensions called libido stasis, in line with the energetic libido theory of Jung. Fire was chosen because of the special meaning it holds to our subconscious. Ancient cultures already believed that fire not only had a magical but also a sexual meaning, and our subconscious might still see fire as a symbol of sexual gratification (Schmid, 1914).

Stekel (1922), an Austrian physician and psychoanalyst, also pointed out that firesetters act out of subconscious motives and do not know why they set fire, and are therefore susceptible to suggested motives by legal practitioners or medical examiners. In his opinion, pyromania still existed and was present in cases where no conscious motive could be found and the act of firesetting was committed for the joy of fire or some inexplicable impulse. The absence of a conscious motive meant that other, covert motives had to be present. According to Stekel (1922), unreciprocated love was the most important subconscious motive for setting fire. The firesetting by young servants could be explained hereby, as it is in the core driven by revenge directed at the own family that abandoned them. In addition, Stekel (1908, 1922) believed that firesetting was a symbolic act to express a repressed sexual desire, which could be deducted from dreams about firesetting prior to the actual fire and masturbation as a way to relieve unaccepted, paraphilic sexual desires. So, from a psychoanalytical point of view an important cause of firesetting was believed to be paraphilic sexual behavior and the act of firesetting seen as acting out a subconscious (homo) sexual desire (Schmid, 1914; Stekel, 1908, 1922).

With the search for overt motives by scholars like Mönkemöller and Többen and the subsequent belief that firesetting stemmed from more subconscious, covert motives, the ideas about motive in firesetting evolved from no motive at all during the nineteenth century, via overt motives explaining firesetting behavior to hidden, subconscious motives. So, a development can be seen from the idea of motiveless firesetting to the acceptance of a motive, in many cases stemming from the subconscious.

4.5. Pyromania as a cause of criminal irresponsibility

In contrast with the nineteenth century, in the twentieth century in professional literature far less attention was devoted to the subject of

pyromania as a distinct diagnosis (Lewis & Yarnell, 1951). This might be explained by the growing belief that pyromania was not a mental disorder in itself. Furthermore, the belief that firesetters were driven by an irresistible impulse and could therefore be exculpated declined.

In the Netherlands, the New Direction (*Nieuwe Richting*) in criminal law and criminology which originated in the late nineteenth century had an important influence on views and beliefs about psychopathology and crime in the first half of the twentieth century (De Ridder, 1991). Forensic psychiatry flourished based on this new focus on the protection of society from dangerous offenders, as psychiatrists were thought to be able to assess and offer treatment to insane criminals. Beliefs about degeneration and psychopaths also influenced forensic psychiatry, with the 1928 Psychopathy Act as a clear example hereof. Forensic psychiatrists were deemed necessary to select and possibly treat those dangerous individuals to minimize the risk to society (Oosterhuis, 2014). These ideas were laid down in legal and psychiatric handbooks. These handbooks also addressed the crime of arson, describing it as a possible cause of criminal irresponsibility due to mental disorder. However, unlike in earlier days, pyromania was no longer seen as an illness in itself. Van der Hoeven (1913), a pioneer in Dutch forensic psychiatry, explicitly stated in his legal handbook that contemporary beliefs forbade acknowledging this phenomenon as a disease entity, rather it should be considered as a symptom of disease. According to Van der Hoeven, the impulse to set fire may originate from an obsession or from an excessive emotion like fear, anger or fright. Furthermore, it could be the result of a sexual desire which is acted out or may stem from delusions and hallucinations. In later work, Van der Hoeven (1928) pointed out that firesetting can be seen in the early stages of schizophrenia. According to him, patients suffering from this disorder are frequently unjustly struck by the punishing hand of justice, often for firesetting.

So, in cases of firesetting, the perpetrators were no longer automatically seen as insane merely because of setting fire. However, unlike the emphasis on punishment in the second half of the nineteenth century, in the twentieth century the general view supported treatment and it was recognized that firesetting behavior may stem from underlying pathology. Van Mesdag (1931) noted that in every case of firesetting committed by pubescent youths, women and man (without apparent financial motive) a psychiatrist must be consulted to give an opinion on the criminal accountability. He stated: 'one finds among firesetters many abnormal individuals who require special assessment and treatment' (Van Mesdag, 1931:33). From these statements, it can be deduced that in theory, treatment had again gained the upper hand over punishment in the first half of the twentieth century and firesetting resulting from pathology could diminish to some extent the criminal responsibility of the perpetrator. However, in practice, long prison sentences for cases of firesetting without acknowledging underlying pathology were not uncommon (Van der Hoeven, 1928).

4.6. Pyromania and the Dutch courts

Although the New Direction and its advocates like Van der Hoeven emphasized the assessment and proper treatment of insane criminals, the underlying rationale was the protection of society from dangerous culprits. In practice, this protection could also be achieved by merely detaining firesetters for a certain period of time so they were physically prevented from relapsing without giving attention to possible underlying pathology. As discussed earlier, Van der Hoeven (1928) stated that mentally disordered criminals did not always receive the forensic attention they needed. This is demonstrated by the following case of the District Court of Amsterdam, 23 March 1905:

Case 4: Johannes van den Hengel

On the night of 10 January to 11 January 1905, Johannes van den Hengel, a 24-year-old laborer twice set fire to a house. He did not own the property but had lived there since November 1904 with his wife

and children. The first fire he set in the attic, while his family had already gone to bed. Johannes claimed that at around half past one in the morning his wife discovered the fire and he started to extinguish it. When he could not succeed, he asked the help of neighbors. After the fire was extinguished he sent his family to his father and returned to the house to gather some belongings. At that time, he started the second fire, this time in the living room, destroying the curtains and furniture. Suspiciously, he had just concluded an insurance policy on his belongings. The next day after an unsuccessful search for the address of the fire insurance agent, the accused was arrested at the home of his in-laws. After his arrest, he was interrogated. During several interrogations, he kept denying and raised the possibility that one of his neighbors might have done it. However, he made contradictory statements. Furthermore, witnesses described Johannes' behavior before and after the fires as odd and agitated. A witness, who went to see him the night before the fire, saw Johannes lying on the floor with his hand on his head due to a severe headache. At that time, he did not respond to the visitor who therefore returned home again. Also, several witnesses described that during the fire he did not help to extinguish the fire. They say he just stood there. Furthermore, he was fully dressed and did not look like he had hastily put on his clothes. In his childhood, when Johannes had not yet reached the age of sixteen, he was also suspected of multiple firesettings. His defense counsel stated that these fires could not be imputed to him. The doctrine of pyromania had admittedly been abandoned, but not the fact that digressions in puberty can occur ('Wel is de leer der pyromanie prijsgegeven, maar niet dat in de puberteitsjaren afdwalingen kunnen voorkomen'). However, this defense did not make a difference for Johannes. In addition to the two counts of arson, he was also convicted for theft and in an extensively motivated verdict he was sentenced to a five years' imprisonment. This prison term was in accordance with the sentence demanded by the prosecution office.

Although a financial motive to obtain insurance money appeared to be present, several aspects of this case seem odd and might give the impression something more was going on. For instance, Johannes exhibited odd behavior before, during and after the fires. Also, the previous suspicions of firesetting when Johannes was younger might raise the question whether some underlying pathology was present. Therefore, it is remarkable that no forensic pre-trial mental health assessment was conducted. This is consistent with the dismissal of pyromania as a distinct disorder, which is reflected in the comments of the defense lawyer. But it also reflects diminished attention for mental disorders underlying crime in general and arson in particular.

In a different, more recent case stemming from 1930, the awareness of proper assessment and treatment of the insane stemming from the New Direction in Dutch criminal law is seen. This case was described in a Dutch monthly magazine for trial and rehabilitation (*Maandblad voor berechting en reclasseering van volwassenen en kinderen*), and is specifically mentioned as a horrid example to emphasize the importance of pre-trial psychiatric assessment with the revealing title: utter insane almost punished with eight years (*Over psychiatrisch-psychologisch onderzoek, 1930*).

Case 5: 31-year-old man

A man aged 31, married and without previous contact with criminal law committed arson for financial gain after consultations with another person. Almost immediately he was caught and was seen by all possible authorities (police, Mayor, examining judge, prosecutor, and court). However, none of these institutions noted anything that could suggest his culpability was diminished. On the contrary, he was described as a vicious person with possible previous arsons and the prosecution demanded eight years' imprisonment. Only because his defense lawyer requested psychiatric assessment in his plea, he was assessed and found completely insane. The psychiatrist found grave imbecility and advised admission to a madhouse, with the court ruling accordingly.

So, awareness for possible pathology in arson cases grew with the New Direction and attention for pathology in offenders in general. This is also illustrated by the following case from 1950 in which a pre-trial forensic mental health assessment was conducted, even though the offender was an adult male and, again, financial motives played a role:

Case 6: 23-year-old salesman

On the early evening of 27 February 1950, a young man set fire to his shop, a business in blankets, mattresses and alike. He struggled to manage financially and wanted to sell his business, but his father sabotaged him. Eventually, he got so fed up with everything that he started a fire to get rid of it all. The salesman was pre-trial forensically assessed on an inpatient basis by Pieter Baan, a forensic psychiatrist specializing in the behavior of criminals, who observed the man in his newly established Psychiatric Observation Clinic in Utrecht. The report mentioned his hereditary degenerative brain defects and Baan concluded that the man was retarded to slightly moronic with strong character disturbances and an epileptic component. He found his criminal responsibility to be severely diminished, due to his disorder and his overwrought state at the time of the offence. He advised the Court to impose a conditional hospital order or a conditional sentence to ensure probation supervision. The Court took the report into account and sentenced the young salesman to 12 months' imprisonment of which 7 months conditional, with probation. Nowhere near the maximum sentence of 15 years.

5. Discussion

Over the years, the medico-legal views on firesetting and pyromania have changed and stayed controversial (Andrews, 2010a, 2010b; Barnett, 2005, 2015; Geller et al., 1986; Mavromatis, 2000; Nanayakkara et al., 2015). These changes cannot be viewed without taking the geographical and historical context into account (Mavromatis, 2000). This article aimed to analyze how changing views on pathological firesetting in Continental Europe between 1800 and 1950 had an influence on legal practice in the Netherlands in particular. Around the turn of the nineteenth century the diagnosis of pyromania was introduced and received a lot of academic attention, especially in Germany and France. Pyromania was seen as an irresistible, motiveless urge to set fire and generally linked to irregular pubertal development. Although these characteristics were disputed, overall there was consensus about pyromania as a distinct disorder that could influence criminal accountability. This was reflected in legal practice; firesetters – especially if they were young – were almost always psychiatrically assessed and criminal accountability was found to be absent or diminished in many cases. Thus, in the first half of the nineteenth century, the balance was in favor of exculpation instead of punishment. In the following period, however, the balance tilted to the other side.

In the second half of the nineteenth century, the discussion about the existence of pyromania as a distinct disorder continued. Some commentators still viewed pyromania as a distinct disorder but also recognized the possibility of firesetting not stemming from pyromania or mental disorder. Others believed pyromania was a symptom of other forms of insanity rather than a separate disorder. This discussion could not be settled and attention gradually shifted to the psychopathology underlying pathological firesetting. Around this time biological and hereditary (degeneration) explanations for pathological firesetting were adopted. These beliefs contributed to general treatment pessimism. In combination with the doubts about pyromania as a distinct disorder this resulted in an emphasis on a punitive response to firesetting. In legal practice, perpetrators of arson less frequently underwent pre-trial assessment than in the first half of the nineteenth century, even in cases where indications of mental disorders were present. High punishments could be given even to offenders who, in hindsight, might have been legally insane.

In the first half of the twentieth century, pyromania was completely disregarded as a distinct diagnosis. Instead, pathological firesetting was believed to be a symptom of other mental disorders. Possible social and psychological explanations for this behavior were studied and motives for insane firesetting received attention. Psychoanalytic theory, the new social sciences and a growing individualism influenced this shift in focus. Acts were often thought to be disproportionate to the motive, leading to a search for more subconscious motives. This focus on overt and covert motive instigated a search for the causes of firesetting. Within psychoanalytic theory, paraphilic sexual behavior received much attention as a possible cause of firesetting. The role of alcohol, homesickness and suicide were also studied, and more in general a growing awareness of social context influencing firesetting behavior could be discerned. In the Netherlands, forensic psychiatry flourished and under the influence of the New Direction in criminal law, emphasis was again placed on the underlying pathology of offenders in arson cases. However, the almost automatic insanity of firesetters in the first half of the nineteenth century no longer appeared, and legal practice did not always align with the ideas of the New Direction, although awareness of possible mental disorders in cases of arson was present.

Some general developments concerning pyromania, firesetting and criminal responsibility can be described. First, the belief regarding pyromania changed over time. Pyromania was initially seen as a distinct disorder that could exculpate the firesetter. However, this belief gradually changed and eventually pyromania was no longer seen as a distinct diagnosis, but firesetting came to be seen as criminal behavior or stemming from other pathology. Second, beliefs regarding motive for setting fire changed remarkably over time. Initially, pyromania was believed to be a motiveless act. Over time the notion of motives underlying this behavior was accepted, with an initial focus on explicit motives like homesickness and revenge and finally attention for subconscious motives for setting fires. Third, the focus on development of the element of sexuality in the first half of the nineteenth century deserves attention. It is remarkable that pyromania was attributed to irregular pubertal development. The social context of young girls who left their home to serve and set fire out of revenge or homesickness can be seen as an important contributor to this belief that firesetting stems from irregular pubertal development, especially among girls. During the first half of the twentieth century the idea of a sexual root of pyromania reappeared in a new form within the context of psychoanalysis.

6. Conclusion

In conclusion, a pendulum movement is visible with respect to the culpability versus excusability of firesetters in legal practice that can be linked to changing views in the field of forensic mental health. Where in the first half of the nineteenth century the pathology of firesetters was emphasized, focus shifted to the punishability of firesetters in the second half of that century. In the first half of the twentieth century the pendulum seemed to stabilize, and although again attention was paid to the treatment of insane firesetters as illustrated by the introduction of a special treatment measure, the dominant rationale behind this was the protection of society. So, in this time period firesetters were oftentimes punished as well as treated. More recent developments show these ongoing shifts in emphasis on either treatment or punishment. In the second half of the twentieth century and especially from the 1980s onwards, the Dutch penal climate emphasized punishment. Yet, at the end of the twentieth century many firesetters were hospitalized as well. However, not for the main purpose of treating them but predominantly to keep society safe.

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