

Tilburg University

Free will and criminal responsibility

Meynen, G.; Oei, T.I.

Published in:

Transnational Criminology Manual, Volume 1 (What is criminology?)

Publication date:

2010

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):

Meynen, G., & Oei, T. I. (2010). Free will and criminal responsibility. In M. Herzog-Evans (Ed.), *Transnational Criminology Manual, Volume 1 (What is criminology?)* (pp. 193-207). Wolf Legal Publishers (WLP).

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

5.6. Free Will and Criminal Responsibility

Gerben Meynen¹ & Karel Oei²

Dr. G. Meynen (MD PhD, psychiatrist)
Faculty of Philosophy & EMGO Institute VU medical center

Prof. dr. T.I. Oei (MD PhD FCCP, psychiatrist)
Tilburg University Law School
Institute of Criminal Law and Victimology, Department of Forensic Psychiatry

Abstract

The law is not only interested in whether a person perpetrated a crime, but also in the question whether the person can be held responsible for the act. In fact, the law provides the possibility of a forensic psychiatric assessment in case of doubts about a person's responsibility for the legally relevant act he or she performed. A forensic psychiatrist or psychologist, then, has to assess the defendant, trying to establish to what extent, due to a mental disorder, the person can be considered not responsible for the act he or she committed. A considerable number of forensic practitioners and theorists believe that the underlying reason for such an assessment is that free will can be compromised by mental disorder, and that free will is required for legal accountability. However, this conception of the rationale of forensic assessments leads to serious problems as soon as the philosophical discussions on free will are taken into account. In this Chapter the forensic and philosophical problem of free will and responsibility will be presented and several solutions to this problem which have recently been proposed, will be discussed.

Résumé

Le droit ne s'intéresse pas seulement au point de savoir si une personne a commis un crime, mais aussi de savoir si elle peut être tenue pour responsable de cet acte. De fait, la loi prévoit qu'un expert psychiatre en "forensics" puisse réaliser une évaluation en cas de doute au sujet de la responsabilité de la personne pour l'acte litigieux qu'elle a commis. Un expert en "forensics", psychiatre ou psychologue, doit alors évaluer le prévenu et tenter d'établir dans quelle mesure, notamment en cas de trouble mental, la personne peut être tenue pour responsable de l'acte qu'il ou elle a commis. Un nombre considérable de praticiens et de théoriciens du champ de la "forensics" pense que la raison qui sous-tend de telles évaluations est que l'autonomie de la

¹ VU University Amsterdam, De Boelelaan 1105, 1081HV Amsterdam, Tel:+31(0)20-5983948, Fax: +31(0)20-5986635, g.meynen@ph.vu.nl

² Prof. Cobbenhagenlaan 221 - Room M805, P.O. 90153, 5000 LE Tilburg, Tel.: +31(0)13-4668103/4662254, Fax: +31(0)13-4668102, t.i.oei@uvt.nl

volonté de la personne peut être compromise par un trouble mental et que l'autonomie de la volonté est la condition de la responsabilité pénale. Cependant, cette appréhension des fondements de l'évaluation forensique génère de sérieux problèmes à partir du moment où sont inclus les débats philosophiques autour de l'autonomie de la volonté. Dans ce chapitre, les questions tant forensiques que philosophiques liées à l'autonomie de la volonté et à la responsabilité seront présentées et différentes solutions récemment proposées, seront discutées.

5.6.1. Introduction

The law is not only interested in whether a person perpetrated a crime, but also in the question whether the person can be held responsible for the act he or she performed. In fact, the law provides the possibility of a forensic psychiatric assessment in case of doubts about a person's responsibility for a legally relevant act. A forensic practitioner, then, has to make a psychiatric assessment of the defendant, trying to find out to what extent a mental disorder could have influenced the sequence of events leading to the criminal act (Gutheil 2005, Rogers and Shuman). For instance, in case a mother kills her newborn baby because of a delusional state in a post partum psychosis, we apparently intuit that the fact that the act resulted from a mental disorder is highly relevant from a legal perspective. Such an intuition is not only reflected in forensic psychiatric literature, but also in ethical/philosophical literature (Peter Strawson 1963, Wolf 1987, Galen Strawson 1994, Kalis 2009). This intuition, however, does not make explicit *what it takes* to be responsible or what it is that mental disorders do (or can do), that makes us intuit that a person is not accountable for certain actions performed while suffering from a mental disorder. Now what is it that mental disorders do which makes them highly interesting from a legal point of view? One set of answers to this question points to *free will*. We consider this type of answers in this Chapter.

The structure of this Chapter is as follows. In section 2, we briefly discuss the nature of forensic assessment of criminal responsibility and the alleged relationship with free will. In section 3, we discuss the philosophical problem of free will. It is this problem that has deeply penetrated forensic theorizing and raised serious concerns about the theory and practice of forensic assessments. In section 4, we discuss five recent solutions to the free will problem in forensic psychiatry as suggested by Morse, Gazzaniga, Felthous and Juth and Lorentzon.³ In this Chapter, we will not go into possible differences between moral responsibility on the one hand and criminal responsibility/legal accountability on the other.⁴ We use the term 'moral responsibility' in order to refer to the ethical domain, and legal/criminal responsibility in order to refer to the legal domain. We take moral responsibility to be required for legal responsibility (within this context accountability will be considered as synonymous with responsibility).

5.6.2. Forensic psychiatric assessment and free will

In order to explain the practice of forensic assessments of criminal responsibility, authors often mention that the judicial system requires two

³ We do not take a position on the advisability of forensic assessments in legal proceedings. The Chapter has been written given the current practice and the philosophical, free will-related debates surrounding it.

⁴ See Vincent (2009) for a proposed taxonomy of responsibility as related to legal accountability.

elements to be able to hold a person accountable for a criminal offence: the criminal act as such (*actus reus*) and intent (*mens rea*, latin for “guilty mind”) (See, e.g., Rogers and Shuman 2005, Zemishlany 2006, Morse 2007). As Zemishlany (2006, p.152) puts it: “A person who, as a result of severe mental disease or defect, is not able to appreciate the nature and quality of his or her acts is not held responsible for committing them.” Several legal rules have been developed to guide an insanity defense. The most widely used legal rule for this defense is the M’Naghten Rule (Elliott 1996, Simon 2005). Daniel M’Naghten was a Scottish woodcutter. He believed that, among others, the prime minister was persecuting him. Therefore, M’Naghten planned to kill him. In an attempt to kill the prime minister, however, M’Naghten murdered the prime minister’s secretary, Edward Drummond, instead. M’Naghten was tried and, in the end, acquitted by reason of insanity (see Elliott 1996). Eventually, the outcome of this legal case led to the so-called M’Naghten Rule, which became the legal standard for the insanity defense in many Anglo-American jurisdictions (Elliott 1996). It can be phrased as, “at the time of committing the act, the party accused was laboring under such a defect of reason, from the disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know what he was doing was wrong.” (Elliott 1996, p.11) Although the M’Naghten Rule has been influential, it is noteworthy that different countries/jurisdictions may have different descriptions of the insanity defense and of the forensic psychiatrist’s task (Elliot 1996). At present, there is no (gold) standard to assist the forensic practitioner in his or her assessment with respect to an assessment of criminal responsibility (Henderson 2005, Simon 2005, Rogers & Shuman, 2005).

We use the term ‘criminal responsibility’ in order to refer to the relevant forensic (psychiatric or psychological) assessment. Yet, an area of unclarity concerns the question whether forensic psychiatrists should express their views about the defendant’s actual responsibility for the act (Gutheil 2005, Rogers and Shuman 2005). Some have suggested that psychiatrists should not make the inference that the person is (not) responsible, or that this should explicitly be phrased as an *opinion*, because it is an ‘ultimate issue’, the final judgment about which should be left to the judge/jury (Gutheil 2005). Psychiatrists, then, should stay away from directly addressing the question of accountability for the act. Notably, in either case, the assessment is taking place in order to provide the court with information to make a judgment with respect to (criminal) responsibility.

Although, for instance, the M’Naghten Rule does not mention free will, some forensic theorists and practitioners hold that what the assessment is actually about is the presence or absence of free will. In *Psychiatric ethics*, Reich (2005, p.206) makes a concise statement which puts free will at the center of (the rationale of) forensic assessment. He states that “the law recognizes that insanity compromises free will, and classifies someone without free will as legally not responsible for his or her actions (...)”. In the same vein, Luthe and Rösler (2004, p.297) state that in case the court consults psychiatric experts, these experts “whether they want to or not, will have to concern themselves

with the question of whether human actions can be freely chosen or whether the acting person could not avoid acting as he did." As the quotation by Reich already shows, it is crucial, that 1) mental disorders are the kind of phenomena that can compromise free will and *also* that 2) that the law requires free will in order to be able to hold people responsible. According Wilson and Adshead (2004, p.301) write: "[w]e have a powerful sense of our own ability to freely choose our behavior, and this is the common-sense view of the law." (cf. Eastman 1992, p.161) Now the fact that on such a theoretical level free will is considered central could explain why also in more practically oriented forensic literature free will sometimes plays a central role. For instance, in a paper by Van Marle (2000), which explains the fact that in the Netherlands there are grades of accountability. In explaining this particular aspect of the Dutch legal system he states: "Undiminished responsibility means that the person concerned had complete access to his or her free will at the time of the crime with which he or she is charged and could therefore have chosen not to do it. Irresponsibility means that the person concerned had no free will at all with which to choose at the time of the crime with which he or she is charged. Important here is determining the moment when aspects of the disorder become manifest in the situation ("the scene of the crime") that will eventually lead to the perpetration. The earlier they play a role, the more inevitable will be the (disastrous) sequence of events, and the stronger will be the eventual limitation of free will." In this account, free will is central. And yet, although the concept of free will might be able to elegantly explain the rationale for forensic assessment, it is generally considered that such an explanation entails serious problems (see, e.g., Stone 2008, Morse 2007, Juth and Lorentzon 2009). These problems arise as soon as the *philosophical debate* on free will is taken into account.

5.6.3. *The philosophical problem of free will*

Given the alleged role of free will in forensic psychiatry (and in the law as such) it might not be surprising that authors consider the philosophical issues related to free will relevant to forensic assessment of criminal responsibility. How to define free will philosophically? As it turns out, there is no consensus among philosophers how to define free will. Several elements or senses of free will frequently feature in the philosophical debate: First, free will as having alternative possibilities (being able to do otherwise), second, free will as being the source of an action, and third, free will as being in control of an action (Kane 2002, Walter 2001). Now the real problem that worries forensic theorists has not so much been the unclarity about how to exactly define free will; the real issue has been the very possibility of something like 'free will' in the actual world we live in. This concern often comes down to the question: is free will (in any of the senses mentioned above) compatible with determinism? This (notorious) question brings us to the heart of the philosophical debate on free will, a debate that has been going on for centuries: the compatibility of free will and determinism.

There are three main philosophical positions on this issue: libertarianism, hard determinism and compatibilism.⁵ 'Libertarians' and 'hard determinists' may disagree on almost everything, nevertheless they agree that free will and determinism are incompatible. Libertarians deem it true that free will exists, and, therefore, consider determinism false. Hard determinists hold that determinism is true and that, therefore, 'free will' is false. The major problem for hard determinists is to explain our moral intuitions (and responsibility-related practices like criminal law procedures) and to explain how we should deal with them *after* we have realized that free will is, in fact, illusory. One of the challenges for libertarians is to reconcile their view with many scientific findings, for instance by physics and neuroscience, showing that our world or behavior are determined by natural laws and neuronal wiring and firing. Compatibilism is, in principle, just the view that free will and determinism can go together. Yet, in the standard case compatibilists have a different view of free will than libertarians; they generally do not demand from free will what libertarians demand from it. They are satisfied with some leaner conception of free will, but they consider this conception *still worthy* to be considered 'free will' – "free will worth wanting", as Daniel Dennett puts it (1984). Whether free will is compatible with determinism, and whether free will is compatible with the actual world we live in, remains heavily disputed (Kane 2002, Watson 2003, Searle 2007).

It is noteworthy that according to Greene and Cohen (2004, p.1776) the law has, in fact, implicitly chosen a libertarian position: "We argue that current legal doctrine, although officially compatibilist, is ultimately grounded in intuitions that are incompatibilist and, more specifically, libertarian. (...) we argue that the law's intuitive support is ultimately grounded in a metaphysically overambitious, libertarian notion of free will that is threatened by determinism and, more pointedly, by forthcoming cognitive neuroscience." In this quotation Greene and Cohen also identify the type of determinism that is currently considered to be the most relevant: neurobiological determinism. In the next section, we discuss Gazzaniga's solution to the problem of neurobiological determinism versus the law and assessment of criminal responsibility.

Notably, to a lesser extent, there is also a discussion on *indeterminism* and free will (Kane 2002). As it appears, indeterminism doesn't help free will either. For when our behavior is random, there is no control, and our reasons for our action are not directly related to our actions – they occur erratically (Kane 2002). Whilst some argue for the relevance of indeterminism (especially given quantum mechanics) to the debate on free will, others argue that at the 'macro-level' (allegedly also the level of neuroscience) there appears to be determinism (see Bishop 2002). This means, that although we live in a world that is, at the quantum level, governed by chance, at the macro-level the world would 'behave' in a deterministic way – which makes the discussion on free will and determinism relevant, still.

⁵ Kane 2002, Watson 2003.

The US philosopher John Searle considers the ongoing philosophical dispute on free will and determinism a sort of “scandal” for philosophy. For all these ages of thinking have not brought us anything like a solution. Searle remarks: “The problem of free will is unusual among contemporary philosophical issues in that we are nowhere remotely near having a solution.” (2007, p.11) Thomas Nagel (1986, p.112) has formulated a comparable opinion:

“I change my mind about the problem of free will every time I think about it, and therefore cannot offer any view with even moderate confidence; but my present opinion is that nothing that might be a solution has yet been described. This is not a case where there are several possible candidate solutions and we don't know which is correct. It is a case where nothing believable has (to my knowledge) been proposed by anyone in the extensive public discussion of the subject.”

Some forensic theorists and practitioners have serious concerns about this free will problem within the context of forensic assessment (this worry is described or expressed by, for instance, Stone 2008, Morse 2007, Aharoni et al. 2008, Juth and Lorentzon 2009, and Meynen 2009 and 2010). The underlying fear is, in brief, that it could very well be that we live in a deterministic world, and that, more specifically, our brains (which appear to make our mental lives possible) work in a deterministic way. In addition, free will could be incompatible with determinism, and therefore, in the end, free will must be an illusion (Wegner 2002, 2003). So, if the forensic psychiatrist's task is essentially about free will, then this task could be illusory in some relevant respect as well.

5.6.4. *Recent solutions to the free will problem in forensic psychiatry*

The previous two sections showed how one of the biggest conceptual problems in forensic psychiatry arose: the concept of free will is considered central to forensic assessment *and* the philosophy of free will confronts us with huge problems concerning the definition and feasibility of anything like ‘free will’ in our world. Given this state of affairs, several solutions to the ‘free will problem’ in forensic psychiatry have been proposed. We will limit our discussion to five recent proposals:

5.6.4.1 *Free will is irrelevant in legal doctrines*

Stephen Morse, an influential US forensic psychologist and theorist, recently (2007) argued that although free will is a problem for philosophers, it is not a problem for forensic practitioners. He argues that because the related legal doctrines do not mention free will, free will should not be considered relevant to forensic assessment. He founds his argument on United States Law. And because free will is not explicitly mentioned as relevant to forensic assessment, forensic practitioners should not have to be troubled by it. Morse's point

appears to be: forensic practitioners have been concerned too much with philosophical debates on responsibility overlooking the plain fact that the legal doctrines related to such an assessment just do not mention free will as relevant. And indeed, for instance the M’Naghten Rule does not mention free will at all. We have to note, however, that if one would accept Morse’s line of thought, then the problem might still remain for those jurisdictions in which free will is being mentioned in doctrines or documents describing or founding forensic assessment. Another challenge to Morse’s line of thought is to counter what Van Inwagen (1986, p.153) puts this way: “[W]e care about free will because we care about moral responsibility, and we are persuaded that we cannot make ascriptions of moral responsibility to agents who lack free will.”⁶ The challenge, more precisely, is to show that although there is a widespread intuition that free will (which can be defined in different ways) is necessary for responsibility as such⁷, free will not being mentioned in legal documents in the US overrides this basic intuition with respect to assessments of criminal responsibility (See Levy 2007 and Meynen 2009 for a response to Morse).

5.6.4.2 Compatibilism is the right position

In his paper Morse (2007) also suggests a more philosophical solution. He proposes that the best thing to do for forensic psychiatrists could be to accept compatibilism as the right position (see section 2 about compatibilism). If forensic psychiatrists would indeed adopt this view, they can continue to hold people responsible even if the world we live in is governed by deterministic natural laws. Choosing compatibilism, meanwhile, entails that forensic practitioners take a specific position in the philosophical debate (compatibilism) – a debate that, according to Searle and Nagel at least, is still uncertain in its outcome. Thus, there is a substantial risk that forensic psychiatrists will be overplaying their hand. There is another concern: suppose that forensic practitioners would indeed embrace compatibilism, then, indeed as a result these forensic workers may have put their minds to rest. However, to the authors who do not embrace compatibilism (like libertarians and determinists) forensic assessment might still lack a sound conceptual justification.

5.6.4.3 The will instead of free will

Alan Felthous (2008) proposes to drop the ‘free’ part of free will. According to Felthous (2008, p.21), “[t]he law defines mental responsibility and competence by the presence or absence of certain capacities or functional abilities or by the

⁶ This surely does not mean that (the exact nature of) the relationship between free will and moral responsibility is clear (see Kane 2002, Watson 2002, Widerker and McKenna 2005).

⁷ This intuition is also reflected in metaphysics and metaethics (see, e.g., Widerker and McKenna 2005, Pereboom 2001, Kane 2002, Watson 2003).

specific actual, active functions such as specific intent and deliberation (...). "Free" will is not involved." He (2008, p.23) claims that, "[t]he will is simply the intentional faculty: Through motivation and decision the will settles upon and then implements an action." In Felthous's view, we should focus on (research on) the intentional faculty, instead of on the problematic prefix 'free'.⁸ Still, we could ask ourselves whether the 'will' provides sufficient information to distinguish, with respect to accountability, e.g., a legally relevant act performed due to a paranoid delusion from a legally relevant act performed without any mental disorder being present. Both actions may be motivated, intentional, and both may involve a decision. (Mental disorders usually do not suspend intentional behavior, nor do they preclude decisions being made.) In order to be able to distinguish between these two cases, therefore, a forensic psychiatrist aims to *qualify* the motivational and decisional process, and tries to establish exactly how the intention, motivation, and decision 'came about'. The fact that the will was 'free' appears such a qualification which somehow is considered to be an 'on the spot' characterization as far as questions about *responsibility* are concerned. Now a challenge for Felthous would be to find ways to qualify the will in a way specifically helpful to assessments of criminal responsibility.

5.6.4.4 *Autonomy instead of free will*

Juth and Lorentzon (2009) recently suggested to leave out the concept of free will, and to focus on the concept of *autonomy* instead. They write: "(...) psychiatry and law can manage without any reference to any position in the debate on free will." So, the concept of autonomy could *fully* satisfy the conceptual needs of forensic practice. On their account, "[t]o be autonomous is to govern oneself or to decide one's own way. To live autonomously is then to live in accordance with one's basic desires or values. There are two ways of being less than fully autonomous according to this general characterization: if one does not or cannot live the life one has chosen to live, or if one does not or cannot choose the life one lives." In their elaboration of autonomy the will – not free will – turns out to be central, like in Felthous's proposal, yet they add to that 'decision' and 'action': "Here three components are discernable: will (or desire, value, or other pro-attitude), decision, and action. How autonomous a person is, is determined by all these components and all these components can vary in degree." Given their proposal, it is important to know 1) whether the concept of autonomy fully accommodates the conceptual needs of forensic assessments, and 2) whether it indeed does not touch on the traditional and troublesome issue of free will. For although Juth and Lorentzon are confident that autonomy will not lead us to the metaphysical problems regarding free will, we are not so sure. For instance, in *Autonomous Agents* the philosopher Mele (1995, p.4) says: "Autonomy, as I understand it, is associated with a family of *freedom*-concepts: free will, free choice, free action and the like." Via a

⁸ On the difference between 'will' and 'free will', also see Sebanz and Prinz (2006, p. 3-5).

kinship with free will, the concept of autonomy, in the end, might still touch upon metaphysical free will-related problems.

5.6.4.5 Neuroscientific determinism should be distinguished from responsibility/free will issues

Michael Gazzaniga (2005a), a neuroscientist who has become famous for his experiments on split-brain patients (2005b), has developed an argument claiming that neurobiological determinism does not endanger free will and moral/legal responsibility. As mentioned earlier, it is this type of determinism that is currently considered the most relevant (Greene and Cohen 2004). We also have to bear in mind that forensic psychiatrists, as medical doctors, are very much familiar with neurobiological research on the relationship between brain and (pathological) behavior. Therefore, this is a type of determinism that has a prima facie relevance to (forensic) psychiatrists. On Gazzaniga's (2005a, p.99) account, neurobiological determinism has no bearing on legal and social responsibility practices, for they have their relevance in separate domains: "[b]rains are automatic, but people are free. Our freedom is found in the interaction of the social world." In other words, on his account it is possible to make a distinction between the functioning of our brains (the realm of neuroscience) on the one hand, and our personal functioning in social contexts on the other (the realm of freedom). He uses the same argument with respect to responsibility: "We are all part of a deterministic system that some day, in theory, we will completely understand. Yet the idea of responsibility, a social construct that exists in the rules of a society, does not exist in the neuronal structures of the brain." (2005a, p.102) On his account, it is possible to make such a fundamental distinction because responsibility is ascribed to *humans*, not to brains: "This is the fundamental point. Neuroscience will never find the brain correlate of responsibility, because that is something we ascribe to humans – to people – not to brains. It is a moral value we demand of our fellow, rule-following human beings."⁹ Gazzaniga gives an example (2005a, pp.101-102) in order to clarify his point: "Just as optometrists can tell us how much vision a person has (20/20 or 20/40 or 20/200) but cannot tell us when someone is legally blind or has too little vision to drive a school bus, so psychiatrists and brain scientists might be able to tell us what someone's mental state or brain condition is but cannot tell us (without being arbitrary) when someone has too little control to be held responsible. The issue of responsibility (like the issue of who can drive school buses) is a social choice. In neuroscientific terms, no person is more or less responsible than any other for actions." Gazzaniga suggests that it is possible to make a clear distinction between the social practice of holding each other responsible, and the findings of neuroscience. He points at the possibility to continue responsibility practices although

⁹ Gazzaniga 2005a, p. 101. See also Gazzaniga (2005, p. 89): "We need to distinguish among brains, minds, and personhood. People are free and therefore responsible for their actions; brains are not responsible."

neuroscientific data do not support such a practice at all. Still, in our view, the crucial question is whether we are willing to accept such a rigorous distinction.

These five solutions to the free will problem in forensic psychiatry have only recently been suggested. This shows the topical interest in these matters, in part, fueled by neuroscience, and more precisely, alleged neuroscientific determinism. To be sure, most of these proposed solutions suggest that solving the free will problem in forensic psychiatry can or should be *independent* from solving the *philosophical* problem of free will (except for proposal 4.2). The future will tell which of these – if any – is/are able to satisfactorily solve the problem of free will for forensic psychiatrists. Until then, a metaphysical issue – free will and related matters of determinism, compatibility and responsibility – will probably continue to occupy the minds of forensic theorists and practitioners who work on forensic assessments of criminal responsibility.

5.6.5. References

- Aharoni, E., Funk, C., Sinnott-Armstrong, W., & Gazzaniga, M., 2008
 'Can Neurological Evidence Help Courts Assess Criminal Responsibility? Lessons from Law and Neuroscience', *Annals of the New York Academy of Sciences*, 1124, pp.145–160.
- Bishop, R.C., 2002
 Chaos, indeterminism, and free will. In R. Kane (red.), *The Oxford Handbook of Free Will* (pp. 111-124). Oxford: Oxford University Press.
- Buchanan, A., 2000
 Psychiatric Aspects of Justification, Excuse and Mitigation. London: Jessica Kingsley.
- Dennett, D.C., 1984
Elbow Room. The Varieties of Free Will Worth Wanting. Oxford: Clarendon.
- Eastman, N., 1992
 Psychiatric, Psychological, and Legal Models of Man. *International Journal of Law and Psychiatry*, 15, pp.157-169.
- Eastman, N. and Campbell, C., 2006
 Neuroscience and legal determination of criminal responsibility. *Nature Reviews Neuroscience* 7, pp.311-318.
- Elliot, C., 1996
The Rules of Insanity. Moral Responsibility and The Mentally Ill Offender. Albany: State University of New York Press.
- Felthous, A.R., 2008
 The Will: From Metaphysical Freedom to Normative Functionalism. *The Journal of the American Academy of Psychiatry and the Law* 36, 16–24.
- Gazzaniga M.S., 2005a
The Ethical Brain, New York: Dana.
- Gazzaniga, M.S., 2005b
 Forty-five years of split-brain research and still going strong, *Nature reviews neuroscience* 2005 6, 8, pp.653-659.
- Gazzaniga, M.S., 2008
 The Law and Neuroscience. *Neuron*, 60, 3, pp.412-415.

- Greene, J. and Cohen, J.D., 2004
 For the law, neuroscience changes nothing and everything. *Law & the Brain*. S. Zeki and O. Goodenough. New York: Oxford University Press, pp.207-226.
- Gutheil, T.G., 2005
 Ethics and forensic psychiatry. In: Psychiatric Ethics (ed. Bloch, S, Chodoff, P., and Green) SA. Oxford: Oxford University Press, pp.345-362.
- Henderson, S., 2005
 The Neglect of Volition. *British Journal of Psychiatry*, 186 , pp.273- 274.
- Juth, N. and Lorentzon, F., 2009
 The concept of free will and forensic psychiatry. *International Journal of Law and Psychiatry*. doi:10.1016/j.ijlp.2009.10.008.
- Kalis, A., 2009
Failures of agency. Utrecht: Utrecht University Press.
- Kane, R. (Ed.), 2002
The Oxford Handbook of Free Will. Oxford: Oxford University Press.
- Levy, N., 2007
Neuroethics. Challenges for the 21st Century. Cambridge: Cambridge University Press.
- Luthe, R. and Rösler, M., 2004
 Freedom of Will, Freedom of Action and Psychiatry: Concerning the Relationship of empirical to intelligible character and so-called freedom of choice in the view of forensic psychiatry. In: T. Schramme and J. Thome, *Philosophy and Psychiatry*. Berlin: De Gruyter, pp. 295-308.
- Meynen, G., 2009
 Should or should not forensic psychiatrists think about free will? *Medicine, Healthcare and Philosophy* 12(2), pp. 203-212.
- Meynen, G., 2010
 Free will and psychiatric assessment of criminal responsibility. A parallel with informed consent. *Medicine Health Care and Philosophy*, doi: 10.1007/s11019-010-9250-7.
- Marle, H. van, 2000
 Forensic Psychiatric Services in the Netherlands. *International Journal of Law and Psychiatry*, 23 (5-6), pp.515-531.

- Morse, S.J., 1999
Craziness and Criminal Responsibility. *Behavioral Sciences and the Law*, 17: 147-164
- Morse, S.J., 2007
The non-problem of free will in forensic psychiatry and psychology. *Behavioral Sciences & the Law*, 25, pp.203–220.
- Nagel, T., 1986
The View from Nowhere. Oxford: Oxford University Press.
- Pereboom, D., 2001
Living without free will. Cambridge: Cambridge University Press.
- Reich, W., 2000
Psychiatric diagnosis as an ethical problem. In: S. Bloch, P. Chodoff S. Green *Psychiatric Ethics, 3rd Edition*. Oxford University Press.
- Rogers, R. & Shuman, D.W., 2005
Fundamentals of Forensic Practice: Mental Health and Criminal Law, New York: Springer.
- Searle, J.R., 2007
Freedom & neurobiology. reflections on free will, language, and political power. New York: Columbia University Press.
- Sebanz, N. & Prinz, W. (Eds.), 2006
Disorders of Volition. Cambridge: MIT Press.
- Simon, R.I., 2005
Ethics and forensic psychiatry. In Sadock, B.J., & Sadock, V.A., *Kaplan & Sadock's comprehensive textbook of psychiatry*, 8th edition. Philadelphia: Lippincott Williams & Wilkins.
- Stone, A.R., 2008
The Ethical Boundaries of Forensic Psychiatry: A View from the Ivory Tower. *The Journal of the American Academy of Psychiatry and the Law*, 36(2), pp.167-174.
- Strawson, G., 1994
The Impossibility of Moral Responsibility. *Philosophical Studies* 75(1-2), pp.5-24.
- Strawson, P.F., 2003
'Freedom and Resentment', in: *Free Will* (Ed. G. Watson), Oxford: Oxford University Press.

- Van Inwagen, P., 1986
 Ability and Responsibility. In *Moral Responsibility* (ed. J.M. Fischer). Ithaca: Cornell University Press, pp. 153-173.
- Vincent, N.A., 2010
 On the Relevance of Neuroscience to Criminal Responsibility. *Criminal Law and Philosophy*, 4(1):77-98.
- Walter, H., 2001
Neurophilosophy of Free Will. From Libertarian Illusions to a Concept of Natural Autonomy. Massachusetts: MIT Press.
- Watson, G., (Ed.), 2003
Free Will. Oxford Readings in Philosophy. Oxford: Oxford University Press.
- Wegner, D.M., 2002
The Illusion of Conscious Will. Cambridge: MIT Press.
- Wegner, D.M., 2003
 The mind's best trick: how we experience conscious will, *Trends in Cognitive Sciences*, 7, pp.65-69.
- Widerker D, McKenna, M. (Ed.), 2003
 Moral responsibility and alternative possibilities: essays on the importance of alternative possibilities. Aldershot: Ashgate.
- Wilson, S & Adshead, G., 2004
 Criminal Responsibility. In Radden (Ed.) *The Philosophy of Psychiatry. A Companion* (pp. 296-311). Oxford: Oxford University Press.
- Wolf, S., 1987
 Sanity and the Metaphysics of Responsibility. In: *Responsibility, Character and the Emotions* (Ed. F. Schoeman). Cambridge: Cambridge University Press.
- Zemishlany, Z. and Melamed, Y., 2006
 The Impossible Dialogue between Psychiatry and the Judicial System: A Language Problem. *Israel Journal of Psychiatry & Related Sciences*, 43(3), pp.150-158.