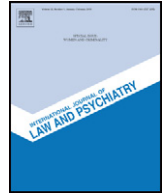




Contents lists available at ScienceDirect

International Journal of Law and Psychiatry



A new legal treatment for psychopaths? Perplexities for legal thinkers



Maria Isabel Gonzalez-Tapia ^{a,*}, Ingrid Obsuth ^b, Rachel Heeds ^b

^a University of Cordoba, Spain

^b University of Cambridge, UK

ARTICLE INFO

Article history:

Received 15 February 2017

Accepted 14 April 2017

Available online 15 May 2017

Keywords:

Psychopathy
Criminal responsibility
Accountability
Insanity defense
Neuroscience

ABSTRACT

Public perception, fueled not only by popular and news media but also by expert claims that psychopaths are archetypes of evil: incorrigible, remorseless, cold-blooded criminals, whose crimes manifest in the most extreme levels of violence. But is there empirical evidence that psychopaths truly are what they are portrayed to be? If so, should the law respond, and adjust its treatment of psychopaths in court – permitting psychopathy to be admitted under an insanity defense and/or resulting in mitigation? In this paper, we demonstrate that fundamental questions from the law to science remain unanswered and must be addressed before any alternative treatment of psychopathy can be considered. As it stands, psychopaths cannot be reliably defined or diagnosed and, as we will demonstrate, even the presumed link with criminal dangerousness is problematic. We conclude that the current legal approach should not be modified, however, if preliminary findings regarding impairments in impulsivity/self-control are confirmed, some, but not all individuals who fall under one definition of psychopathy may merit different treatment in future.

© 2017 The Authors. Published by Elsevier Ltd. This is an open access article under the CC BY-NC-ND license (<http://creativecommons.org/licenses/by-nc-nd/4.0/>).

Contents

1. Introduction	46
2. The concept of psychopathy	47
2.1. Cold-blooded-unemotional vs. anxious-emotionally reactive individuals	48
2.2. Primary vs. secondary psychopathy	49
2.3. Successful vs. unsuccessful psychopaths	50
3. Mental insanity defense and reduced culpability at sentencing – differences and commonalities between common law and civil law	50
4. Accountability and psychopathy: key points of reference	52
4.1. The time of assessment of accountability	52
4.2. Biological requirement	52
4.2.1. Systems requiring diagnosable mental illness	52
4.2.2. Systems requiring just a mental anomaly or alteration	53
4.3. Normative element: cognitive or volitional impairments	55
5. Rethinking insanity defense? Emotion, human rationality and criminal responsibility	56
6. Conclusions	57
Acknowledgement	57
References	57

1. Introduction

The public has increasingly been given the message that ‘psychopaths are threatening, expensive and untreatable’. For example, in

2006, Babiak and Hare wrote (p. 17–18): “We now know that both male and female psychopaths commit a greater number and variety of crimes than do other criminals. Their crimes tend to be more violent... and their general behavior more controlling, aggressive, threatening, and abusive. Further, their aggression and violence tend to be predatory in nature - cold-blooded... *instrumental*... and seldom followed by anything even approaching normal concern for the pain and suffering inflicted on others... Psychopathic criminals *recidivate* at a much higher

* Corresponding author at: Facultad de Derecho y CCEE, Universidad de Córdoba, C) Puerta Nueva, s/n, 140071 Córdoba, Spain.
E-mail address: fd1gotam@uco.es (M.I. Gonzalez-Tapia).

rate, do so much earlier...and make up 15 percent of the prison population. They are responsible for at least half of the persistent serious and violent crimes committed in North America. Yet... not all psychopaths turn to a life of crime, and not all criminals are psychopaths. Psychopaths can be just 'snakes in suits.'

These alarming claims, presented to the public by key experts in the field as facts, are representative of the unsettling picture of psychopathy currently developing in society. Fueled by increasing negative media attention, these messages, along with mounting evidence for supposed neurobiological markers of psychopathy, may influence, or may have already begun to influence, decisions made by policy makers and courts. The question is: Is the concept of psychopathy clear enough and is there currently sufficient empirical evidence to support these assumptions and to justify this influence?

In contrast to its treatment of individuals with diagnosable mental health problems, based on official classification systems, criminal law does not currently excuse or mitigate 'psychopaths'. To date, the traditional view that psychopathy is not a mental disorder but a 'way of being', a specific type of personality, persists in the majority of courts. Thus, in the eyes of the law, psychopaths are 'bad' not 'mad'. Psychopathy is treated either as irrelevant, or as an aggravating factor due to the very high level of criminal dangerousness traditionally associated with it (see e.g., [Rice & Harris, 2013](#)).

In recent years, voices questioning the current legal treatment of psychopathy have appeared in the literature (e.g., [Gillett & Huang, 2013](#); [Godman & Jefferson, 2014](#); [Nadelhoffer & Sinnott-Armstrong, 2012](#)). They criticize the current legal system on the grounds that advances in behavioral neuroscience and genetics have not been incorporated; they advocate a different approach to criminal responsibility for psychopaths based on biosocial impairments. This would most likely result in more severe legal treatment through 'selective incapacitation' and potential life-long commitment ([Morse, 2008b](#)) commensurate with their greater dangerousness ([Coid & Maden, 2003](#); [Luna, 2013](#)), their difficulty engaging in and responding to traditional psychotherapeutic or psychopharmacological approaches, and the subsequent lack of successful treatment outcomes ([Polaschek, 2014](#); [Salekin, Worley, & Grimes, 2010](#)).

Psychopathy is a challenge for our socio-liberal, free-will and culpability-based Criminal Law systems, because it represents archetypes of 'evil', of incorrigible criminals, for whom a retributive culpability-based punishment is not enough and a consequentialist 'dangerousness-based' legal response would be required. Whether under the name of 'psychopathy' or another name, this is an old and well-known problem for Criminal Law (at least since [Lombroso, 1896](#); [Ferri, 1881\(1929\)](#); [Garófalo, 1885\(2005\)](#); or [von Liszt, 1883](#)). However, the scientific context is new, and forces us to look at what the Law can learn from it. If neuroscience and genetics have new information to offer, the Law should not be indifferent, but open to considering pertinent developments and adapting where necessary. In this paper we address this issue and, in so doing, we also hope to contribute to elucidating any discrepancies between the current 'status quo' (in terms of advances in research) and the information distributed to the public.

As we will demonstrate, key questions from the law to science regarding psychopathy remain unanswered, arising in particular from fundamental disagreements and contradictions in the basic definition of the concept itself, which map onto two different profiles. In fact, depending on whom one asks, psychopathy is (or is not) synonymous with sociopathy and antisocial personality disorder (ASPD; [Walsh & Bolen, 2012](#)). Moreover, parallel gaps and contradictions can be found in the literature examining the biological markers of psychopathy. For legal thinkers, this scenario leads to a genuine perplexity, where even the dangerousness component of psychopathy needs to be clarified, particularly because of the recognition of 'successful psychopaths' (who do not tend to be criminally dangerous) as a category.

We will conclude, that the current legal treatment, at least for 'primary psychopaths', should not be modified; the accepted presence of 'successful' psychopaths rules out any relevant mental alteration and

precludes a direct correlation with criminal behavior. We will also conclude that 'secondary psychopaths' might receive, in individual cases, different legal treatment in the future, if the preliminary findings pointing to impairments in self-control/impulsivity are confirmed.

Finally, it is important to highlight that this is a legal paper. Its aim is to review the key scientific findings available to date, as well as identify the outstanding questions from law to science to consider its findings and to potentially inform normative solutions. It is not the goal of this paper to provide an exhaustive review of the literature, make any new proposals or theorize about the psychological concept of psychopathy nor the proposed biological markers attributed to it by the literature. Our purpose is, then, to assess whether the current legal treatment of psychopathy is adequate or not; whether it takes into consideration the findings of the contemporary scientific literature; and whether any changes are warranted.

2. The concept of psychopathy

Before we discuss the legal requirements or criteria that 'psychopathy' would have to meet in order to be considered in sentencing, it is necessary to establish what the concept of psychopathy actually is. The definition of psychopathy poses the first important difficulty. Psychopathy is far from being a clear and generally shared concept, and there is a lack of consensus regarding its distinctive features, or the underlying psychological or neurobiological profiles. However, a clear definition is essential for the Law, in order to properly apply the legal requirements with respect to psychopathy or any other psychological disorder or condition.

The most commonly used definition of a psychopath has been: a self-centered, callous, remorseless individual, lacking empathy and the ability to form close relationships; and a person who acts without the restrictions of a conscience, linked to a limited capacity to experience emotions, such as fear and anxiety. Their only goal is the satisfaction of their own needs, often through engagement in criminal behavior ([Hare, 1991](#)). Psychopaths are also described as having intact cognitive capacity, being able to distinguish between right and wrong, but lacking emotional empathy and having diminished inhibitory control ([Blair, 2005](#)).

There is general consensus that the key personality traits of psychopaths are lack of emotional empathy and lack of a sense of responsibility, often referred to as Callous and Unemotional traits (CU). There is also some agreement that antisocial behavior (not necessarily criminal) is, at least, a behavioral outcome or recurrent manifestation of psychopathy (see [Skeem, Polaschek, Patrick & Lilienfeld, 2011, for a review](#)). These traits also manifest through severe deficits in the ability to recognize and experience social emotions; that is, positive or negative emotions felt in relation to others, including shame, embarrassment, guilt, empathy, and love, in addition to fear and sadness (e.g. [Dawel, O'Kearney, McKone, & Palermo, 2012](#)). Experience of emotions seems to focus and modify brain activity, leading us to choose cooperative, long-term reward responses over cheating/manipulation and immediate rewards. It is this aspect which makes them crucial for regulating and maintaining the balance between self-interest and group interest (see [Walsh & Bolen, 2012:156](#)). As we will discuss later, this perspective of psychopathy is relevant for a consequentialist criminal law, because social emotions, and the ability to experience them, are essential in preventive strategies incorporated into the criminal justice system. These rely primarily on the internalization of moral norms, through socialization and motivation, as well as deterrence through the use of punishment, as a threat to deter people from engaging in criminal activity ([von Hirsch, Bottoms, Burney, & Wikström, 1999](#), for all). According to [Lykken \(2000\)](#) and others (e.g., [Mealey, 1995](#)), lack of socialization in 'primary psychopaths' would arise from their inherent impairments, whereas in 'secondary psychopaths' (for Lykken — 'sociopaths'), from a maladaptive early socialization environment, inconsistent parenting and family violence in particular.

Download English Version:

<https://daneshyari.com/en/article/6462979>

Download Persian Version:

<https://daneshyari.com/article/6462979>

[Daneshyari.com](https://daneshyari.com)