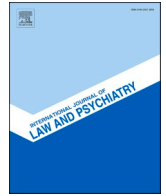


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Research Paper

Insanity defense and social dangerousness: A comparative study between China and Italy[☆]Huan Wan^a, Giovanna Parmigiani^{b,*}, Stefano Ferracuti^c, Ping Yan^a^a Criminal Justice School, Zhongnan University of Economics and Law, 430073 Wuhan, China^b Department of Law, University of Modena and Reggio Emilia, 41121 Modena, Italy^c Department of Human Neurosciences, Sapienza University of Rome, 00185 Rome, Italy

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ABSTRACT

The determination of criminal responsibility and the evaluation of social dangerousness in the criminal proceedings of offenders with mental disorders are crucial and complex issues. Forensic psychiatric evaluation practices and regulations vary significantly across jurisdictions, offering comparative analysis opportunities. This paper compares the forensic psychiatric evaluation processes in China and Italy, emphatically examining and analyzing the assessment of criminal responsibility and social dangerousness. The shared language, the potential for harmonizing forensic psychiatry practices, and the pursuit of unified and transparent standards and practices underscore the importance of conducting cross-national comparative research.

1. Introduction

The criminal justice policy for offenders with mental disorders tends to reflect the level of legal development in a nation (Chen & Cheng, 2012). Forensic psychiatric evaluations, particularly when assessing criminal responsibility and social dangerousness, constitute one of the most critical and intricate aspects of criminal justice. Several factors concur to hinder the objectivity and reliability of forensic experts' evaluations, among which the most acknowledged are: the lack of standardized procedures and methodologies to perform such assessments (Beckham et al., 1989), the influence of cognitive biases (Beckham et al., 1989; Dattilio et al., 2006; Homant & Kennedy, 1986; Murrie et al., 2013), money, prestige and the level of media attention linked to the case (Commons et al., 2004), and the possibility of faking good or faking bad by the defendant (Arin & Mengchuay, 2022).

Significant disparities exist in the regulations and practices of forensic psychiatric evaluations across different jurisdictions (Salize et al., 2005; Simon & Ahn-Redding, 2006), which give the possibility of comparing forensic practices among different nations.

To date, several studies have used a transnational approach to focus on significant differences and commonalities of forensic patients and forensic psychiatry systems across countries (Balcioglu et al., 2024; Castelletti et al., 2023; de Girolamo et al., 2023; Edworthy et al., 2016;

Gröning & Dimitrova, 2023; Li et al., 2016; Oberndorfer et al., 2023; Senn et al., 2020). Their main focus was on sociodemographic features and clinical variables of forensic patients affected by schizophrenia spectrum disorders (Castelletti et al., 2023; de Girolamo et al., 2023) and their health and social needs (Oberndorfer et al., 2023); on the characteristics of homicide perpetrators with psychotic illnesses (Balcioglu et al., 2024) and of long-stay forensic patients (Senn et al., 2020). A comparison of forensic psychiatric systems have been offered between China and United States (Li et al., 2016), Bulgaria and Norway (Gröning & Dimitrova, 2023) and United Kingdom, Germany and the Netherlands (Edworthy et al., 2016) in order to promote the standardization of practices.

However, no study has compared the assessments of criminal responsibility and social dangerousness between China and Italy, with an analysis of their legal provisions and judicial practices. China and Italy are both civil law countries where forensic psychiatric evaluations are introduced as evidence in judicial proceedings (Fornari, 2018; Song, 2017). In both countries, legal insanity is a prerequisite for exculpating criminal responsibility, and the criteria for its assessment rely on the evaluations of both the cognitive and volitional component. Moreover, in both, there are three level of criminal responsibility and the ultimate decision regarding legal insanity is made by a judge. Although the abovementioned similarities, distinct differences in their cultural

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backgrounds, socio-economic conditions, legal systems, and healthcare structures—factors that shape forensic psychiatric evaluations and the handling of offenders with mental disorders—makes this comparison particularly interesting. In China, the emphasis on social security and public order reflects its collectivist culture, while Italy tends to focus more on individual rights and social inclusion. China's healthcare system is characterized by rapid development, but there are still some regional disparities in resource distribution, along with growing public awareness of mental health issues. In contrast, Italy benefits from a well-established social welfare system, which influences the differing approaches to evaluating and rehabilitating mentally disordered offenders. In China, the law assigns the responsibility for the care and treatment of individuals with mental disorders to their family members or guardians, reflecting traditional family-based mutual support. In contrast, Italy's public healthcare and social services systems take on most of this responsibility, with families playing a smaller role and relying more on community and professional support (Hu et al., 2011). Moreover, variations in the judicial systems, particularly in terms of procedural justice, judicial discretion, and the determination of criminal responsibility, present unique considerations for forensic psychiatric assessments in both countries. We deem that this comparative approach, focused in the assessment of criminal responsibility and social dangerousness, will offer valuable insights for clinical practice and research.

By examining the forensic psychiatric evaluation processes and intervention strategies in each country, it is possible to improve the assessment and treatment of offenders with mental disorders. This comparison also broadens the scope of evaluation methods, encouraging international collaboration and the development of standardized assessment protocols. Additionally, it serves as a useful reference for enhancing legal frameworks and advancing mental health services, forensic psychiatric evaluations, and judicial practices in both countries, while fostering global cooperation in these areas.

2. History and legal framework

2.1. China

In China, the formal development of the forensic psychiatric evaluation system began in the 1980s by enacting foundational laws and regulations.¹ Subsequently, this period marked the beginning of a structured legal approach to forensic psychiatric evaluations, supported by national legislation and the development of relevant procedural and administrative regulations. The legislative framework for forensic psychiatric evaluations in China is underpinned by comprehensive legal and procedural guidelines, primarily governed by two cornerstone pieces of legislation: the “Criminal Law of the People's Republic of China”, revised in 2020, and the “Criminal Procedure Law of the People's Republic of China”, revised in 2018 (Cui & Wei, 2017). Additional provisions governing forensic psychiatric evaluations are distributed among a range of legal documents.² These primarily consist of the announcement by the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of Justice, and the Ministry of Health concerning the “Interim Provisions on Forensic Psychiatric Assessment of Mental Disorders” published in 1989, along with the “Mental Health Law of the People's Republic of China” which was revised in 2018.

This legislative framework is established by the National People's

¹ Including the Criminal Law of the People's Republic of China (1979), the Criminal Procedure Law of the People's Republic of China (1979), the Provisional Regulations on Civil Procedure (1982), the General Principles of the Civil Law of the People's Republic of China (1986), and the Regulations on Public Security Administration Penalties (1986).

² The appendix lists other additional provisions governing forensic psychiatric evaluations.

Congress, its Standing Committee, and various national and local judicial authorities, including the Supreme People's Court and the Ministry of Public Security. These authorities have set forth the principles for determining the criminal responsibility and the social dangerousness of individuals with mental disorders. Consequently, these laws provide the foundational legal basis for conducting forensic psychiatric evaluations, setting the standards for defining the criteria for assessing criminal responsibility, guiding the initiation and termination of involuntary medical treatment, and incorporating assessments of social dangerousness within this context. Furthermore, they also outline the role of expert evaluations in the criminal justice process, detailing the procedures for conducting forensic psychiatric evaluations, the preparation of expert opinions, and the rights of suspects and victims regarding these evaluations. Moreover, China has implemented competency to stand trial assessments, which have been standardized in judicial proceedings. In 2018, the Ministry of Justice of the People's Republic of China issued the Guidelines for Assessment of Competence to Stand Trial in the Mental Disordered (SF/Z JD0104005—2018), which clearly defines competency to stand trial and establishes assessment criteria. According to these guidelines, the focus of the assessment is on whether the mental disorder affects the suspect's or defendant's ability to understand the legal proceedings, recognize their rights and obligations, and reasonably cooperate with their defense attorney.³ The assessment involves both medical and legal considerations⁴ and classifies competency to stand trial into two levels: full competence and incompetence. Reflecting on the broader historical context, this rich legal tapestry is informed by China's long tradition of acknowledging mental health issues within its legal system, dating back over two thousand years. For instance, this historical awareness is exemplified by anecdotes such as Sun Bin's feigned mental illness to avoid the death penalty, showcasing early recognition of mental disorders in legal judgments in China (Zheng & Xie, 2006).

In China, forensic psychiatric appraisers must be licensed psychiatrists with a minimum professional rank of associate professor, adhering to strict regulations and qualifications outlined by vital legal documents (Chen et al., 2011). Registration and qualification at the provincial level are mandatory to prevent unauthorized practice (Chen et al., 2011). Oversight is managed by specific authorities like the Public Legal Service Management Bureau of the Ministry of Justice and the National Association of Judicial Appraisers (Chen et al., 2011). Judicial appraisal institutions, as mandated by the “General Rules for Judicial Appraisal Procedures (2016)”,⁵ assign evaluations, with the main appraisal settings being psychiatric hospitals, universities, and research institutes (Chen & Hu, 2015), ensuring a professional approach to forensic psychiatric evaluations. The classification or diagnostic standards for mental disorders referenced in current forensic practices in China are the “Chinese Classification of Mental Disorders, 3rd Edition” (CCMD-3), published by the Ministry of Health of China in 2001, and the “International Classification of Diseases and Related Health Problems, 10th

³ Article 3.2, Guidelines for assessment of competence to stand trial in the mental disordered (SF/Z JD0104005–2018). The original Chinese phrasing is: “受审能力是指犯罪嫌疑人/被告人在刑事诉讼活动中对自己面临的诉讼及其可能带来的后果合理恰当的理解能力、对诉讼程序及自我权利的认识能力、以及与辩护人配合进行合理辩护能力的有机结合。” (translated by Huan Wan)

⁴ Article 4.2, Guidelines for assessment of competence to stand trial in the mental disordered (SF/Z JD0104005–2018). The original Chinese phrasing is: “受审能力的评定有两个要件:医学要件和法学要件。医学要件为存在某种精神障碍及严重程度;法学要件为该精神障碍是否影响行为人对自身面临的刑事诉讼的性质及其可能后果、自己在刑事诉讼的权力和义务的辨认能力,以及与辩护人有效配合进行合理辩护的能力。” (translated by Huan Wan)

⁵ Article 18, Chapter III, General Rules for Judicial Appraisal Procedures (2016 Revision), “After accepting an appraisal commission, a judicial appraisal institution shall designate a judicial appraiser with the qualifications to handle the appraisal matters of the institution to conduct the appraisal”. (translated by Huan Wan)

Edition” (ICD-10) issued by the World Health Organization in 1992.⁶

Forensic psychiatric appraisers have earned a legally recognized status in China due to their professional skills. The rarity of their specialized knowledge and the intensive, rigorous training needed to achieve specific professional credentials bestow upon these experts a form of authoritative power based on expertise (Li, 2019). In judicial proceedings, while judges have the final authority over the admissibility of evidence, they often have limited leeway regarding forensic expert opinions, frequently adopting them outright (Zhang et al., 2020). The judicial system’s accountability mechanisms tend to prevent judges from utilizing discretion (Chen et al., 2011). Thus, the authority of forensic psychiatric evaluations often overrides that of judicial authority. Nonetheless, the authority of forensic psychiatric evaluations in China is not without its limitations. The challenges addressed by forensic psychiatric evaluations include subjective interpretations of objective facts (Li, 2019). The conclusions drawn from forensic psychiatric evaluations often need more strict scientific accuracy. Typically, forensic psychiatric appraisers refrain from employing specialized physical methods in their assessments, resulting in a heavy reliance on their experience (Li, 2019). Moreover, forensic psychiatric evaluations are subject to medical and legal standards (Li, 2022), the latter of which may fall outside the psychiatric experts’ specialized knowledge (Li, 2019). In the realm of law, these experts could not exhibit high professionalism (Li, 2019).

2.2. Italy

A deep influence on Italian forensic psychiatry came from positivistic theories of the 19th century, which sustained that criminal behavior had a genetic base, rather than been mediated by free will (Gibson, 2014). Cesare Lombroso, who was the father of anthropological criminology, in its most influential work, “L’uomo delinquente” (Lombroso, 1878), sustained that offender presented typical biological and genetic traits, that made them predisposed to committing crimes. This theory was in open disagreement with the theories of classical social philosophy, sustained by the work of Cesare Beccaria, underlining the role of free will on human behavior (Beccaria, 2003; Gibson, 2014).

The Italian Penal Code⁷, named after the then Minister of Justice Alfredo Rocco, tried to find a balance between the classical and positivistic schools by conceiving the so-called “dual track”, according to which there were two possible scenarios: a) guilty defendants judged capable of free will (accountable) would undergo the penalty track (prison); b) guilty defendants judged to be incapable of free will (not accountable) and socially dangerous would be sent to psychiatric settings (i.e. asylums) (Pelissero, 2008).

In Italy every kind of expert can be appointed by the judge in a trial (not only the behavioral ones), with no need for certification or specific training or experience in the forensic field. In fact, differently from other European countries, such as Germany and France, Italy has no separate qualifications in forensic psychiatry, but optional master’s degree may be followed by different professionals (such as medical doctors, psychiatrists, and psychologists) in order to expand their knowledge in this field. In fact, the Procedural Penal Code (Codice di Procedura Penale, CPP), in article 220, affirms: “The expert evaluation is allowed when it is necessary to carry out investigation or acquire data or evaluations, requiring specific technical, scientific or artistic skills” (translation by

(Messina et al., 2019)). With the decree of the Minister of Justice of 4 August 2023, n. 109,⁸ a national list of forensic experts has been established at the Ministry of Justice, which has replaced the register of local experts divided by specialty previously possessed by each tribunal (Messina et al., 2019). The requirements to register are represented by: a) being registered in the respective professional orders or colleges, b) regular fulfillment of professional training obligations; c) being of excellent moral conduct; d) possessing special technical expertise in the category of interest (at least 5 years of experience after medical specialization for doctors); e) have registered residence or professional domicile in the district of the court.

There are four stages for the management of defendants affected by mental disorders: inquiry, pretrial, trial and placement (Peloso et al., 2014). The forensic expert can be appointed since the first phase (inquiry), where the prosecutor gathers evidence to ascertain if the crime has been committed. If the crime is minor and the defendant considered mentally ill by the appointed expert, the prosecutor tends to avoid processing him/her, sending them to community care, following expert’s recommendations (Peloso et al., 2014).

During the pretrial, the judge decides if a court of law must be organized, and the type of provisional measures for the defendant. Behavioral experts can be appointed to assess criminal responsibility and danger to public safety and give recommendations about provisional placement. Following their suggestions, the judge can dispose a provisional placement in prison, a forensic or psychiatric facility. For minor crimes committed by subjects affected by mental disorders, the judge tends to drop the prosecution. In case of serious crime or social dangerousness, the judge disposes a trial (Peloso et al., 2014).

In the second section of the Art. 220 CPP it is specified: “with the exception of what is provided for by law with regard to the execution of a punishment or a measure, expert evaluations assessing customary or professionalism in crime commissions, and more in general mental features not related to psychopathology, are not allowed” (Translated by (Messina et al., 2019)). Consequently, psychological or criminological evaluations, dealing with psychological or behavioral aspects not directly associated with psychopathology are not permitted, as only medical evaluations are admitted (Traverso et al., 2000).

In Italy, criminal responsibility is assumed as present until proven otherwise (Bertolino, 2006). During its evaluation, the forensic expert must infer the defendant’s state of mind at the time of the crime (often weeks or months before the assessment) on the basis of the subject’s examination and history, psychiatric assessment, and collateral sources of information (e.g., police and health records, witnesses, toxicological, and instrumental data).

The forensic expert may be request to evaluate the defendant’s state of mind at the time of the crime (criminal responsibility), their capacity to understand the proceedings against them and the ability to consult with lawyer (competence to stand trial), and the risk of recidivism (danger to public safety) (Traverso & Traverso, 2010). There are no clinical observational facilities, consequently the assessment can be performed on an outpatient basis or whenever the defendant is under provisional security measure (i.e. prison, general hospital, house) (Ariatti & Ingravallo, 2010).

3. Evaluations of criminal responsibility

3.1. China

There is a unified guideline in China, the “Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders” (SF/Z JD0104002–2016), compiled and promulgated by the

⁶ Chapter 2, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016).

⁷ REGIO DECRETO 19 ottobre 1930, n. 1398. Approvazione del testo definitivo del Codice Penale Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:regio.decreto:1930-10-19:1398>

⁸ MINISTERO DELLA GIUSTIZIA. DECRETO 4 agosto 2023, n. 109. Retrieved from <https://www.gazzettaufficiale.it/eli/id/2023/08/11/23G00121/sg>. Accessed February 19, 2025

Ministry of Justice in 2016. These guidelines introduce a new model for assessing criminal responsibility, incorporating the evaluation of appreciation and control capacity into objective indicators (Zhang et al., 2020), such as motive, preconditions, triggers, timing and location of the crime, victim selection, choice of weapons, emotional reactions at the time of the crime, evasion of responsibility after the crime, efforts to conceal the crime during interrogation or evaluation, understanding of the wrongfulness of the act, evaluation of consequences, self-care capacity, work or study capacity, self-awareness, reality testing capacity, and self-control capacity.⁹

These factors are used to judge the degree of impairment of appreciation/control capacity, leading to three levels of criminal responsibility: complete, limited, and none. The guidelines recommend using the “Assessment Scale for Criminal Responsibility in Individuals with Mental Disorders” as a standardized evaluation tool (Cai et al., 2004; Zhang et al., 2005).

Therefore, the assessment of criminal responsibility in China follows a mixed standard, combining medical (biological) and legal (psychological) criteria. The medical criteria involve evaluating the mental state of the individual during the commission of the harmful act, including evaluating the presence of intellectual disability, or a diagnosing of mental disorder, and assessing their severity. This forms the foundation for evaluating criminal responsibility. The legal criteria,¹⁰ on the other hand, evaluates whether the individual could not “appreciate” or “control” their behavior based on their capacity to understand the nature, significance, consequences, and effects of their actions and to consciously choose and control their behavior in accordance with this understanding (Zhang et al., 2020).

The Chinese mixed standard requires biological and psychological judgments to determine impaired “capacity of appreciation”¹¹ or “capacity of control”.¹² First, it is necessary to establish whether the individual has a mental disorder, and then it must be determined whether this disorder prevented them from recognizing or controlling their behavior. Accurately quantifying the degree of impairment in appreciation and control capacity can be challenging, and forensic psychiatric appraisers often rely on their experience, leading to subjectivity and significant variations in evaluation conclusions when dealing with similar cases (Hu et al., 2011). Moreover, medical and legal judgments are typically left to the discretion of forensic psychiatric appraisers, who determine criminal responsibility in China. This approach contradicts the mixed legislative model adopted in China’s Criminal Law (Li, 2022).

Currently, Chinese laws and regulations have not provided explicit provisions for the assessment of criminal responsibility in substance users. This issue is primarily reflected in forensic psychiatric evaluation

practice. At present, the only relevant technical specification is the “Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders” issued by the Ministry of Justice (Zhang et al., 2018). In China, the assessment of criminal responsibility for substance-induced mental disorders varies depending on whether the substance was voluntarily consumed.¹³ If the substance was consumed involuntarily, and the individual lost the ability to appreciate or control their actions due to the mental disorder, they may be exempt from criminal responsibility under the “criminal responsibility for individuals with mental disorders” provision. However, for voluntary drug consumption, the guideline adopts a stricter approach. Even if mental symptoms impair the individual’s ability to appreciate or control their actions, they are generally still stand criminally responsible. In such cases, a medical evaluation is typically required to provide a detailed explanation of the individual’s mental state at the time of the offense. This distinction reflects the cautious stance of Chinese standard regarding drug-induced mental disorders. In China’s judicial practice, a study shows that while most forensic experts are aware of the Guidelines,¹⁴ few consistently follow them. Most forensic appraisers continue to assess full or diminished responsibility (Zhang et al., 2014). Another study found variations in judicial decisions: in cases of voluntary substance use, judges generally favored full responsibility, though opinions varied. In cases of involuntary substance-induced disorders, judges applied stricter criteria for responsibility, rather than directly concluding non-criminal responsibility (Zhang et al., 2016).

In China, forensic psychiatric evaluation, a distinct category within forensic medical appraisal, includes forensic pathology appraisal, forensic clinical appraisal, forensic psychiatry evaluation, forensic physical evidence identification, and forensic toxicology identification.¹⁵ Forensic psychiatry evaluation is further divided into nine sub-categories: mental state examination, assessment of criminal responsibility, assessment of the capacity for civil conduct, assessment of other types of capacity, mental injury examination, medical damage examination, dangerousness assessment, mental disorder medical evaluation, and other forensic psychiatry evaluations related to psychology and mental health.¹⁶ Therefore, practitioners of forensic psychiatry evaluation require specific qualifications to conduct such assessments. Experts in other forensic medical appraisal disciplines are not qualified to perform forensic psychiatric evaluations.

There are primarily two routes for the training of forensic psychiatry appraisers in China (Chen et al., 2011): The first is for medical college graduates who, after working for several years in psychiatric hospitals or psychiatric departments of general hospitals and gaining extensive clinical experience, become qualified to conduct forensic psychiatric evaluations. The second route involves medical graduates working directly in judicial appraisal institutions, where they assist senior

⁹ Article 5, Chapter 4, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “辨认与控制能力损害程度的判断应从以下方面进行评估:作案动机、作案前兆、作案的诱因、作案时间选择性、地点选择性、对象选择性、工具选择性、作案当时情绪反应、作案后逃避责任、审讯或检查时对犯罪事实掩盖、审讯或检查时有无伪装、对作案行为的罪错性认识、对作案后果的估计、生活自理能力、工作或学习能力、自知力、现实检验能力、自我控制能力。” (translated by Huan Wan)

¹⁰ Article 2, Chapter 3, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “刑事责任能力是指行为人能够正确认识自己行为的性质、意义、作用和后果,并能够根据这种认识而自觉地选择和控制自己的行为,从而到达对自己所实施的刑法所禁止的危害社会行为承担刑事责任的能力,即对刑法所禁止的危害社会行为具有的辨认和控制能力。” (translated by Huan Wan)

¹¹ Article 3, Chapter 3, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The term “辨认能力” is translated as “Capacity of Appreciation”.

¹² Article 4, Chapter 3, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The term “控制能力” is translated as “Capacity of Control”.

¹³ Article 5.2.5, Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “对毒品所致精神障碍者,如为非自愿摄入者按5.1条款评定其刑事责任能力;对自愿摄入者,如果精神症状影响其辨认或控制能力时,不宜评定其刑事责任能力,可进行医学诊断并说明其作案时精神状态。” (translated by Huan Wan)

¹⁴ Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016).

¹⁵ Article 3, Chapter 1, Regulations on the Classification of Forensic Judicial Appraisal Practice (Ministry of Justice Regulation [2020] No. 3), Issued by Ministry of Justice of China. The original Chinese phrasing is: “法医类司法鉴定依据所解决的专门性问题分为法医病理鉴定、法医临床鉴定、法医精神病鉴定、法医物证鉴定、法医毒物鉴定等。” (translated by Huan Wan)

¹⁶ Article 24, Chapter 4, Regulations on the Classification of Forensic Judicial Appraisal Practice (Ministry of Justice Regulation [2020] No. 3), Issued by Ministry of Justice of China. The original Chinese phrasing is: “法医精神病鉴定包括精神状态鉴定、刑事类行为能力鉴定、民事类行为能力鉴定、其他类行为能力鉴定、精神损伤类鉴定、医疗损害鉴定、危险性评估、精神障碍医学鉴定,以及心理、精神相关的其他法医精神病鉴定等。” (translated by Huan Wan)

appraisers with appraisal-related tasks and gradually become familiar with the appraisal process. After a certain period of performing auxiliary appraisal work, they can apply for professional practice. Appraisers formed through the second route may have slightly less practical experience than those with clinical experience. Therefore, forensic psychiatric evaluations are predominantly carried out by clinical doctors at psychiatric hospitals or psychiatric departments of general hospitals in China. Psychologists are not authorized to perform such forensic psychiatric evaluations.

As of the end of 2020, there were 43,816 practising psychiatrists in China (3.1 psychiatrists per 100,000 people) and 6308 practising assistant psychiatrists. Compared to the data published in the World Health Organization's "Mental Health Atlas 2020",¹⁷ the number of practising psychiatrists (excluding assistant psychiatrists) per 100,000 population (3.1) is higher than the level in upper-middle-income countries (1.7 psychiatrists) but lower than in high-income countries (8.6 psychiatrists) (Ma et al., 2020). These clinical psychiatrists, characterized by their limited number, are mandated to conduct forensic psychiatric evaluations in addition to their clinical responsibilities. This dual obligation is understandably burdensome.

3.2. Italy

In Italy, differently for China, there are no official guidelines on how to perform insanity evaluations, nor the use of any specific tool is recommended. Consequently, forensic experts do not have to follow any standard format or question when writing their report. However, as in Western Countries, Italian insanity criteria rely on the evaluation of the cognitive and volitional component (Simon & Ahn-Redding, 2006).

The Italian Penal Code, approved on the 19th of October 1930¹⁷ (the Rocco Code) provides for three levels of criminal responsibility: totally responsible, with substantially diminished responsibility, and non-responsible. Insanity criteria are disciplined through 3 different articles (see Table 1). Firstly, art 85 of the Italian Penal Code ("Capacity of appreciate and will") underline that to be punished the subject has to be held attributable, or capable to appreciate and will. Regarding the "capacity of appreciating", it can be defined as the suitability of the subject at the moment of the crime of understanding the value and therefore the social disvalue of their action or omission (Fornari, 2018). The "capacity of willing" is represented instead by the suitability that the subject had to self-determine in view of carrying out or avoiding that action which constituted a crime (Fornari, 2018). Art 88 and 89 of the Italian Penal Code define the criteria for non-responsibility and substantially diminished responsibility, respectively. In both it is required the presence of a state of mind, because of infirmity, capable to exclude or greatly diminish the capacity to appreciate and will. Interestingly, the notion of infirmity, refers to any condition, consequently not only psychic but also physic, determining a mental state affecting (or completely undermining) the capacity of appreciating or willing at the moment of the crime, with a profound impact on the mental state of the subject who committed the crime (Traverso & Traverso, 2010). Consequently, it can be represented by one of the following: a) an evident psychopathological decompensation (i.e. acute psychotic episodes); b) organic mental disorders; c) physical infirmities, provided that they have had a clear, significant and serious impact on the mental functioning of the agent at the time and in reference to the crime; d) serious personality disorder in which episodes of "decompensation" in a borderline or psychotic sense can be documented (since the sentence of the Corte di Cassazione 9163/2005 – "Raso judgement") (Fornari, 2018).

Regarding substance use, a crime committed under the influence of alcohol or drugs does not imply a judgement of non-responsibility (art

Table 1
Criminal responsibility standards in Italy and China.

Italy	China
<p>Art. 85 - Capacity of appreciate and will No one can be punished for an act foreseen by law as a crime if, at the time in which it was committed, he was not attributable. Anyone who has the capacity to appreciate and will is attributable.^a</p>	<p>Article 18, Section 1, Chapter II Criminal Law of the People's Republic of China (2020 Amendment) A mentally ill person who causes dangerous consequences at a time when he is unable to recognize or unable to control his own conduct is not to bear criminal responsibility after being established through accreditation of legal procedures; but his family or guardian shall be ordered to subject him to strict surveillance and arrange for his medical treatment. When necessary, he will be given compulsory medical treatment by the government. A person whose mental illness is of an intermittent nature shall bear criminal responsibility if he commits a crime during a period of mental normality. A mentally ill person who commits a crime at a time when he has not yet completely lost his ability to recognize or control his own conduct shall bear criminal responsibility but he may be given a lesser or a mitigated punishment. An intoxicated person who commits a crime shall bear criminal responsibility.^b (translated by PKULaw, an intelligent legal information retrieval system jointly developed by the Peking University Law Artificial Intelligence Laboratory and Beijing PKU Yinghua Technology Co., Ltd.)</p>
<p>Art. 88 – Non-responsibility "A person who, at the moment in which he/she committed the crime, was, because of infirmity, in such a state of mind as to exclude the capacity of appreciating or willing, is non-responsible" (translated by (Parmigiani et al., 2022)).^d</p>	<p>Article 3.2 - Criminal responsibility Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002-2016). Criminal responsibility refers to an individual's ability to correctly understand the nature, significance, effects, and consequences of their actions, and to consciously choose and control their behavior in accordance with this understanding. It represents the capacity to bear criminal responsibility for socially harmful acts prohibited by criminal law, specifically the ability to appreciate and control such acts that are forbidden by the law." (translated by Huan Wan)</p>
<p>Art 89 – Substantially diminished responsibility "A person who, at the moment in which he/she committed the crime, was, because of infirmity, in such a state of mind as to greatly diminish, without excluding, the capacity of appreciating and willing, is responsible for the crime committed, but the penalty is reduced"</p>	<p>Article 3.2.3 - Non-Criminal Responsibility Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002-2016). Non-Criminal Responsibility refers to the state in which an individual, due to severe consciousness disorders, intellectual deficits, or mental symptoms such as hallucinations and delusions, is unable to control their behavior or understand and foresee the consequences of their actions when committing a harmful act.^c (translated by Huan Wan)</p>
	<p>Article 3.2.2 - Diminished Criminal Responsibility Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002-2016). Diminished Criminal Responsibility, or partial responsibility, or limited responsibility, refers to a state where, at the time of committing a harmful act, an individual's ability to appreciate or control their behavior is significantly</p>

(continued on next page)

¹⁷ Mental Health Atlas 2020. World Health Organization. Published October 8, 2021. Retrieved from <https://www.who.int/publications/i/item/9789240036703>. Accessed March 1, 2024.

Table 1 (continued)

Italy	China
(translated by (Parmigiani et al., 2022). ^f	weakened due to the influence of mental symptoms, though not to the extent of complete loss or inability. ^g (translated by Huan Wan)

^a Art 85 – Capacità di intendere e di volere

“Nessuno può essere punito per un fatto preveduto dalla legge come reato, se, al momento in cui lo ha commesso, non era imputabile. È imputabile chi ha la capacità di intendere e di volere”

^b Article 18, Section 1, Chapter II, Criminal Law of the People’s Republic of China (2020 Amendment), The original Chinese phrasing is: “特殊人员的刑事责任能力。精神病人在不能辨认或者不能控制自己行为的时候造成危害结果，经法定程序鉴定确认的，不负刑事责任，但是应当责令他的家属或者监护人严加看管和医疗；在必要的时候，由政府强制医疗。间歇性的精神病人在精神正常的时候犯罪，应当负刑事责任。尚未完全丧失辨认或者控制自己行为能力的精神病人犯罪的，应当负刑事责任，但是可以从轻或者减轻处罚。醉酒的人犯罪，应当负刑事责任。”

^c Article 2, Chapter 3 - Criminal Responsibility. Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “刑事责任能力也称责任能力，是指行为人能够正确认识自己行为的性质、意义、作用和后果，并能够根据这种认识而自觉地选择和控制自己的行为，从而达到对自己所实施的刑法所禁止的危害社会行为承担刑事责任的能力，即对刑法所禁止的危害社会行为具有的辨认和控制能力。”

^d Art. 88 – Vizio totale di mente

“Non è imputabile chi, nel momento in cui ha commesso il fatto era, per infermità, in tale stato di mente da escludere la capacità di intendere e di volere”

^e Article 3.2.3 - Non-Criminal Responsibility. Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “是指行为人实施某种危害行为时，由于严重意识障碍、智能缺损、或幻觉妄想等精神症状的影响，不能控制自己的行为或不能理解与预见自己的行为结果的状态。”

^f Art 89 – Vizio parziale di mente

“Chi, nel momento in cui ha commesso il fatto, era, per infermità, in tale stato di mente da scemare grandemente, senza escluderla, la capacità di intendere o di volere, risponde del reato commesso, ma la pena è diminuita”

^g Article 3.2.2 - Diminished Criminal Responsibility. Guidelines for the Assessment of Criminal Responsibility in Individuals with Mental Disorders (SF/Z JD0104002–2016). The original Chinese phrasing is: “也称部分责任能力、限制责任能力，本技术规范建议使用限定(刑事)责任能力。在发生危害行为时，由于精神症状的影响，对自己行为的辨认或者控制能力明显削弱，但尚未到达丧失或不能的程度。”

92, 93 and 94 Italian Penal Code). In these cases, it is evaluated the state of mind at the moment in which the subject started drinking or taking the drug, not at the moment of the acute intoxication. In addition, when drunkenness is preordained to commit the crime (art 92) or is habitual (art 94), the punishment is increased. In only two cases the subject may be judged not responsible or with diminished responsibility: when the drunkenness is the result of accident or force majeure (art 91) or when the subject has chronic alcohol intoxication or abuse of substances (art 95). This last case refers to a situation in which substance abuse has produced organic damage to the psychological functions of the perpetrator of the crime (organic mental disorders due to alcohol and drugs) which persists even when the substance intake ceases (Fornari, 2018).

The forensic evaluation on criminal responsibility may be carried out for the court or public prosecutor and also for the defense counsel (Peloso et al., 2014). It is usually requested when there are well-founded reasons (in terms of offender’s behavior, their declaration at the time of the arrest, crime typology, previous psychiatric hospitalizations, etc.) to question defendant’s accountability (Ferracuti & Lagazzi, 2010). In fact, all those who, having reached the age of eighteen, commit a crime are indictable until proven otherwise. At the same time, all the subjects, younger than 14 years old, are always not accountable (art. 97 c.p. - under the age of 14). Between 14 and 18 years of age, criminal responsibility must be ascertained on a case-by-case basis.

The forensic report may be requested pretrial (by the district

attorney or by the pretrial judge) and during the trial (by the trial judge (Ciccone & Ferracuti, 1995). It is usually composed by the request of the following evaluations:

- Criminal responsibility. The defendant may be judged to be accountable, with substantially diminished responsibility, or total irresponsibility.
- Competence to stand trial
- Social dangerousness. Only in those cases in which the forensic expert has found the defendant with substantially diminished responsibility, or total irresponsibility, the judge requires the answer to an additional question: is the defendant socially dangerous? Or what is the probability that the accused will commit the same act in the future? (Ciccone & Ferracuti, 1995)

Currently, there are no data on the exact number or specific specialties (psychiatrist, psychologist, medico legal expert) of forensic expert in Italy.

Table 2, 3, and 4 show the main similarities and differences between the two countries.

4. Social dangerousness

4.1. China

In China, social dangerousness assessment aims to determine the initiation and termination of involuntary medical procedures. Traditional forensic psychiatric evaluations do not inherently include an assessment of social dangerousness. Since the introduction of involuntary medical procedures in the 2012 amendment to the Criminal Procedure Law, individuals with mental disorders found not criminally responsible by law are required to undergo assessments of social dangerousness. According to the Chinese Criminal Procedure Law, there are three applicable criteria for involuntary medical measures.¹⁸ First, there are objective criteria involving the commission of violent acts that endanger public safety or seriously harm the personal safety of citizens. Second, there are subjective criteria which require that individuals with mental disorders be evaluated as not criminally responsible by law through statutory procedures. Third, there is the criterion of social

Table 2

Criminal responsibility - Similarities between China and Italy.

Legal sources	Legality of crimes and punishments Presumption of sanity Theory of free will
Legislative content	Both employ a mixed standard for evaluating criminal responsibility that combines medical (biological) criterias and legal (psychological) criterias.
Evaluation content	The evaluation reports of individuals with mental disorders of both begin at the investigation stage and serve as evidence in the trial stage.
Acceptance of evaluation results	Judges in both have the ultimate decision-making power.
Acceptance of evaluation results	Judges in both rely heavily on the opinions of forensic experts.

¹⁸ Article 302, Chapter V, Book V, Criminal Procedure Law of the People’s Republic of China (2018 Amendment), “A mental patient who has committed any violent behavior compromising public security or seriously endangering the personal safety of citizens and is legally exempted from criminal responsibility after identification under statutory procedures shall be subject to involuntary medical treatment if the mental patient may continue to endanger the society.” (translated by PKULaw, an intelligent legal information retrieval system jointly developed by the Peking University Law Artificial Intelligence Laboratory and Beijing PKU Yinghua Technology Co., Ltd.)

Table 3
Criminal responsibility - Differences between China and Italy

Differences	China	Italy
CRIMINAL RESPONSIBILITY		
Legislative authorities	The National People's Congress and its Standing Committee	The Parliament
Legislative Objectives	Emphasis on social defense	Emphasis on protecting rights
Rule construction	A mixed legal concept, as the term "mental illness" used in the Criminal Law is not unified with the term "mental disorder" used in the Mental Health Law.	The term "infirmity" refers both to physical and psychological condition that can totally affect of undermine subject's capacity of appreciate and will
Evaluation subject	A comprehensive appraiser admission system and a "National Judicial Appraisal Expert Database"	A well-established system of forensic experts testifying in court and a technical consultant systems.
Evaluation criteria of cognition	Discernment capacity	Intent
Evaluation criteria of free will	Control capacity	Will
Evaluation results	Unified evaluation guidelines and standardized tools.	Evaluations and results vary significantly among different regions and different forensic experts.
Evaluation system	Less comprehensive cross-examination of expert opinions during the trial process.	An adversarial system allows expert opinions to undergo more comprehensive cross-examination

Table 4
Social dangerousness - differences between China and Italy

Differences	China	Italy
SOCIAL DANGEROUSNESS		
Legal concepts	Began to be implemented after the enactment of involuntary medical procedures under the Criminal Procedure Law.	It has always been a major concern of experts.
Legal concepts	Less	More explicit legal provisions
Evaluation standard	More clear and unified scientific criterias	Multidisciplinary evaluation approach
Evaluation standard	Less	More conducive to a comprehensive evaluation
Treatment system	Forensic psychiatric hospital model still relies on a model of cooperation between law enforcement and medical professionals	REMS model follows the deinstitutionalization movement principles, abandoning hospital-based care in favor of residential units and employing clinical staff exclusively.

dangerousness, meaning a continued risk of harming society, which pertains to the concept of "social dangerousness" in the context of individuals with mental disorders (Zhang, 2021). As China's current legislative system stands, there is an issue where the provisions of the Criminal Law do not constrain the involuntary medical measures established in the Criminal Procedure Law. The current Criminal Law classifies involuntary medical measures as administrative coercive measures, resulting in legal inconsistencies between involuntary medical measures and procedures established in the Criminal Procedure Law, leading to confusion in legal application (Xing, 2015).

In involuntary medical procedures, evidence considered by the court to evaluate "personal dangerousness" primarily falls into three categories: assessment of criminal responsibility, witness testimonies, and medical records of psychiatric diagnosis and treatment. The Chinese Criminal Procedure Law does not explicitly specify under what circumstances an individual with a mental disorder can be considered to pose a "personal dangerousness", nor does it provide corresponding judgement criteria for this requirement (Yu, 2022). The assessment of criminal responsibility is the most significant among them, serving not only to evaluate the mental state and capacity for the responsibility of the evaluated individual but also as evidence to determine the individual's criminal responsibility and "personal dangerousness" (Yu, 2022). Empirical research has found that, in many cases, the basis for the court to classify an individual as mentally disordered also becomes the basis for determining whether he poses a "personal dangerousness". As a result, a logical connection is formed that equates "mental disorder" with having "social dangerousness" (Yu, 2022).

In China, the assessment of social dangerousness also plays a significant role in civil matters, particularly in cases involving the hospitalization of patients with mental disorders. According to the Mental Health Law of the People's Republic of China, medical institutions may decide to hospitalize patients with severe mental disorders if they are deemed to pose a potential risk to themselves or others.¹⁹ Social dangerousness assessments are a crucial factor in making such decisions.

China still lacks standardized operational guidelines for assessing the social dangerousness of individuals with mental disorders who are incapable of criminal responsibility. In 2022, the Forensic Psychiatry Group of the Psychiatry Branch of the Chinese Medical Association released an "Expert consensus on violence risk assessment for involuntary medical treatment in persons found not criminally responsible on account of mental disorder" (Forensic Psychiatric Group of Chinese Society of Psychiatry, 2022).

For individuals deemed not criminally responsible yet dangerous, China mandates involuntary medical treatment, executed primarily in "Ankang Hospitals" managed by public security authorities (Wu, 2022). As of June 2017, there were 26 "Ankang Hospitals" or involuntary medical institutions managed by public security authorities in 19 provinces, municipalities, and autonomous regions in China (Wu, 2022). "Ankang hospitals" primarily admit three types of patients: Individuals with mental disorders who, as assessed by forensic psychiatric experts, are not criminally responsible but require supervision and treatment; Suspects awaiting forensic psychiatric evaluation; and Suspects incompetent to stand trial (Chen & Hu, 2015).

In China, "Ankang hospitals" have evolved into public institutions or administrative bodies under the management of public security authorities, undertaking public security, administrative, and criminal judicial functions and providing public health and medical welfare services. With the expansion of their roles, some local authorities have also incorporated compulsory drug rehabilitation functions within "Ankang hospitals" (Wu, 2022). Consequently, "Ankang hospitals" currently assume responsibilities beyond involuntary treatment, including compulsory drug rehabilitation by public security authorities, admitting various types of psychiatric patients and voluntary drug rehabilitates from the general public, and conducting forensic psychiatric evaluations, serving as "specialized psychiatric hospitals integrating involuntary treatment, compulsory drug rehabilitation, forensic evaluations, and general treatment" (Guo, 2016).

Regarding handling patients deemed "not guilty because of

¹⁹ Article 30, Chapter 3, Mental Health Law of the People's Republic of China (2018 Revision). The original Chinese phrasing is: "精神障碍的住院治疗实行自愿原则。诊断结论、病情评估表明, 就诊者为严重精神障碍患者并有下列情形之一的, 应当对其实施住院治疗: 已经发生伤害自身的行为, 或者有伤害自身的危险的; 已经发生危害他人安全的行为, 或者有危害他人安全的危险的。"(translated by Huan Wan)

insanity”, China’s criminal law stipulates that their family members or guardians provide strict supervision and medical treatment for these patients; if necessary, the government shall enforce involuntary treatment (He, 2011). In practice, there are too few “Ankang hospitals” to manage and treat mentally disordered offenders, and the existing facilities are saturated. The dual responsibilities of providing treatment and maintaining social order have become overwhelming for “Ankang hospitals”. As a result, except in a few cases where the government enforces involuntary treatment, most mentally disordered offenders who are not criminally responsible are left under the supervision of their families, which potentially poses a severe threat to the maintenance of social order (Pan, 2016).

These hospitals face challenges such as insufficient capacity and unclear guidelines for regular diagnostic evaluations to determine the continuation or cessation of involuntary treatment (Pessina et al., 2019). The Chinese Criminal Procedure Law mandates regular diagnostic evaluations for individuals under involuntary medical treatment but lacks clear guidelines on the frequency. This ambiguity leaves institutions to determine their own schedules (Wang, 2022), resulting in infrequent evaluations and complicating the termination of involuntary medical treatment in China (Li & Xie, 2019). The process for lifting involuntary medical treatment needs a standardized evaluation mechanism. It tends to prioritize the views of the institutions and family members over the rights of the individuals, with an underlying retributive perspective influencing the treatment and perception of these individuals (Wang, 2022).

4.2. Italy

In Italy, the assessment of the psychiatric social dangerousness is required when the forensic expert finds the defendants to be totally irresponsible (due to mental infirmity) or with substantial diminished responsibility.

The art. 203 of the Italian Penal Code defines socially dangerous “the person, even if not accountable or punishable, who has committed some of the acts indicated... and is likely to commit new acts foreseen by law as crimes” (translated by Parmigiani).²⁰

Social dangerousness leads to the application of safety measures (Fornari, 2018), with a rehabilitative purpose, compared to the sentence, which has a retributive purpose (Carabellese & Felthous, 2016). Security measures can be distinguished in custodial (psychiatric and non-psychiatric) and non-custodial measures (i.e. supervised freedom, prohibition to reside in a specific, town, province, etc.). The forensic expert must assess only the social dangerousness associated with the mental infirmity (psychiatric social dangerousness) and is exempt from such evaluation in those cases in which the defendant has been judged accountable. The evaluation of social dangerousness is performed only for forensic patients, while for civil patients, Law 833 of 1978 established the transition from ‘dangerousness’ to ‘the need for treatment’ as a criterion for involuntary psychiatric hospitalization.

Until a few years ago, subjects judged to be dangerous to public safety were admitted to a forensic psychiatric hospital or to another sheltered facility (Barbui & Saraceno, 2015). However, among the six facilities present in the Italian territory, the quality of the mental healthcare provided was unsatisfactory low, which led to a warning of human rights violations issued by the Council of Europe in 2006 (Barbui & Saraceno, 2015). Among the main issues were the overcrowding (there were up to 12 inmates in a single cell), the presence of problematic hygienic conditions, the nontherapeutic/rehabilitative nature, the presence of police officers (Italian penitentiary police), and the fact that they were not tailored to fit changing levels of dangerousness.

²⁰ Art 203 c.p.: “La persona, anche se non imputabile o non punibile la quale ha commesso taluno dei fatti indicati...ed. è probabile che commetta nuovi fatti previsti dalla legge come reati”

Finally, it was common to the majority of inmates, the unlimited extension of the social dangerousness judgement, a phenomenon called ‘white life sentence’. This was mainly due to the lacking of family and social conditions suitable for discharge, rather than to a careful assessment of individual factors (Barbui & Saraceno, 2015).

Consequently, in 2008 the Italian Government issued a decree establishing the progressive closure of 6 forensic psychiatric hospitals²¹ (DPCM, 2008). The Law 9/2012²² established that new small-scale residential facilities (REMS) should be developed. Finally, the Law 81/2014²³ set deadlines, operational procedures and requested individualized discharge programs and required each one of the 20 Italian regions to develop secure residential units in the community (Residenze per l’Esecuzione delle Misure di Sicurezza – REMS) (Di Lorito et al., 2017). Each REMS is limited to a maximum of 20 beds and it is managed only by sanitary personnel (at least two psychiatrists, one psychologist, two occupational therapists, one social worker, 16 nurses and 10 nursing assistants) (Scarpa et al., 2017). To be admitted to a REMS it is necessary a compulsory referral mandated by the Court (Scarpa et al., 2017). In addition, to prevent the above-mentioned phenomenon of the ‘white life sentence’, the duration of treatment is limited, as it cannot be longer than a prison sentence for the same index offense. Finally, to facilitate the reintegration of the patients into society, within 45 days after admission a personal rehabilitation program must be developed (Di Mizio et al., 2022).

At February 2017, 30 REMS were operational in Italy (Corleone, 2017). Despite the innovation and benefits of the new forensic facilities, in the last years several issues have emerged, such as the limited number of psychiatrists operating in them (there is no psychiatrist at night), the few investments in the community psychiatry for non-custodial measures, the fact that there are only medium/low security facilities, and the need of beds which has been highly underestimated. The last point represents a particular thorny issue, because had led to the development of a “waiting list” for dangerous offenders. At February 2021, 770 people were waiting to be admitted to a REMS facility, 98 of whom in prison facilities (not tailored to assess the specific needs of this type of offenders), while the remaining 672 were free (Di Mizio et al., 2022).

Four possible scenarios can follow the evaluation of criminal responsibility and social dangerousness:

1. The defendant is judged to be totally irresponsible and socially dangerous. In this case, if the social dangerousness is high, he is acquitted and admitted to a REMS; if the social dangerousness is low, he undergoes supervised freedom and he is in charge to the mental health care service of the community;
2. The defendant is judged to be totally irresponsible but not dangerous to public safety. In this case he is acquitted and the case is closed.
3. The defendant has substantially diminished responsibility and social dangerousness. The penalty is reduced of 1/3, followed by the evaluation of the persistence of social dangerousness. If the social dangerousness is high, he is admitted to a REMS; if it is low, he

²¹ DECRETO DEL PRESIDENTE DEL CONSIGLIO DEI MINISTRI 1 aprile 2008. Modalità e criteri per il trasferimento al Servizio sanitario nazionale delle funzioni sanitarie, dei rapporti di lavoro, delle risorse finanziarie e delle attrezzature e beni strumentali in materia di sanità penitenziaria. Available at: <https://www.gazzettaufficiale.it/eli/id/2008/05/30/08A03777/sq>

²² LEGGE 17 febbraio 2012, n. 9. Conversione in legge, con modificazioni, del D.L. 22 Dicembre 2011 n. 211, recante interventi urgenti per il contrasto della tensione detentiva determinata dal sovraffollamento delle carceri. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012-02-17;9>

²³ DECRETO-LEGGE 31 marzo 2014, n. 52. Disposizioni urgenti in materia di superamento degli ospedali giudiziari. Available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto-legge:2014-03-31;52>

undergoes supervise freedom and he is in the care of the mental health care service of the community;

4. The defendant has substantially diminished responsibility but is not dangerous to public safety. The penalty is reduced of 1/3, with no application of safety measures (Fornari, 2018).

The possibility to graduate the level of social dangerousness and consequently to differently address the subject's therapeutic/rehabilitative needs is a new aspect introduced with the development of the REMS. In the previous years, it was sufficient a judgement of danger to public safety to be admitted to a forensic psychiatric hospital regardless of the level of dangerousness.

Italy lacks official guidelines for the evaluation of danger to public safety, despite Fornari (2018) having suggested internal and external indicators for such assessment. Specifically, internal indicators are:

- Presence and persistence of symptoms of psychotic or major depressive spectrum disorders or serious personality or neurodevelopmental disorders or major neurocognitive disorders, functionally decompensated and possibly comorbid with other mental or substance use disorders
- Poor or no adherence to health and psychopharmacological prescriptions
- Failure or inadequate response to those practiced, provided they are adequate in terms of quality and therapeutic range and actually administered and taken
- Absence of specific therapies
- Behavioral explosions of uncontrolled anger, self- and/or hetero-destructive.

When these indicators are presents, the social dangerousness is considered to be high and the subject is admitted to a REMS.

When these indicators are improving, Fornari (2018) suggests to assess external indicators in planning the path that the person can take in residential and semi-residential facilities of the Community Mental Health Service. These are as follow:

- The characteristics of the family and social environment to which one belongs (acceptance, rejection, indifference);
- The availability and therapeutic plans of the local psychiatric services (therapeutic continuity);
- The possibility or not of (re) employment or alternative solutions;
- The type, level and degree of acceptance of the subject's return to the environment in which he lived before the crime;
- Alternative opportunities for logistical accommodation (housing and work)

In accordance with the new law, the evaluation of social dangerousness must only take into account patient's individual characteristics, and family, social and economic reasons, as well as the absence of a personalized mental healthcare programme should no longer play a role in motivating or extending a judgement of social dangerousness.

5. Concluding observations

In the present paper several similarities and differences have been underlined between Italy and China in criminal responsibility and social dangerousness evaluations.

Despite differing political systems and legislative authorities, both countries employ a mixed standard of medical and legal criteria for assessing criminal responsibility, starting from the investigation stage and serving as crucial evidence during trials. However, while China requires a diagnosis of mental disorder and faces inconsistency between the terms "mental illness" and "mental disorder" in its laws, Italy refers to the presence of "mental infirmity", a broader term that sometimes can lead to some ambiguity, that encompasses both mental and physical

diseases that can totally prevent or undermine the subject's capacity to appreciate and will" in relation to the crime.

Unlike Italy, China benefits from unified assessment guidelines, requires forensic psychiatrists to be licensed and qualified professionals (the minimum rank is associate professor), and outlines two specific routes for training as a forensic expert. Finally, the Public Legal Service Management Bureau of the Ministry of Justice and the National Association of Judicial Appraisers manage the supervision process. On the other hand, in Italy the landscape is much more heterogeneous for numerous reasons such as the absence of shared assessment guidelines, together with the lack of a specific training or required license (Ramelli et al., 2010) and supervision (Catanesi & Martino, 2006). Forensic evaluations can theoretically be performed by any registered medical doctor – not necessary a psychiatrist (Peloso et al., 2014). In our opinion, this is an aspect where there is room for improvement. The development and use of guidelines and the mandatory attendance to a specific training could reduce the heterogeneity of forensic report and enhance their objectivity, reliability and transparency.

Another interesting comparison regards the issue of danger to public safety. China, only recently implemented such assessments, with no explicit guidelines on how to perform them. This probably has led to the frequent connection that equates "mental disorder" with having "social dangerousness" (Yu, 2022). Italy, has recently deeply modified the management of security measures for offenders deemed socially dangerous, introduced for the first time with the Rocco Code in 1930. Italy has been in fact the only country in the world in which fully-residential services (the REMS) have substituted forensic psychiatric hospitals. Differently from the large Chinese "Ankang hospitals", the Italian REMS are small scale (maximum 20 beds each) residential services managed only by sanitary personnel (Barbui & Saraceno, 2015), with a focus on therapy and rehabilitation. To be admitted to a REMS the patient must receive a judgement of high social dangerousness, based on the assessment of his own characteristics rather than on the basis of social or familiar factors. In this perspective, Italy could be a valuable example for China, that should focus on defining social dangerousness criteria, enhancing judicial-psychiatric collaboration, and establishing standardized procedures for evaluating and terminating involuntary medical treatment, including setting clear time limits to prevent indefinite detention based on social dangerousness.

Differently from China, where the law involves family member or guardians for the strict supervision and medical treatment of offenders "not guilty because of insanity" because of the saturation of the existing facilities (He, 2011), in Italy there are different pathways according with the presence of high or low danger to public safety (Fornari, 2018). However, because the underestimated needs for beds, at February 2021, 770 people were waiting to be admitted to a REMS facility, 98 of whom in prison facilities (not tailored to assess the specific needs of this type of offenders), while the remaining 672 were free (some of whom with their families). In this respect, we deem that there is room for improvement for both countries.

In conclusions, the criminal law system of Italy and China share some basic characteristics, despite forensic psychiatric evaluations and the management of offenders dangerous to public safety differing significantly. We deem that our cross-national comparative research contributes to find common ground, in order to try to reduce heterogeneity in forensic psychiatry, and seek unified, transparent standards and practices that balance the respect of individual rights and societal interests.

Transnational research, in fact, provides valuable insights into the significant differences and commonalities of forensic psychiatry systems across countries. Such studies help balance individual rights with social interests and offer guidance for improving global forensic psychiatric services. For example, Li et al. (2016) highlighted key differences between China and the U.S. in their legal frameworks and practices, providing valuable lessons for the reform of China's forensic psychiatry system. Similarly, Edworthy et al. (2016) compared forensic psychiatric care in England, Germany, and the Netherlands, showing how

transnational research can reveal strengths and weaknesses of different systems, contributing to best practice development. Senn et al. (2020) further explored whether the Dutch long-term hospitalization model could be applied to forensic psychiatry in England. Gröning & Dimitrova (2023) examined the criminal insanity systems in Norway and Bulgaria, considering the possibility of harmonizing forensic psychiatric frameworks across Europe. de Girolamo et al. (2023) found that, despite differences in social functioning and violence histories, forensic psychiatric patients in different countries require stratified management based on violence risk. Castelletti et al. (2023) highlighted how demographic and clinical differences impact patient outcomes across Europe. Balcioglu et al. (2024) compared psychiatric patients in Turkey and Russia, showing how culture affects behavior and needs. Oberndorfer et al. (2023) compared the needs of schizophrenia patients in five European countries, highlighting the need to consider cultural and practical differences in setting international standards. These studies highlight the value of transnational comparisons in advancing forensic psychiatry and promoting the standardization of practices, while balancing diverse national systems.

Despite our study providing valuable insights into the similarities and differences in forensic psychiatric assessments between China and Italy based on legal texts, some limitations need to be acknowledged. The lack of empirical data or case samples limits the generalizability of the conclusions, as the findings may not fully reflect practical applications. Additionally, the complexity of cultural factors and variations in the interpretation of legal provisions may affect the accuracy of the comparison. Differences in legal culture, judicial practices, and the application of legal statutes in both countries require further exploration to ensure a comprehensive and precise cross-national comparison.

Future forensic psychiatry research should focus on cross-national collaboration, technological innovation, socio-cultural analysis, and healthcare system optimization to enhance service quality worldwide. Cross-national cooperation is essential for developing standardized tools and interventions to reduce disparities and improve risk management. Understanding socio-cultural influences on patient behavior will enable more tailored treatment plans. Technology, especially AI and big data, will improve risk prediction accuracy and optimize interventions, while local needs must be considered in global standards. Interdisciplinary collaboration can deepen insights into patient behavior and strengthen cross-national studies. Future research should also prioritize preventive interventions and community rehabilitation to reduce recidivism, supporting better patient reintegration. These efforts will drive the global advancement of forensic psychiatry.

CRedit authorship contribution statement

Huan Wan: Writing – original draft. **Giovanna Parmigiani:** Writing – original draft. **Stefano Ferracuti:** Writing – review & editing, Conceptualization. **Ping Yan:** Writing – review & editing, Conceptualization.

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Declaration of competing interest

The authors have declared that no competing interests exist.

Appendix A. Supplementary data

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