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Is it Wrong to Criminalize and Punish Psychopaths?

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Abstract

Increasing evidence from psychology and neuroscience suggests that emotion plays an important and sometimes critical role in moral judgment and moral behavior. At the same time, there is increasing psychological and neuroscientific evidence that brain regions critical in emotional and moral capacity are impaired in psychopaths. We ask how the criminal law should accommodate these two streams of research, in light of a new normative and legal account of the criminal responsibility of psychopaths.

Keywords
antisocial, brain, emotion, judgment, law, moral, psychopathy

Psychopaths know the difference between right and wrong, yet emotionally lack the *feeling* of what is right and wrong. Unlike individuals with mental disorders such as schizophrenia or dementia who may have impaired cognitive capacity, psychopathic individuals understand that specific actions are against the law or violate social norms; however, although they may be able to make accurate judgments about legal or moral violations, they appear to lack an important factor that motivates individuals to behave morally—emotional capacity. Psychological and neuroscientific studies are providing increasing empirical evidence demonstrating the importance of emotion in moral judgment and behavior, and characterizing the deficits observed in psychopathy. Such evidence provides empirical support for the recent argument by Morse (2008), who concludes that "severe" psychopaths are neither morally responsible nor deserving of blame and punishment because they do not understand the point of morality, and lack a conscience and the capacity for moral understanding and rationality. In this article, we suggest that the criminal law should accommodate increasing psychological and neuroscientific evidence that emotional capacity is an important factor for translating factual knowledge about right and wrong into moral behavior,[1] and that psychopathic individuals have deficits primarily in this domain. We believe that this evidence supports Morse's normative argument that the mental-disorder criteria of nonresponsibility defenses should include psychopathy (Morse, 2008).

The law of criminal responsibility in the United States reflects a consideration of emotion in defenses, such as the American Law Institute's Model Penal Code (1962), where an actor's capacity to *appreciate* the wrongfulness of his conduct is at issue. Despite the text of this defense and others, determining criminal responsibility in both criminal law theory and actual practice turns on an actor's cognitive capacity for rationality. Since psychopaths act intentionally, with the understanding that there are rules and consequences for violating them, the criminal law generally does not allow evidence of psychopathy, standing alone, to support a defense of nonresponsibility. Furthermore, requirements for the insanity defense exclude

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mental defect that is "manifested only by repeated criminal or otherwise antisocial conduct" (Model Penal Code of 1962). Currently, psychopathy, as characterized in the research literature (e.g., Hare, 2003), is not listed in the *Diagnostic and Statistical Manual-IV* (American Psychiatric Association, 2000). Thus, across a wide body of somewhat idiosyncratic state criminal law, psychopathy is typically excluded as a mental disorder sufficient for an insanity defense (Maibom, 2008).

Emotion is Important for Moral Judgment and Behavior

Extant law reflects the traditional view that moral actions can be attributed to logical processes of reasoning and judgment (Colby & Kohlberg, 1987; Kohlberg, 1984). Recent research, though, shows that conscientious reasoning often fails to predict moral behavior, and that moral emotions are a powerful force behind behaving morally (Moll, de Oliveira-Souza, & Eslinger, 2003). Haidt (2001) suggests that moral behavior is primarily guided by spontaneous, effortless emotional responses that operate automatically and unconsciously. In situations involving causing harm to others, normal individuals experience an aversive emotional response to cues that another individual is in distress, and empathize with the potential pain of the victim (Blair, 2007). Commensurate with this, neuroimaging studies have shown that during moral decision making, brain regions involved in emotional processing become active when individuals contemplate causing direct harm to another individual (Greene, Nystrom, Engell, Darley, & Cohen, 2004; Greene, Sommerville, Nystrom, Darley, & Cohen, 2001).

Convincing evidence also comes from studies of individuals with brain damage in areas thought to be involved in the induction of social emotions (e.g., Koenigs et al., 2007). In these patients, judgment is impaired in moral dilemmas involving an option of causing direct harm to another individual. Patients with brain damage are more likely to judge harmful acts as permissible, suggesting that they may not experience the same degree of emotional aversiveness that healthy individuals experience when considering such acts. Clinically, these patients display blunted emotions, a lack of empathy or remorse, less fear of punishment, and abusive behavior toward others (Damasio, 1994). Taken together, these patients' patterns of deficits suggest that impairments in emotional capacities can significantly impair both moral judgment and behavior.

Psychopaths' Immoral Behavior Likely Results from Emotional Deficits

Brain imaging research is beginning to identify regions that function differently in psychopathy. A recent meta-analysis of these studies suggests that there are significant reductions in both structure and function in emotion-related brain areas in psychopathic individuals (Yang & Raine, 2009). Notably, there is significant overlap between the brain regions implicated in psychopathy and the regions important in emotional responding during moral decision making (Raine & Yang, 2006); evidence suggests structural (Yang, Raine, Narr, Colletti, & Toga, 2009) as well as functional impairments in the amygdala (Birbaumer et al., 2005; Kiehl et al., 2001), a region important in emotional responding and fear conditioning (LeDoux, 2000).

Although much research has demonstrated that psychopathic individuals have deficits in emotional responding (Blair, 2005), we recently tested whether these differences in functioning could be observed at the actual time of moral decision making. Using the same fMRI task used previously by Greene et al. (2001, 2004), the first two authors of this article found that when contemplating moral dilemmas involving direct harm to another individual, participants scoring higher in psychopathy demonstrated less amygdala activity (Glenn, Raine, & Schug, 2009). Despite a small sample size, this study provides preliminary evidence for the direct link between psychopathic tendencies and reduced emotional reactions to causing harm to others.

Emotional Deficits Should be Considered in Legal Judgments of Criminal Responsibility

Given increasing psychological and neuroscientific evidence that brain regions critical in moral decision making are impaired in psychopaths, here we argue that highly psychopathic individuals, with emotional deficits that impair moral behavior, should not be held criminally responsible for their antisocial actions. In the absence of appropriate emotional responding, psychopaths lack motivation to behave morally; their social knowledge is rhetorical and has little influence on behavior. Normative and legal arguments excluding psychopaths from blame and punishment are made much more persuasive by empirical evidence. In light of this evidence, we believe that psychopaths should be subjected to other forms of social control, provided that society is still protected.

Note

1. Here we equate moral behavior with criminal behavior under the assumption that most criminal violations are also moral violations, though not necessarily the other way around.

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