

Experiences from a Norwegian forensic psychiatrist

Randi Rosenqvist
randi@rosenqvist.no
KPS, OUS

Background

The insanity defence since 1848

- Those who were insane at the time of the crime were acquitted.
 - Usually schizophrenia, but also other serious mental illnesses
- From 2002 – Forty years of better treatment of schizophrenic patients. Perpetrators were not necessarily so ill that it defended the insanity defence. The legal term “psychotic” was introduced as a psychotic **state**, not a diagnosis.
- From 2020 the term was altered to “was found not not fit to plead because of a severely deviant state of mind”.

- “The medical principle”: A felon is acquitted if he committed the crime **while** he was “**insane**”
- “The psychological principle”: A felon is acquitted if he committed the crime **because** he was “**insane**”

Treatment of insane felons

- From 1850, transferred to psychiatric asylums according to civil regulations within the Mental Health Act, no treatment available.
- From approximately 1890 (2020), some were sent to a special hospital for dangerous men. Closed in 1987
- From 1929 a special sentence according to the Penal Code, the perpetrator could be sent to a nursing home, a psychiatric hospital or a prison – but psychotic persons were not supposed to be in prison.

Treatment of insane felons (2)

- From 1970 – many psychotic patients were released from mental hospitals, more treatment was voluntarily, treatment was often very effective and there was a clear anti-psychiatry movement in public.
- From 1986 (?), the special sentence (Penal Code) was not a sufficient legal basis for admittance to a mental hospital. The Mental Health Act (civil) was the only legal basis for treatment
- From 2002 a special hospital order for dangerous acquitted offenders could be imposed by the court (Penal Code). The hospitals were coerced to give the perpetrator adequate treatment to prevent new violent acts. From 2017 this also was the case for some insane offenders who were pestering their environment. The public prosecutor became party to the case. The Mental Health Act regulated the stay and treatment in hospital.

Forensic psychiatry in the 1990s

- There were few forensic psychiatric expert, often elderly academics and consultants in private practise.
- There was no academic institute or research in forensic psychiatry
- There was no training in forensic psychiatry

- The experts wrote their assessment and met in court, and gave the court their opinion of whether the felon was insane or not.
- The assessments often lacked discussions, just presented the experts views.
- Some acquitted felons were sent to prison on a special sentence because they were difficult to treat in hospitals.

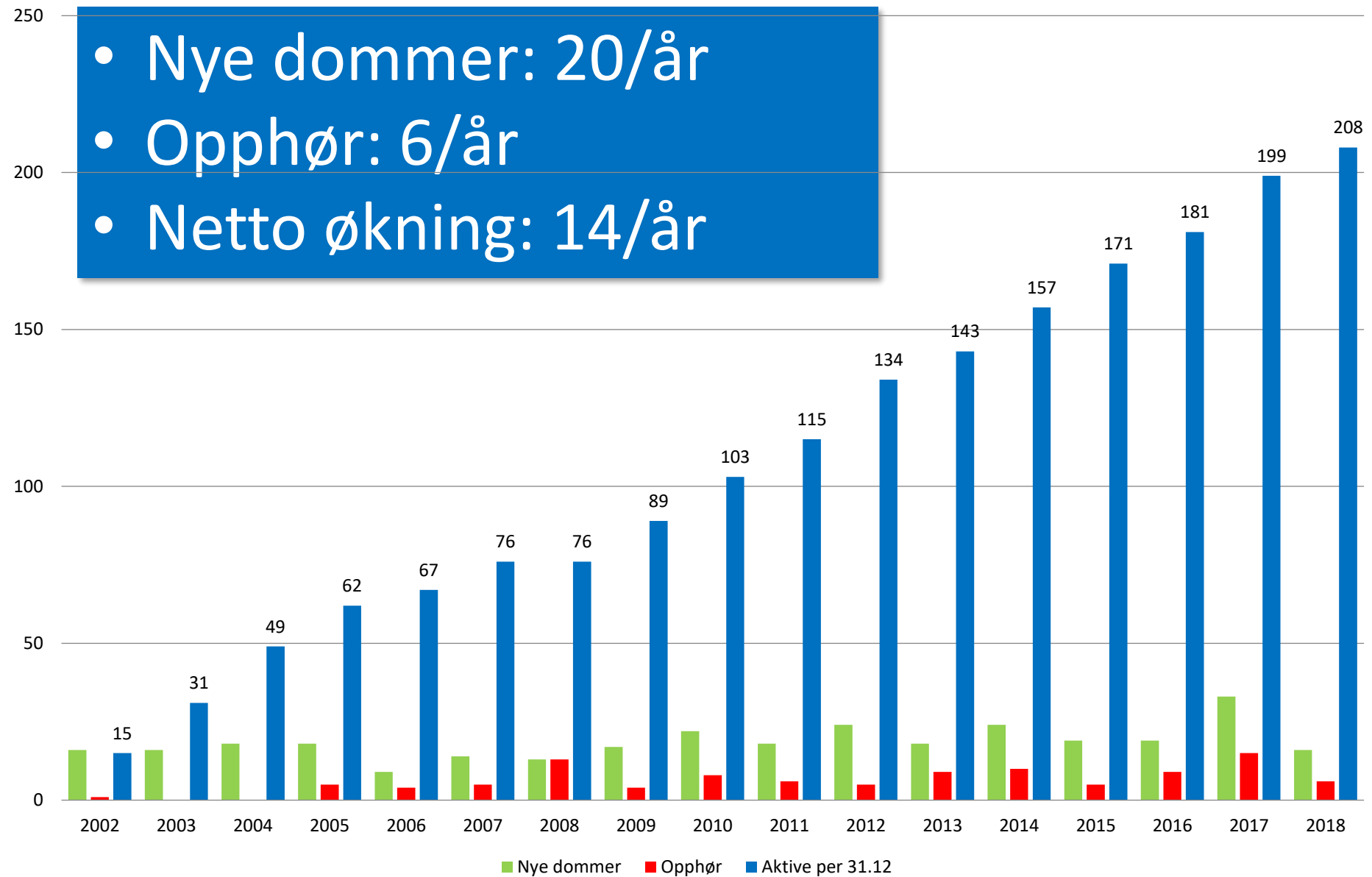
Forensic psychiatry in the 2000s

- A new insanity defence (“psychotic”) and new special sentences.
- A new Diagnostic Manual (ICD-10) and risk analyses were required.
- A recruitment of younger clinicians in the field (psychiatrist and psychologists)
- Courses in Forensic Psychiatry and Forensic Medicine (B- and C- courses)
- The National Forensic Medical Board (from 1902) developed guidelines for the experts and gave more advice than previously.
- Units for research and teaching in Oslo, Bergen and Trondheim were established from the end of the 1990s (SIFER). Secure units were established in mental hospitals from the 1990s.

The in-patient capacity in mental health hospitals is reduced

Year	Hospital beds, total	Hospital beds per 1000
1990	7745	2,5
2002	5439	1.6
2020	3284	0.8
		SSB databank

Utvikling; dom til thp



The serious assault on the government and the young members of the Labour party in 2011

- The forensic experts were intensely criticized.
- It was claimed that it was the experts and not the courts that acquitted a charged person.
- Many people feared that the terrorist would be acquitted.
- People were confused because the legal term “psychotic” was defined by the Parliament and the clinical term “psychotic” is a result of international psychiatric theory.

A law commission and a political process

New legal regulations from October 2020

- A charged person is to be acquitted when the court finds him **not fit to plead** because of a **severely deviant state of mind**” (or severely mentally retarded or with a very reduced consciousness)
- What does it mean to have **a severely deviant state of mind**?
 - The preparatory works are not very extensive
 - Psychotic persons, but also persons with other deviant mental states.
 - The court must consider **the lack of understanding the reality, the burden of symptoms and the functional ability** and if it is **reasonable and just** to acquit the person.
- The court must then decide if the charged person **therefor was not fit to plead,**

- The new legislation is neither the medical nor the psychological principle, but a discretionary principle.
- The court must have an understanding of how the requirements in the penal code's insanity section is to be understood (difficult! The preparatory papers are very limited), and understand the cognition of a severely psychotic person and how this state of mind enables the ability to judge the reality (understand psychotic illnesses), and then also consider what seems just (which is not at all described in the preparatory papers).
- The medical experts are only to describe the charged person in psychiatric terms.

The forensic experts task been changed

- It is no longer necessary to understand and consider whether the charged person fulfils the requirements for acquittal.
- Does this make the task easier?
- How do you present a medical report so the court understands what you mean? Do you have to explain what you mean in your oral presentation? Will the court refrain from asking what the psychiatric report means in legal terms??

- I am not so concerned about the experts, but very concerned about **due process**.
- The majority in the panel of judges are lay people. They might never have met a psychotic person. They might believe that the psychotic person could and should have behaved better/otherwise and that it is unjust to acquit him. They might also believe that a charged person who suffered from a not so serious mental deviance had a severely deviant state of mind as the term is very poorly defined.
- I believe that experienced judges might work under the impression that it “is the same shit, but with a new wrapping”, which might be the intention.

The experts must also present a risk analysis

- Special sentences for the “dangerous” insane, mentally retarded and the sane perpetrators.
- The experts must diagnose and make a risk assessment using risk assessment instruments, but the instruments are only a prerequisite for the individual assessment. How do you evaluate the individual?
- The experts must obviously know what might happen in future (!), or at least know how the mental health system, the community care and the prison system probably will treat the charged person.

My concerns of the expert's bias

- The experts are concerned that offenders who are difficult to treat are sentenced to psychiatric care where there is insufficient capacity. They underestimate the pathology and conclude a personality disorder and not a psychotic state.
- How do you understand very disturbing behaviour? The experts might not be able to diagnose complicated psychopathology.
- The experts think privately it is unjust not to punish the offender.
- The experts recommend the special sentences financed by the government (excludes sentence to psychiatric treatment).

- My hope for the future in forensic psychiatry is that we build more mental hospital capacity for threatening, possibly dangerous severely mentally ill patients and “secure homes” for the same after treatment.
- This might increase the psychiatric competence concerning such patients.
- And I hope the Supreme Court can give a better definition of what qualifies as insanity than the last government did.