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Could/should 'psychopathy' excuse criminal responsibility or mitigate punishment?

Currently, criminal law does not excuse or mitigate 'psychopaths'. In fact, it is an aggravating factor due to criminal dangerousness.

The key question/s from the legal system to science is:

Is psychopathy a mental disorder or, at least, a pathological mental alteration?

IF SO:

- do psychopaths have **rational capacity**, i.e., are they able to distinguish and "understand"/"appreciate" right from wrong (*cognitive test*)?
- can they control their impulses (*control test*)?
- to what degree is the **rational and control capacity** affected?
- is science **ready to provide expert evidence**, particularly neuroimaging, meeting legal standards of proofs?

Definition/s

A **psychopath** is a self-centered, callous, remorseless individual, lacking of empathy and the ability to form close relationships. It is a person who works without the restrictions of consciousness, as a result of limited capacity to experience emotional responses to fear and anxiety. Their only goal is the satisfaction of their own needs, often associated with criminal behaviour (Hare, 1993)

Not categorical construct but dimensional construct (Hare/Neumann, 2005, 2008). Severe psychopaths: 1%

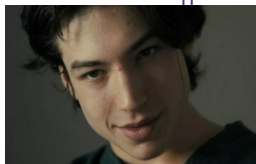
Psychopaths are described to have an intact cognitive capacity, being able to distinguish between right and wrong, but lacking emotional empathy and having a diminished inhibitory control (Blair, 2005).

Successful (little or no criminal record) vs. **unsuccessful psychopaths** (with criminal record) – Mixed findings respect to this distinction (Cfr. Gao/Raine, 2012, for all).

General agreement:
core trait is lack of emotional empathy

Still debated:

- Persistent antisocial behaviour: trait/outcome;
- Definitional character of sexual deviance.



Diagnosis & assessment

Psychopathy is **not explicitly included** in any of the diagnostic manuals (DSM-IV-TR, DSM-5 or ICD-10).

PCL-R 2º ed. (Hare, 2003) the most used psycho-diagnostic tool.

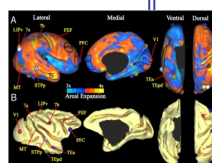
LACK OF PSYCHIATRIC RECOGNITION AS A DISORDER SENDS COURTS A NEGATIVE MESSAGE

Neurobiological phenotype

1. **Structural impairments in the amygdala and hippocampal system and orbitofrontal and vmPFC** (Raine/Yang, 2006, for all); also in **Ventral Striatum** (Buckholtz, 2010) – related to diminished sensitivity to fear and reward, respectively.

2. **Reduced connectivity between the amygdala and PFC** (Craig et al. 2009; Motzkin et al. 2011) – related to impulsivity and lack of socio-emotional integration.

3. **Impairments may be related only to unsuccessful psychopaths** (Yang et al. 2005, 2010; Gao/Raine, 2010).



Key points of reference

EMOTION + COGNITION GUIDE HUMAN RATIONALITY (Damasio, 1994)

EMOTION IS CORE IN MORAL JUDGMENT AND the MORAL DECISION-MAKING PROCESS (Greene et al. 2004 for all).

LACK OF EMOTIONAL EMPATHY + BRAIN IMPAIRMENTS COMPROMISE NEURAL CIRCUITS UNDERLYING MORAL DECISION – MAKING (Raine/Yang, 2006)

CRIMINAL DECISION-MAKING IS A MORAL DECISION ABOUT THE LAW AND RIGHTS OF OTHERS.

UNSUCCESSFUL PSYCHOPATHS MAY HAVE A COMPROMISED CORE CONDITION OF COGNITIVE AND CONTROL ABILITIES: THE CAPACITY OF BEING MOTIVATED BY THE LAW, THE MORAL VALUES UNDERLYING THE LAW AND THE PUNISHMENT (Glenn et al. 2011).

PSYCHOPATHIC INDIVIDUALS WITH BRAIN IMPAIRMENTS MAY HAVE A COMPROMISED capacity for CRIMINAL RESPONSIBILITY.

New Legal Treatment?

New findings, particularly based on fMRIs, are leading to rethinking the current legal solution:

Hypothesis:

SEVERE PSYCHOPATHS MAY BE HELD IRRESPONSIBLE: THEY LACK THE CAPACITY FOR MORAL UNDERSTANDING (Morse, 2008) AND SOCIALISATION (Blair, 2008) AND, THUS, THEY ARE NOT MOTIVABLE BY THE LAW

If "to understand" (Spanish Penal Code) or "to appreciate" (Model Penal Code, 1962) right and wrong requires cognitive + emotional capacities, and high psychopathic individuals lack one of them, **rational capacity is compromised** (Glenn, et al. 2011).

If they have a very diminished capacity of internalising standards/rules, they cannot access a good reason not to break them (Morse, 2008). Their control capacity is compromised.

Outstanding issues

Science needs to be clear and conclusive about pathological impairments, distinguishing severe psychopaths (for full insanity) and less severe (for partial defense or mitigation).

Neuroimaging has to provide conclusive evidence, meeting standards of expert evidence.

The concept of unsuccessful vs. successful psychopaths needs to be clarified (the criteria of convicted vs. not convicted is not helpful for criminal law).

The causes vs. consequences of psychopathy need be clearly distinguished.

High consensus among professionals (psychiatrists, lawyers, criminologists, neuroscientists) about the nature, origin, and consequences of psychopathy needs to be established.

Effective treatment needs to be established, addressing the core deficits in psychopathy (emotional deficits); in contrast to existing treatment focused on behaviours and risk management.

Insanity defense + no treatment = ??? (life in prison and/or criminal commitment for life) – What is the difference?

If there is no effective treatment, is an insanity defense a better solution?