CRIME AND HYPNOSIS IN *FIN-DE-SIECLE* GERMANY: THE CZYNSKI CASE

by

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Lurid tales of the criminal use of hypnosis captured both popular and scholarly attention across Europe during the closing decades of the nineteenth century, culminating not only in the invention of fictional characters such as du Maurier's Svengali but also in heated debates between physicians over the possibilities of hypnotic crime and the application of hypnosis for forensic purposes. The scholarly literature and expert advice that emerged on this topic at the turn of the century highlighted the transnational nature of research into hypnosis and the struggle of physicians in a large number of countries to prise hypnotism from the hands of showmen and amateurs once and for all. Making use of the 1894 Czynski trial, in which a Baroness was putatively hypnotically seduced by a magnetic healer, this paper will examine the scientific, popular and forensic tensions that existed around hypnotism in the German context. Focusing, in particular, on the expert testimony about hypnosis and hypnotic crime during this case, the paper will show that, while such trials offered opportunities to criminalize and pathologize lay hypnosis, they did not always provide the ideal forum for settling scientific questions or disputes.

Keywords: hypnotic crime; expert witnesses; Munich;
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INTRODUCTION

In 1894, George du Maurier (1834–96) published his sensational novel *Trilby*, which quickly became one of the most popular and successful novels of its day.¹ The tale's sinister foreign hypnotist, Svengali, who uses the ill-fated Trilby as a kind of musical automaton and, in so doing, does irreparable damage to both her body and her mind, became a lasting and immediately recognizable cultural metaphor for manipulation, as well as for the dangers of hypnosis and the submission of the will.² By strange coincidence, in the same year that *Trilby* was eagerly consumed by readers across Europe, a Munich courtroom provided the stage for both the prosecution of a real-life Svengali and the cross-examination of an aristocratic Trilby, whose hypnotic treatment by and

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sexual relationship with her low-born Slavic hypnotist had the public and the press queuing to sit in the court's public gallery.

On the first day of proceedings against the hypnotist, whose name was Czeslaw Czynski, on 18 December 1894, the *Münchener neueste Nachrichten* declared:

for the first time today a German court has involved itself in the much contested field of hypnotism. The Supreme Bavarian Jurors have to dispense justice in an extraordinarily difficult case especially given that not only a series of medical-scientific, but also highly important legal questions come into consideration.³

Similarly, the *Augsburger Abendzeitung* remarked that the novelistic circumstances of this case had provoked both widespread general interest and great excitement in medical circles.⁴ This excitement was not, however, entirely voyeuristic. As the legal journal *Der Gerichtssaal* made clear in a review of the expert witnesses' testimony, the Czynski case provided, at long last, a tangible example of hypnotic crime, which until Czynski's prosecution had only been discussed theoretically, but had nonetheless contributed to what many jurists regarded as an overblown fear of hypnotic criminality.⁵ For jurists and doctors, therefore, the trial held out the promise of settling the much debated question of the forensic importance of hypnotism.⁶ As the participants in the Czynski trial were to find, however, the courtroom – a space with its own rules and standards of evidence – was not necessarily the best forum for resolving scientific questions, although it did offer a range of opportunities for propaganda on the part of those determined to establish a medical monopoly over hypnosis.

Just as a small number of late nineteenth-century doctors and jurists expressed an interest in the intersection of hypnosis and crime, so too have a handful of modern scholars sought to explore the meaning of this phenomenon. Both historians and literary scholars have considered the proliferation of suggestion literature (scientific, forensic and fictional) at the end of the nineteenth century, in order to probe the contemporary anxiety and frisson elicited by hypnotic crime. Daniel Pick's *Svengali's web*, for instance, examines *Trilby* as a publishing sensation which, through the lens of cultural history, reveals the overlapping complex of late nineteenth-century ideas about race, gender, science and pseudoscience.⁷ Similarly, Stefan Andriopoulos' book *Possessed* examines hypnotic crime as it manifested in late nineteenth- and early twentieth-century legal, medical and literary texts, as well as cinema, in order to understand pervasive contemporary fears about being governed by an outside force.⁸

In addition, a number of studies in the histories of science and medicine have examined specific cases of putative murder or death under hypnosis. Ruth Harris, for example, has studied the 1890 Parisian trial of Gabrielle Bompard, who claimed that her involvement in a robbery murder was the result of hypnotic suggestion. Harris shows how this trial transformed into both a forum for debate over the legitimacy of the Salpêtrière and Nancy Schools' theories of hypnosis and a vehicle for claiming the necessity of a medical monopoly over healing practices.⁹ Many of the same themes are evident in Emese Lafferton's analysis of an 1894 Hungarian case of death under hypnosis that resulted in the trial of a hypnotist.¹⁰ Here, though, Lafferton shows that, in spite of expert opinion solicited from the Forensic Medical Council in Budapest, which had concluded that the accused hypnotist was responsible for the death of his subject, the court chose to ignore metropolitan authority in favour of local knowledge and personal charisma.¹¹

This article, which focuses on the trial of the lay hypnotist Czynski, intends to explore a case that, while well known, has not been studied in any great depth. Providing detail of the events leading up to the trial and the testimony of the expert witnesses, it will show, like the works of Harris and Lafferton, that hypnosis trials afforded medical practitioners an opportunity to vie for a monopoly over hypnosis by pathologizing and criminalizing the work of their lay competitors. Beyond this, however, the article's principal concern is to show how the courtroom had its limitations as a forum for settling scientific disputes. While contemporaries hoped that the Czynski trial might establish once and for all the forensic implications of hypnosis, ultimately, while there existed no scientific consensus concerning the nature and power of hypnotic suggestion, it could not. Alison Adam, in her recent history of forensic science, has said, 'the courtroom was a major locus where scientists could claim or display their authority, a place where new scientific techniques could be accepted or rejected; hence it was a place where scientific knowledge was made'.¹² This is undoubtedly true but, as the Czynski trial demonstrates, it was also a place where the premature debut of new or disputed knowledge might result in the court ignoring or dismissing the expert evidence. Using the example of the Czynski trial, then, this article will maintain that, while the attempt to answer scientific questions or resolve scientific disputes in judicial contexts could be professionally rewarding, it could equally be a frustrating and futile experience, given that the court's own questions and standards of proof were often far removed from those of the experts whom they called upon to testify.

CRIME AND HYPNOSIS

The contemporary fascination with hypnosis, suggestion and crime in late nineteenth-century Germany, as elsewhere in Europe, manifested itself in medical works on hypnosis, newspaper reports on trials involving altered states of consciousness, sensation novels like that of du Maurier in which unscrupulous hypnotists abused helpless somnambulists, and criminological works that considered the forensic importance of hypnosis and suggestion. This interest had begun to develop in the 1880s, at which time both the German public and the medical community were introduced to the strange effects of hypnosis and suggestion by stage mesmerists such as the Dane Carl Hansen, who combined older mesmeric techniques with the hypnosis of the Scottish physician James Braid.¹³ Shortly after Hansen's dramatic exhibition of his suggestive powers, interest in hypnosis was further stimulated by demonstrations held at the Salpêtrière Hospital in Paris and the Medical School at Nancy.¹⁴ While the Salpêtrière School, led by Jean-Martin Charcot, maintained that susceptibility to hypnosis was a pathological concomitant and signifier of hysteria, and the Nancy School of Hippolyte Bernheim argued that the hypnotic state was a benign product of suggestion with the potential to heal, the debate between these two schools convinced a group of young German physicians to study hypnotism and led a number of them to advocate the use of hypnosis and suggestion as a form of medical therapy.¹⁵ This was in spite of both ambivalence and outright resistance from other members of the medical community in Germany, who regarded hypnosis as the purview of shepherd-boys and charlatans.¹⁶

Crime emerged as a salient theme in contemporary discussions of hypnosis and suggestion for several reasons. The first was the apparent surrender of the will that occurred in the hypnotic state, which led medical researchers to ask how far the hypnotist

could impose his will on the somnambulist. Could someone, for example, be forced to commit a murder or a robbery in hypnosis and, if they could, what were the implications for the understanding of the individual as an independent and rational actor or for the notion of criminal responsibility? In order to answer these questions, a series of experiments were carried out at the Salpêtrière and Nancy Schools, as well as by independent researchers such as the Swiss psychiatrist August Forel (1848–1931).¹⁷ Experiments of this sort saw somnambulists slip what they were told was poison into another person's food or use what they were assured was a pistol to shoot their victim.

Forel, for example, described an experiment conducted in the presence of the Zurich Law Society in which he put a 70-year-old man to sleep in an empty room and said to him:

Look there, B; that man standing close to us is a wicked wretch, an unmitigated rascal. Let us do for him; here is a knife (I handed him a piece of chalk). He is standing immediately in front of you; stab him in the abdomen. Evidencing great excitement, trembling, and with drawn features, he seized the chalk convulsively in his right hand, suddenly got up, and plunged the knife (chalk) with great force twice into the air.¹⁸

In other experiments, Forel handed his subject a gun loaded with blanks and had him shoot at another doctor:

I gave an elderly, very suggestible man a revolver, after having hypnotized him; Mr. Hoefelt had previously loaded it with blank cartridges. I told the subject that Mr. Hoefelt was a very bad person, and that he was to shoot him. He took up the revolver with great determination, and fired a shot straight at the lawyer. The latter, pretending to be wounded, fell down. I told the hypnotized that the fellow was not quite dead: he must fire another shot at him. This was done without hesitation.¹⁹

Such experiments naturally created heated debate among physicians, psychologists and psychiatrists. Some researchers, particularly those associated with the Nancy School such as Jules Liégeois and Bernheim, claimed that these tests proved the possibility of hypnotic crime, while others, including Charcot and Gilles de la Tourette of the Salpêtrière, argued that the subjects in these experiments retained an awareness that the crime they were asked to commit was not a real one.²⁰ Furthermore, opponents of the idea that suggestion might be used to persuade someone to commit a crime against their will and inclination maintained that hypnotized subjects were unable to commit acts against their inner nature.²¹

While medical opinion on the question of whether someone might be hypnotically persuaded to commit a crime remained divided, there was consensus that crimes – in particular rape, robbery or bodily harm – might readily be committed against those in hypnotic states.²² This idea was central to those medical polemics that argued for a medical monopoly over the use of hypnosis. According to these texts, mesmerists and lay hypnotists might take advantage of their unconscious patients or might damage their physical and mental health through their inexpert application of hypnosis. For this reason, and citing sensational cases in which amateur hypnosis had led to injury, sexual exploitation and death, medical hypnotists argued that only physicians should be allowed to apply this powerful and labile therapy, and that both mesmerism and lay hypnosis should be criminalized.²³

As an example of the dangers of hypnotic injury at the hands of lay hypnotists and occultists, who also tended to make use of hypnosis, one physician stated:

We ourselves have had the opportunity during the last year to observe no fewer than six people in Munich whose health has been injured by serving as mediums at the spiritualist experiments of amateurs. One of these cases concerned a journeyman tailor, a second concerned an agent and the third concerned a sculptor. All three people displayed marked signs of male hysteria that had been artificially provoked for the first time as a result of these experiments.²⁴

An example of how lay people were likely to abuse their power over women was provided by the same physician, who cited the case of Carl Mainone who, after a 20-hour course with a magnetic healer, used his newly acquired skill to treat the sister of his landlord's wife for her short-sightedness. During treatments he raped the young woman.²⁵

Given the theatrical nature of the medical and legal discourse on hypnosis, suggestion and crime, it is unsurprising that this theme was taken up by both the popular press and sensational fiction, where the possibility of hypnotic crime was used to titillate and frighten readers. Examples included Paul Lindau's stage play *The other* (1893), Gregor Samarow's *Under a foreign will* (1888), Wilhelm Walloth's *Under the spell of hypnosis* (1897) and Hermann Broch's trilogy *The sleepwalkers* (1928–32), all of which were enormously popular and went through multiple editions.²⁶ The irresistible hypnotist and his somnambulistic slave, examples of which included Svengali and Trilby and somewhat later Caligari and Cesare, the hypnotist and criminal somnambulist in the 1920 film *The Cabinet of Dr Caligari*, thus became recognizable figures within late nineteenth- and early twentieth-century popular culture.

This sensationalist literature did more than simply mimic the medical and juridical discourse on hypnosis and crime, incorporating pieces of text from work in these fields to aid in its authenticity; at the same time, it supplied physicians with fictional examples of hypnotic crime that could support their arguments against the lay use of hypnosis. Because there were a very limited number of real criminal cases in which hypnosis and suggestion featured, doctors, particularly those at the Salpêtrière under Charcot, often quite unreflectively, incorporated examples derived from fiction.²⁷ In other instances, scientific journals such as the *Zeitschrift für Hypnotismus* reviewed plays and books about hypnotic crime, commenting on how the fictional account corresponded with scientific observation.²⁸ This, of course, further confused the issue of whether the criminal use of hypnosis was a real threat. This medico-legal interest in hypnosis and suggestion, which stressed the dangers of these phenomena in the wrong hands, did, however, have a flipside. As early as the late 1880s we find authors such as Carl du Prel (1889) and Wilhelm Preyer (1890) advocating the use of hypnosis to enhance witnesses' memories of events which they had experienced, or in some cases suggesting that hypnosis might be used to force confessions from criminals.²⁹

HYPNOTIC LOVE

In the Czynski trial, which came before the Superior Court in Munich in 1894, many of these theoretical arguments and disputes about the forensic significance of hypnosis were brought to bear on a real case and on a real Svengali. While the parallels that one can draw between the story of Svengali and that of Czynski have their limits, both involved a foreign lay hypnotist who used his skills on a vulnerable woman for personal, financial and possibly sexual gain. The sinister air that attached to both figures was also in large part a result of

prejudices about class and race, Svengali being foreign, a German-speaking Pole and Jewish, and Czynski being both Slavic and the social inferior of his victim. Czynski, however, had made himself out to be a magnetic healer, rather than a musician or impresario, when he first met the Baroness Hedwig von Zedlitz und Neukirch in Dresden.³⁰

Having been hounded by the police in Posen for the mixture of magnetism, hypnotism and occultism he presented in public talks and private consultations, he established a hypnotic practice in the Saxon capital in 1893 in which his common-law wife acted as his medium.³¹ Around the middle of this same year, the Baroness, an apparently likeable 38-year-old woman who was strongly religious and interested in spiritualism, attended Czynski's clinic seeking treatment for stomach pains and headaches.³² Czynski's method involved hypnosis combined with laying his hands on her afflicted body parts. In the initial consultations, Czynski's partner and medium was present, but as the Baroness's treatment progressed their meetings were left unsupervised.

During one of these consultations in October 1893, Czynski took von Zedlitz by surprise by declaring his undying love for her.³³ Despite the hypnotist's unexpected declaration she reciprocated, at which point her therapy ceased, but the couple continued to meet. By the end of the year, they were engaged and their relationship had become intimate, but Czynski persuaded the Baroness not to advertise their engagement because of what he termed political considerations. In fact, Czynski's problem was that, as well as having a common-law wife, he was legally married and had to seek a divorce or annulment before marrying again.³⁴ Unable to obtain his divorce in a timely manner, Czynski decided to carry out a wedding ceremony with a fake certificate and unregistered celebrant in a Munich hotel on 8 February 1894.³⁵ When the Baroness's family, from whom she lived independently, finally caught wind of the wedding and came to interrogate the bridegroom, they quickly discovered that the marriage certificate was not genuine.³⁶ As a result, the Baroness's brother called in the police to arrest Czynski, who was taken into custody on 16 February.

THE CZYNSKI TRIAL

While Czynski was charged with a range of crimes, including forgery and the unauthorized use of several titles (including 'Dr' and 'von'), when he was brought to trial in December 1894, the central point of the case against him was the claim that he had used a posthypnotic suggestion, the memory of which had been erased by hypnosis, to create in the Baroness an irresistible love that would enable him to enter into an intimate relationship with her.³⁷ According to the *Münchener neueste Nachrichten* the suspicion of posthypnotic suggestion followed not just from the fact that Czynski had treated von Zedlitz with hypnosis, but also from the conviction that it would be exceptional for a woman of the Baroness's standing to fall in love with an adventurer and charlatan like Czynski.³⁸ In order to explore this claim, six expert witnesses, who the court believed possessed specialist knowledge of hypnosis and suggestion, were called to provide reports. They were: Dr Grashey, head of the local asylum, where Czynski spent some time after a suicide attempt while in custody;³⁹ Albert von Schrenck-Notzing, a young Munich-based psychiatrist who was one of the pioneers of the therapeutic use of hypnosis in Bavaria;⁴⁰ Professor Hirt of Breslau; Professor Preyer from Wiesbaden; Professor Fuchs of Bonn; and Dr Martius of Munich. Trained in psychiatry, these expert witnesses were given a

platform by the court to expound on their particular view of the role of hypnosis in the Czynski case.

While expert witnesses in Germany had a long history, reaching back to the introduction of the *Constitutio Criminalis Carolina* of 1532, it was not until the late nineteenth century that the role of psychiatric expert witnesses was institutionalized. This occurred following the launch of a new penal code in 1871, which allowed that a crime was not punishable if the accused could be shown by a medical expert not to have had free will during its commission (Article 51), and a revision of the code of criminal procedure that provided for the observation of a defendant in a public asylum for a period of up to six weeks for the purpose of preparing a report on their mental state (Article 81).⁴¹

Initially included in legal proceedings in order to assess legal responsibility, by the turn of the century, psychiatrists were carving themselves a bigger niche within the forensic sphere as they were called on to answer questions on intermediate mental states, witness credibility and suggestion. This afforded them increasing opportunities to showcase their ideas and establish their expertise and authority. Expert witnesses in German courts, however, differed from those within the Anglo-American context in that they tended to be called on to testify by the presiding judge, rather than by the prosecution or defence, and often played a part in the preliminary investigation (*Vorverfahren*) that preceded the trial.⁴² But, while psychiatrists, like those called to testify in the Czynski trial, were not the hired guns of the adversarial system, there was still plenty of room in German courts for both epistemological debate and professional rivalries that bore little direct relevance to the legal questions at hand. This was to become evident in the Czynski trial over the question of susceptibility to hypnosis.

On the first day of the trial the experts were called upon to offer opinions about how the presence of Czynski in the courtroom, while the Baroness testified, might have an impact upon her reliability as a witness.⁴³ The court noted that, following Czynski's arrest, von Zedlitz had continued to espouse her support and reiterate her love for him. In a statement to the state attorney, for instance, she said, 'I know and believe firmly that the accused, even if he deceived me, did this only out of love, out of unselfish love, only out of fear'.⁴⁴ It was only after several months of separation from him that it appears that she came to believe she had been betrayed. In the eyes of the experts, this proved that the Baroness had been under Czynski's hypnotic influence. For these reasons, Grashey believed it safer to keep them apart in the courtroom, as did Preyer and Hirt, all of them thinking it possible that his presence might cause von Zedlitz to revert to the role of will-less automaton or reactivate the hypnotic suggestion he had ostensibly implanted in her.⁴⁵

When Czynski took the stand following this discussion, the experts examined him on his medical training and his treatment of von Zedlitz.⁴⁶ Czynski claimed that treatment had occurred in a sitting position without the laying on of hands and that he had made use of a hypnotized medium, but that he had not hypnotized the Baroness.⁴⁷ According to Professor Preyer, the transfer method that Czynski had used had long been discredited. Schrenck-Notzing, meanwhile, was interested in whether any religious or spiritualist sittings had taken place, to which Czynski said yes, although he continued to maintain that the Baroness had not been put into a will-less state and that the experts would have to acknowledge that a strongly religious and moral woman could not be hypnotized and could not have anything suggested to her.⁴⁸ These two experts, who were involved in the campaign in Germany to make illegal the lay use of hypnosis and to demonstrate the terrible consequences of both amateur hypnosis and its bedfellow occultism, sought here

to distinguish the medical use of hypnosis from that of magnetic healers and stage hypnotists and to make clear that Czynski belonged firmly in the latter camp.⁴⁹

On the second day of the proceedings, the experts also had the opportunity to ask questions of the Baroness. Dr Hirt asked her whether the defendant had ever said to her anything along the lines of 'in eight days or in a month you will do this and that', trying to ascertain whether Czynski had implanted in her any kind of posthypnotic suggestion.⁵⁰ The Baroness denied this, stating that the defendant had only ever told her to think of him every day and have his image in her mind as a means of being close to him. She stressed also that sexual intercourse between them had not occurred in a will-less state.⁵¹ While Czynski had denied that von Zedlitz had received hypnotic treatment and the Baroness herself maintained that she had not for one moment lost her will, Schrenck-Notzing told the court that from an expert standpoint what had occurred was still a hypnotic procedure. According to him, 60% of hypnotized people lost their ability to remember what occurred during hypnosis, while 40% retained the memory of what happened, but this became dreamlike.⁵²

Owing to other commitments, one of the experts, Dr Fuchs, gave his report on the afternoon of the first day.⁵³ Fuchs maintained that hypnosis could not be used to influence someone in an irresistible manner and that it could not be used on someone who was responsible in the psychiatric sense.⁵⁴ It would therefore be impossible for him to hypnotize the jurors or the judge or influence their wills in any noteworthy fashion. Fuchs's conclusions were criticized by the other experts, who noted both his superficial grasp of the case in hand and his lack of expertise in the area of hypnosis and suggestion.⁵⁵ In the light of this disagreement, the defence lawyer, Bernstein, sought to draw the court's attention to the disputed nature of the experts' knowledge about hypnosis, asking Fuchs whether the existence of posthypnotic suggestion remained an object of scientific debate, to which the witness replied that it was.

On the third day of proceedings, before the expert testimony, one of the witnesses to the fraudulent wedding was cross-examined. Schrenck-Notzing asked her whether Czynski had looked her in the eyes during the ceremony or whether she had felt influenced when signing the marriage certificate.⁵⁶ Although the witness denied any such contact, Preyer, somewhat of an expert on graphology as well, told the court that her signature showed signs that it had been written by someone without freedom of the will and under the influence of suggestion.⁵⁷

What followed were the reports of the experts. Dr Grashey set out for the court what he understood by the freedom of the will and argued that Czynski had used the loss of will on the part of the Baroness to have intercourse with her. He thus concluded that Czynski was guilty of a crime against morality.⁵⁸ Professor Hirt explained that the lightest hypnotic state was the most dangerous and that those who are easiest to hypnotize are those who have learned discipline, for example, military personnel. That Czynski hypnotized the Baroness despite her denial was for Hirt beyond doubt, but he maintained nonetheless that the relationship between them had not been a result of hypnosis and that Czynski was therefore not guilty.⁵⁹ Schrenck-Notzing gave details of a series of examples derived from the scientific literature of the various types and effects of hypnosis. As evidence of the hypnotic rapport between Czynski and the Baroness, for example, he stressed an incident in which she gave the hypnotist money and immediately knew from his expression that the amount was too little. In response, Bernstein asked whether someone who gave a bellboy a smaller tip than he expected must be hypnotized by this bellboy in order to be able to recognize the disappointment in his expression.⁶⁰

Leaving the matter of hypnotic rapport, Schrenck-Notzing went on to try to distinguish scientifically different kinds of love, at which point Grashey interjected and a long discussion took place about the extent to which love and love affairs could be considered objects within the scientific grasp.⁶¹ For instance, Grashey, who professed much experience of observing young women in the wake of broken engagements, declared that he found the Baroness's behaviour after her separation from Czynski abnormal.⁶² He concluded from this that her affection for Czynski had had a pathological character. Once again the defence lawyer intervened to express his doubt that a love story could be treated as scientifically as an infection of the lungs.⁶³ Science had, in his opinion, gone too far here, and he doubted the expertise of the expert witnesses in matters of love, which was much more the purview of men of art. That the Baroness had fallen for a social inferior Bernstein did not find at all remarkable, pointing obliquely to Czynski's physical appeal by asking Schrenck-Notzing whether, given the same hypnotic ability, but ugly eyes instead of appealing eyes, no hair instead of lush hair, no teeth rather than white teeth and 60 years rather than 35, he could still have had his hypnotic way with the Baroness. Schrenck-Notzing admitted that at least some sympathy between hypnotists and hypnotized was usually required for suggestion to work.⁶⁴

Professor Preyer's testimony noted the manner in which the Baroness appeared immediately to fall into an altered state when she set eyes on the defendant in court.⁶⁵ He located the Baroness's suggestibility in her strongly established superstition and belief in spiritualism and amulets. While he did not regard her as hysterical, he did think that she belonged to a class of highly sensitive people who are easier to influence than those with strong wills. Preyer concluded his testimony by saying that Czynski had put von Zedlitz into a dependent state and that she would not have engaged in an intimate relationship with him if she had not been in this state, so Czynski had undoubtedly practised a criminal influence over her.⁶⁶

The main object of the closing statements in this trial was discussion of the case for and against the charge of crimes against morality. To ground his claim of guilt, the state attorney, Mahler, relied on the expert testimony of Grashey, Schrenck-Notzing and Preyer, who all said that hypnosis had occurred. He described the defendant as an egotist, charlatan and adventurer who had used criminal means to achieve his egotistic purpose.⁶⁷ Bernstein, the defence lawyer, used his closing statement to argue that interest in this case was not so much about the person of the accused and his putative crimes but much more about the fact that, in this case, for the first time, scientific theory regarding the consequences of hypnotism was supposed to be explored judicially. According to Bernstein, the theory on hypnosis was not, however, sufficiently established to have its judicial debut.⁶⁸ The defence lawyer's reading of the literature in this field had only established for him that debate still raged over the forensic consequences of hypnosis. Some experts, he said, maintained that hypnosis was all powerful, while others dismissed it as rubbish or a fad. The striking differences between the expert witnesses' statements during the proceedings (here he referred to the dissenting opinions of Fuchs and Hirt) underlined the fact that the topic was not yet sufficiently understood to be considered by the law. Finally, he reminded the jury that they would be responsible for deciding whether consideration of hypnotism should be introduced into German law. In the case before them they should regard themselves as gatekeepers of legal security and must deny entry to that which might lead to insecurity and confusion.⁶⁹

While much time had been dedicated to the experts' reports and questions about hypnosis, the verdict, when it came, reflected Bernstein's scepticism or perhaps just confusion about

the stress on hypnotism in the trial, by convicting Czynski on the charges of fraud and forgery, but not on the charge of crimes against morality.⁷⁰ Nonetheless, the Czynski case became a major example in medical, legal and criminalistic writing on the forensic significance of suggestion.⁷¹

CONCLUSION

At the beginning of the Czynski trial there had been three questions that appeared to confront the court: to what extent was hypnotic suggestion capable of influencing the freedom of a person's will? Could hypnotic suggestion lead to a complete loss of the will? And what position should legislation and criminal law take with regard to hypnotism?⁷² Those with an interest in the forensic meaning of hypnosis fully expected that, in the course of the proceedings, answers to these questions would be forthcoming. By the end of the trial, however, these expectations had been dashed; in establishing a verdict the expert testimony had largely been ignored, legal precedent had not been set and a consensus within the scientific community about the criminal efficacy of hypnosis remained elusive. What, then, had been achieved?

The expert testimony in the Czynski case provided yet another tangible example of the dangers of hypnosis in the hands of amateurs and charlatans and strengthened the perceived links between lay hypnosis and other fringe practices such as spiritualism and occultism. It thus contributed to the campaign to have the use of hypnosis and suggestion restricted to those with medical training. The newspaper coverage in particular, but also the books and articles that appeared in the wake of the trial, helped disseminate and circulate knowledge about hypnosis and suggestion to medical and lay audiences, both within Germany and further afield. While the verdict had not reflected any decision about whether the Baroness had, in fact, been hypnotized, in popular and academic discourse around hypnotic crime the Czynski case became regarded as a prime example of the potential of hypnosis to be wielded as a weapon against the unwary and weak-willed, contributing to contemporary anxieties about responsibility and the stability of the social order.⁷³

For the historian, the failure of the expert testimony in this trial to establish either Czynski's criminal use of hypnosis, or the forensic significance of hypnotism more broadly, points to a less-remembered aspect of courtroom interactions between science and law. While recent scholarship has done much to show how the courtroom could provide a place to create knowledge and perform scientific authority, we should not forget that this was not a forum that experts could simply manipulate for their own ends. It was a space with its own rules and procedures that were not always tolerant, as Bernstein's criticisms demonstrate, of experts whose claims and ambitions overreached the actual parameters of their science. Courts, as Sheila Jasanoff has pointed out, can provide the impetus for new scientific knowledge, asking questions that scientists are yet to explore or remain uncertain about.⁷⁴ At the same time, however, practices of judicial gatekeeping mean that courts tend to reject expert testimony where knowledge is insufficiently established and has not gained general acceptance in the field.⁷⁵ The Munich court was thus not unusual in 1894, either in soliciting knowledge from experts in an emergent field of research or in deciding to ignore their testimony on the basis that there was not yet general acceptance among them or the broader scientific community about the nature and

power of hypnotic suggestion. The Czynski case was certainly not the only one in which, despite lengthy debate on the part of expert witnesses, the court chose to base its verdict on other factors, but it highlights, in a particularly salient way, the limits of legal contexts for the promotion of scientific and medical knowledge.

NOTES

- 1 George du Maurier, *Trilby: a novel* (American Book Publishing Company, New York, 1899; first published 1894).
- 2 Daniel Pick, *Svengali's web: the alien enchanter in modern culture* (Yale University Press, New Haven, 2000).
- 3 'Hypnotismus vor Gericht', *Münchener neueste Nachrichten*, 18 December 1894, Nr 583, p. 3. This case was widely reported in Central Europe but also created interest further afield, with newspapers in the United States and New Zealand outlining the details of the case. See, for example, 'Convicted of fraud by hypnotism', *New York Times*, 22 December 1894, p. 5; 'Hypnotised into marriage: remarkable trial at Munich', *New Zealand Herald* 32(9734), 2 February 1895, p. 2.
- 4 *Augsburger Abendzeitung*, Nr 348, cited in Dr. Freiherr von Schrenck-Notzing, 'Thatbestand', in Rudolf Grashey *et al.*, *Der Process Czynski. Thatbestand desselben und Gutachen über Willensbeschränkung durch hypnotisch-suggestiven Einfluß* (Ferdinand Enke, Stuttgart, 1895), p. 1.
- 5 'Der Process Czynski', *Der Gerichtssaal* 51, 76–77 (1895), at p. 76.
- 6 In the introduction to a collection of Grashey's, Hirt's, Schrenck-Notzing's and Preyer's expert reports, published in 1895, Schrenck-Notzing noted that the Czynski case was the first time that a German jury court (Schwurgericht) had dealt with a hypnotic crime. Schrenck-Notzing, *op. cit.* (note 4), p. 1.
- 7 Pick, *op. cit.* (note 2).
- 8 Stefan Andriopoulos, *Possessed: hypnotic crimes, corporate fiction, and the invention of cinema* (University of Chicago Press, 2008).
- 9 Ruth Harris, 'Murder under hypnosis in the case of Gabrielle Bompard: psychiatry in the belle époque courtroom', in *The anatomy of madness: essays in the history of psychiatry* (ed. W. F. Bynum, R. Porter and M. Shepherd), pp. 197–241 (Routledge, London, 1985).
- 10 Emese Lafferton, 'Murder by hypnosis? Altered states and the mental geography of science', in *Medicine, madness and social history: essays in honour of Roy Porter* (ed. Roberta Bivinis and John V. Pickstone), pp. 182–196 (Palgrave Macmillan, Basingstoke, 2007).
- 11 *Ibid.*, pp. 192–194.
- 12 Alison Adam, *A history of forensic science: British beginnings in the twentieth century* (Routledge, London and New York, 2015), pp. 25–26.
- 13 Alan Gauld, *A history of hypnotism* (Cambridge University Press, 1992), pp. 302–306.
- 14 *Ibid.*, pp. 310–315, 320–336.
- 15 Heather Wolfram, 'An object of vulgar curiosity: legitimizing medical hypnosis in imperial Germany', *J. Hist. Med. Allied Sci.* 67, 149–176 (2012), at pp. 158–159.
- 16 Andreas-Holger Maehle has suggested that resistance to the therapeutic use of hypnosis in Germany may, in part, have been connected to anti-French feeling, France being the former enemy and scientific and cultural rival. See Andreas-Holger Maehle, 'The powers of suggestion: Albert Moll and the debate on hypnosis', *Hist. Psychiatry* 25, 3–19 (2014), at p. 6. For the medical debate on hypnotic therapy, see the article by Maehle in this special issue.
- 17 Ruth Harris, *Murder and madness: medicine, law, and society in the fin de siècle* (Clarendon, Oxford, 1989), pp. 171–185.

- 18 Auguste Forel, *Hypnotism, or suggestion and psychotherapy: a study of the psychological, psycho-physiological and therapeutic aspects of hypnotism*, 5th edn (Rebman Company, New York, 1907), p. 284.
- 19 *Ibid.*, p. 285.
- 20 Julien Bogousslavsky, Oliver Walusinski and Denis Veytunes, 'Crime, hysteria and *belle époque* hypnotism: the path traced by Jean-Martin Charcot and Georges Gilles de la Tourette', *Eur. Neurol.* **62**, 193–199 (2009), at p. 196.
- 21 *Ibid.*, p. 196.
- 22 *Ibid.*; Maehle, *op. cit.* (note 16), pp. 11–12.
- 23 Albert von Schrenck-Notzing, *Die gerichtlich medicinische Bedeutung der Suggestion. Vortrag gehalten gelegentlich des zweiten internationalen Congresses für experimentellen und therapeutischen Hypnotismus in Paris* (August 1900) (F. C. W. Vogel, Leipzig, 1900), p. 7; Albert von Schrenck-Notzing, *Über Hypnotismus und Suggestion* (Wirthschen, Augsburg, 1889), p. 38.
- 24 Albert Schrenck-Notzing, 'Die gerichtliche Bedeutung und mißbräuchliche Anwendung des Hypnotismus', *Psychologische Gesellschaft zu München*, November 1889, p. 13.
- 25 Albert von Schrenck-Notzing, 'Der Fall Mainone: Verbrechen gegen die Sittlichkeit an einer Hypnotisierten, verhandelt vor dem Schwurgericht in Köln am 7. und 8. Mai 1901', *Archiv für Kriminalanthropologie* **7**, 132–143 (1901).
- 26 Andriopoulos, *op. cit.* (note 8), p. 31. On Lindau's play and the response of medical hypnotists such as Moll to it, see Maehle, *op. cit.* (note 16), p. 11.
- 27 Andriopoulos, *op. cit.* (note 8), p. 35.
- 28 *Ibid.*, p. 33.
- 29 Carl du Prel, *Das hypnotische Verbrechen und seine Entdeckung* (Verlag der Akademischen Monatshefte, Munich, 1889); W. Preyer, *Der Hypnotismus. Vorlesungen gehalten an der K. Friedrich-Wilhelms Universität zu Berlin* (Urban & Schwarzenberg, Vienna and Leipzig, 1890).
- 30 Carl Reissig, *Liebe. Eine hypnotische Suggestion?* (H. Barsdorf, Leipzig, 1895), pp. 2–3.
- 31 'Hypnotismus vor Gericht', *op. cit.* (note 3), p. 3.
- 32 Schrenck-Notzing, *op. cit.* (note 4), p. 4.
- 33 'Hypnotismus vor Gericht', *op. cit.* (note 3), p. 3.
- 34 *Ibid.*
- 35 *Ibid.*
- 36 Telegrams held by the Staatsanwaltschaft demonstrate the concern of the Baroness's family when they heard the news. See Telegram Nr 6110 and 7841, Staatsanwaltschaft 7109, Staatsarchiv München (hereafter StAM).
- 37 'Hypnotismus vor Gericht', *op. cit.* (note 3), p. 3.
- 38 *Ibid.*
- 39 Staatsanwaltschaft 7111, StAM, contains a series of letters from Czynski to the court complaining of his treatment at the hands of Dr Grashey while he was resident in the doctor's asylum. See letters dated 28 August 1894 and 30 August 1894. See also Rudolf Grashey, 'Aerztliches Gutachten erstattet von Obermedicinalrath Professor Dr. Grashey (München)', in Grashey *et al.*, *op. cit.* (note 4), pp. 45–46.
- 40 Archival sources indicate that Schrenck-Notzing knew the family and that the Baroness's father had asked for him to be included among the expert witnesses. Staatsanwaltschaft 7109, StAM, p. 232.
- 41 Christian Müller, *Verbrechensbekämpfung im Anstaltsstaat. Psychiatrie, Kriminologie und Strafrechtsreform in Deutschland, 1871–1933* (Vandenhoeck & Ruprecht, Göttingen, 2004), p. 28.
- 42 In the imperial period, Germany's criminal procedure was hybrid in nature: that is, it combined elements of the inquisitorial and adversarial systems. While there was still a lengthy pre-trial

- investigation orchestrated by an investigating judge, serious crimes were heard in front of a jury. See Benjamin Carter Hett, *Death in the Tiergarten: murder and criminal justice in the Kaiser's Berlin* (Harvard University Press, Cambridge, MA and London, 2004), pp. 22–28.
- 43 The Baroness's father, in a letter to the district court, dated 22 May 1894, had also expressed concern that his daughter might be influenced by the presence of the defendant when she gave her testimony. Staatsanwaltschaft 7109, StAM, p. 232. 'Hypnotismus vor Gericht', *op. cit.* (note 3), p. 3.
- 44 Staatsanwaltschaft 7110, item 50, StAM.
- 45 'Hypnotismus vor Gericht', *op. cit.* (note 3), p. 3.
- 46 *Ibid.*
- 47 *Ibid.*
- 48 *Ibid.*
- 49 On the attempts of German medical hypnotists to pathologize lay hypnosis, see Wolffram, *op. cit.* (note 15), pp. 161–166.
- 50 'Hypnotismus vor Gericht', *Münchener neueste Nachrichten*, 19 December 1894, p. 3.
- 51 *Ibid.*
- 52 *Ibid.*, p. 2.
- 53 Fuchs, whose opinions about hypnotic suggestion were very different from those of the other experts, published his expert report separately as Friedrich Fuchs, *Über die Bedeutung der Hypnose in forensischer Hinsicht* (Friedrich Cohen, Bonn, 1895).
- 54 'Hypnotismus vor Gericht', 19 December 1894, *op. cit.* (note 50), p. 2.
- 55 Carl du Prel, in his short article about the expert testimony in the Czynski case, was critical of Fuchs, Preyer and Hirt, but seems to have found the use of Fuchs particularly objectionable on the basis that his attitude to hypnosis was one of curt rejection, illustrated by his belief that only foolish women might fall prey to hypnotic suggestion. Carl du Prel, 'Der Process Czynski (1894)', in *Nachgelassene Schriften* (Max Altman, Leipzig, 1911), pp. 282–283. 'Hypnotismus vor Gericht', 19 December 1894, *op. cit.* (note 50), p. 2. Fuchs, *op. cit.* (note 53), pp. 26–30.
- 56 'Hypnotismus vor Gericht', *Münchener neueste Nachrichten*, 20 December 1894, Nr 588, p. 3.
- 57 As became apparent later in the proceedings, Preyer had analysed a signature that did not belong to the witness (Frau Rudolf) at all. Du Prel, *op. cit.* (note 55), p. 283; 'Hypnotismus vor Gericht', 20 December 1894, *op. cit.* (note 56), p. 3.
- 58 'Hypnotismus vor Gericht', *Münchener neueste Nachrichten*, 21 December 1894, Nr 590, p. 3; 'Hypnotismus vor Gericht', *Münchener neueste Nachrichten*, 23 December 1894, Nr 593, p. 3.
- 59 'Hypnotismus vor Gericht', 23 December 1894, *op. cit.* (note 58), p. 3.
- 60 *Ibid.*
- 61 *Ibid.*
- 62 Grashey's expert report, which stressed that the Baroness had been hypnotized and was controlled by Czynski's suggestions, spent considerable time arguing that her love for him was not normal, but an abnormal hypnotic love manufactured and manipulated via posthypnotic suggestion. Grashey, *op. cit.* (note 39), pp. 55–58.
- 63 'Hypnotismus vor Gericht', 23 December 1894, *op. cit.* (note 58), p. 3.
- 64 *Ibid.*
- 65 *Ibid.*
- 66 *Ibid.*
- 67 *Ibid.*
- 68 Du Prel indicated that the differences of opinion among the experts about posthypnotic suggestion did not appear to have changed much in the four years since he had published his book on hypnosis and crime. Du Prel, *op. cit.* (note 55), p. 284.
- 69 'Hypnotismus vor Gericht', 23 December 1894, *op. cit.* (note 58), p. 3.
- 70 Du Prel complained that when the opinions of the experts are so disparate the jury members are robbed of the means of forming an opinion. Du Prel, *op. cit.* (note 55), p. 284.

- 71 See, for example, Auguste Forel, *Der Hypnotismus. Seine psychologische, psychophysiologische und therapeutische Bedeutung oder Die Suggestion und Psychotherapie*, 5th edn (Ferdinand Enke, Stuttgart, 1907), pp. 250, 260; Hans Gross, *Criminalpsychologie* (Leuschner & Lubensky, Graz, 1896), p. 687; Hans Gross, *Gesammelte kriminalistische Aufsätze* (F. C. W. Vogel, Leipzig, 1902), p. 360.
- 72 'Der Proceß Czynski und die Fascination', *Beilage zur Allgemeinen Zeitung*, 20 February 1895, Nr 51, p. 1.
- 73 Lafferton, *op. cit.* (note 10), pp. 187–188.
- 74 Sheila Jasanoff, *Science at the bar: law, science, and technology in America* (Harvard University Press, Cambridge, MA and London, 1995), pp. 50–51.
- 75 *Ibid.*, pp. 61–63.