Moral Responsibility of the Psychopath

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Abstract

Psychopathy is estimated to affect approximately 1% of the population of the United States (Neumann & Hare, 2008a), yet the harms stemming from psychopaths are disproportionately large relative to their prevalence among the general populace. Recent mass shootings such as those in Sandy Hook, Aurora, and Norway have increased the visibility of psychopaths and psychopathic behavior in the media and subsequently in America's legal conversation. Given the increased focus on those with this disorder, the need for clear articulation of standards of moral responsibility with regard to psychopathy has never been greater. The way in which we conceptualize a psychopath's moral responsibility, or lack thereof, for her or his actions underpins and guides the development of legal and social policy as it applies to such persons.

In this paper, I defend the thesis that psychopaths are, in relation to non-psychopaths, either less or not at all morally responsible for their actions. I premise this claim on the fair opportunity notion of moral responsibility, and argue that psychopaths possess to a diminished or nonexistent extent both faculties needed for the fair opportunity view, namely normative competence and situational control. I begin with a brief overview of the history of psychopathy as a construct, after which I survey the state of psychological and physiological research into psychopathy, which leads into a discussion of four lines of argument with respect to the moral responsibility of psychopaths. Following this, I defend the use of one particular line of argument, give a general account of moral responsibility, and argue for my thesis. After exploring potential objections to the argument, I conclude with a brief discussion of the implications of the argument.

Exposition

Growing national concern about recent incidents of mass violence has focused the public's attention on a class of people not often considered: psychopaths. While not all psychopaths are mass-murderers, they possess personality traits disposing them toward violence at greater rates than the general population (Neumann & Hare, 2008a), and have thus become an object of growing study in the forensic and clinical psychological fields. Psychopaths interest us in their own right, but also for the light they shed on the inner workings of non-psychopaths. Psychopaths' cognitive, neurological, and behavioral deficits clarify the moral psychology of non-psychopaths (Watson, 2012). The growing body of literature evaluating the moral and criminal responsibility of psychopaths, as Watson points out, seeks to fuse classic moral thought with recent advances in technology enabling the neuro-scientific study of psychopathy to form a cohesive picture of the underpinnings of morality.

This project, which seeks to situate the moral responsibility of psychopaths within a broader responsibility framework, is necessary both philosophically and pragmatically. Any general account of moral responsibility should be robust enough to account for edge cases, such as the psychopath, in its analysis. By examining moral responsibility through the lens of the psychopath – who, as will become clear, presents a very different psychological profile from that of a non-psychopath – I attempt to inform the broader philosophical debate about judgments of morality. From a pragmatic standpoint, the moral responsibility, or lack thereof, of psychopaths ought to have a direct bearing on the ways in which society interacts with them, particularly in the judicial and corrective systems. Already these systems have institutionalized the notion of differing levels of moral responsibility, which can be seen in differing designations for the same crime (embodied, for example, in the difference between manslaughter and murder). Although

superficially these designations are notions of criminal responsibility, they also express a marked difference in the level of moral responsibility we assign to those so designated. That these systems recognize reduced levels of moral responsibility for non-psychopathic criminals, yet treat psychopathy – a disorder whose existence is out of the control of those who suffer from it – as a state of heightened moral responsibility, seems to be a contradiction worth resolving. Psychopaths have different treatment and corrections needs from non-psychopaths, and recognizing their reduced moral responsibility is the first step to attaining those needs.

A Brief History of the Concept of Psychopathy

From the start, notions of morality have been inextricably linked to psychopathic behaviors and individuals. The first attempt to inject a lack of morality into the legal sphere happened in Britain in the 1840's. James Prichard, a physician, proposed that certain criminals be classified morally insane, a term under which Prichard included "the feelings, affections, temper…habits and conduct of the individual" (1842, p. 30). In so doing Prichard hoped to separate the vision-seeing, voice-hearing insane criminal from the merely cold, callous individual we have come to colloquially identify as a psychopath. Although unsuccessful in influencing his jurisprudential contemporaries, who enshrined into law the M'Naghten Rules which explicitly endorsed the legal insanity defense on the basis of an inability, primarily delusion-based, to know right from wrong at the time of the crime (*Queen v. M'Naghten,* 1843), Prichard nevertheless established a difference between psychopaths and other mentally-ill persons that would be explored in detail later on.

Prichard's attempt at differentiation of psychopaths from ordinary criminals found its real home in the reformulation of psychopathy as a medical condition by Henry Maudsley. Maudsley conceived of moral insanity as an attendant symptom of a variety of other illnesses, including

bipolar disorder and neurosyphillis (Ward, 2010, p. 10). By redefining moral insanity as a medical disease, Maudsley reasserted the medical profession's necessity to the legal field; by medicalizing the disease, however, Maudsley left moral insanity in the hands of unscrupulous physicians who readily diagnosed all manner of criminals with the disease, resulting in a growing population of "insane" criminals (Ward, 2010, p. 12).

This expansion of moral insanity to encompass large swaths of crime, Hans Toch argues, greatly resembles the current use of the modern-day *Diagnostic and Statistical Manual of Mental Disorders* diagnosis of Antisocial Personality Disorder (as cited in Ward, 2010, p. 12). Then, as now, applying mental disorders to much of the criminal population met with stiff resistance in the forensic community. Charles Mercier, a philosopher and psychiatrist operating in Edwardian England, renamed moral insanity as moral imbecility, in the process asserting the distinction between the vast majority of ordinary crime and the small percentage of pathological crime and criminals (Mercier, 1914). As Ward notes, the key component of crime committed by moral imbeciles was its irrationality and non-necessity (2010, p. 13). Importantly, Mercier had a large hand in creating the definition of moral imbecility given legal form in the Mental Deficiency Act 1913, which first distinguished in legal terms the need for detention of such people even in the absence of criminal responsibility[1] (Ward, 2010, p. 14-15).

The basis of modern conceptions of psychopathy was provided by Hervey Cleckley in his 1941 work *The Mask of Sanity*. Cleckley was the first to observe that beyond the simple irrationality of their crime, psychopaths were a breed apart due to the absence of the ability to use past experiences to create and conform to the social and criminal norms that non-

[1] Here, criminal responsibility is used in the descriptive sense, that is, what the court system typically holds criminals responsible for.

psychopaths seemed to inherently possess (Ward, 2010, p. 17-18). As Cleckley characterized the psychopath, "…he knows it is a crime and regarded as cruel, evil and worthy of punishment. He proceeds, however, because he is incapable of…emotional factors which would restrain the normal man. In a certain sense he might be said to know exactly what he is doing but not to know enough to care" (Cleckley, 1941, p. 228-229).

Contemporary conceptions of psychopathy find their roots in Cleckley's work. The dominant view of psychopathy in contemporary clinical psychology, and the basis for much current work in the philosophy of psychopathy, is derived from Robert Hare's Psychopathy Checklist-Revised (PCL-R). Although Hare contends that his psychometric instrument has not become constitutive of the construct of psychopathy itself, he acknowledges that its use in the relevant fields of study far outstrips that of other instruments and is responsible in no small measure for elucidating current conceptions of psychopathy (Hare & Neumann, 2008b). The PCL-R presents psychopathy as a combination of antisocial behaviors and personality traits that constitute four general clusters: a lack of normally-functioning affective processes; hostile, manipulative and superficial interpersonal relationships; antisocial behavior; and an impulsive, reckless lifestyle (Hare & Neumann, 2008b).

Neurology and Psychology of Psychopathy

Typical views of moral responsibility as applied to psychopathy hinge at least in part on the question of the immutability of the psychopath's behavior. Additionally, Hare's PCL-R incorporates psychological factors into a diagnosis of psychopathy, a key differentiator of psychopathy from Antisocial Personality Disorder (APD), the diagnostic criteria for which are nearly all behaviors rather than psychological states – indeed, the one psychological factor recognized as diagnostically valid for APD is not necessary to make the diagnosis. Thus, insight

into the basis of the unique psychology of psychopaths is of interest to the project seeking to determine the moral responsibility of psychopaths. If, as Watson (2012) states, "Evidence that the ultimate cause of psychopathic personality is genetic has been growing" (p. 13), the philosophical cause this paper takes up must contend with the implications of this evidence on the inherent nature of psychopathy.

Evidence for the genetic cause of psychopathic personality is neurological in nature. The typical view among the extant literature is that abnormalities in the expression of otherwise normal genes result in neurological deficits, which in turn seem to play a causal role in the behaviors that are uniquely prevalent among psychopaths (Blair, Mitchell, & Blair, 2005). Specifically, such neurological evidence is strongly correlated with psychopathy as diagnosed by the PCL-R (Watson, 2012, p. 13). The longest-standing research on the neurology of psychopathy deals with their lower-than-typical physiological reactivity to aversive stimuli. As demonstrated by Patrick in 1994, the threshold to startle psychopaths is significantly higher than in non-psychopaths, a finding which has been linked to amygdala abnormalities by subsequent research (Blair, 2006 as cited in Watson, 2012, p. 14). Given the amygdala's role as the center of learning and reward and fear processing, such deficits seem to indicate that psychopaths' brains are configured in such a way as to have difficulty associating negative consequences with actions in the way that non-psychopaths do, which would partially explain behaviors such as persistent rule- and law-breaking. Along similar lines, Watson's 2012 overview cites a variety of studies implicating frontal lobe abnormalities; as the frontal lobe is the seat of executive behavior-controlling functions, issues in that cortex may explain why psychopaths fail to "pay attention to the consequences of their actions and...resist socially unacceptable urges" (p. 15).

Psychopaths also exhibit reduced emotional reactivity when compared to non-psychopaths, an observation underpinned by the multitude of studies finding significant alterations in the laterality of psychopathic brains as compared to non-psychopathic brains. Brain laterality refers to the distribution of mental processes between the left and right hemispheres of the brain; abnormal brain laterality can have serious behavioral and cognitive consequences because the brain structures needed to process stimuli and produce cognition are distributed with varying degrees of symmetry throughout the brain – thus, directing a stimulus to a side of the brain that is less able to process that stimulus can result in behavioral or cognitive abnormalities. A meta-review by Robert Hare, a leading psychopathy researcher, of works on the laterality of psychopathic brains found that in many cases their brains' laterality were reversed or distributed more equally from that of non-psychopaths (1998). Watson makes the connection between such abnormal laterality and emotional processing, explaining that a failure to properly lateralize emotions may result in the reduced emotionality displayed by PCL-R psychopaths (2012, p. 16).

Lastly, Watson identifies in the literature a finding that he claims is directly relevant to psychopaths' moral psychology: their inability, as compared to non-psychopaths, to "distinguish between 'moral' and purely 'conventional' transgressions" (2012, p. 18). Specifically, psychopaths tend to see moral rules as less mutable and more violable than non-psychopathic children, who see some rules as unbreakable even when told otherwise by an authority figure (Blair, 1995 as cited in Watson, 2012). Despite the seemingly contrary finding that psychopaths rate the permissibility, seriousness and modifiability of conventional transgressions as similar to that of moral transgressions (Blair, 1995 as cited in Watson, 2012), Watson presents evidence that psychopaths do not tend to cite victim welfare concerns as the basis for moral prohibitions (Blair, 1995 as cited in Watson, 2012) and teases out from this the claim that "psychopaths seem

to have an at best limited grasp of what makes moral transgressions moral, and can thus be claimed to lack true moral understanding" (Watson, 2012, p. 19). This claim will be dealt with in the argument section of this paper.

On balance, as Watson suggests, a robust body of evidence has developed that points to neurological and psychological abnormalities in the psychopath. That, as Watson seems to believe, this can be taken as evidence that the psychopathic personality's roots are genetic in nature is less clear due to the complex interplay of environment on physiology. Nevertheless, it is now clear that any theory of moral responsibility applied to psychopaths must address the relative genetically-influenced invariance in norms of reaction of psychopathy brought to light by neurological and psychological research.

Psychopathic Moral Responsibility – Four Lines of Thought

Watson's 2012 overview of the topic draws out four lines of thought extant in the current literature relating to evaluation of the moral responsibility of psychopaths. In this section I will briefly summarize each line of thought, laying out its general position on psychopathic moral responsibility and presenting one primary paper within each line of thought that represents the broad strokes of the perspective.

The first line of thought Watson identifies is Rationalist Motivational Internalism (RMI). RMI holds that moral understanding is "a strictly cognitive process that motivates moral conduct" (Watson, 2012, p. 32). Thus, on this account, affective or emotional states have no place in moral understanding – a key difference between RMI and its competing lines of thought. Under the auspices of RMI, the inability to rationally understand morality can lead to the psychopath's non-responsibility (Watson, 2012, p. 32). Watson presents as a classic Kantian RMI understanding Maibom's 2005 argument for the moral responsibility of psychopaths.

Maibom frames her analysis as a simple comparative matter between rationalism and sentimentalism, and while she acknowledges that psychopaths have emotional deficits, the evidence in favor of psychopaths' impaired rationality provides stronger evidence for the rationalist project (Maibom, 2005). That is, Maibom believes that the deficits psychopaths exhibit in their rational evaluation of their action support the idea that morality is simply practical or applied rationality to a greater extent than their emotional deficiencies support the notion that morality is the moderating influence of empathy (Humean sympathy) on action. The project of supporting rationalism vis-à-vis psychopathic behavior at the expense of sentimentalism is shared among many proponents of RMI.

Watson's second line of thought is Sentimentalist Motivational Internalism (SMI). SMI aligns with RMI in that moral understanding is a motivator for moral behavior, and a lack of moral understanding can lead to moral non-responsibility. SMI disagrees with RMI in that SMI adds the sentimental or affective component to moral understanding, seeing it as a combination of rational and emotive factors. Watson explains that the key emotive factor in the SMI line of thought is empathy (2012, p. 37). Stephen J. Morse's 2008 article, typical of the SMI viewpoint, argues that because psychopaths lack the capacity to possess empathy, their moral understanding is defective, even in light of their seeming grasp on rationality. Morse further states that the American legal system's sentences are premised on the basis of punishment and blame for the sentenced. Because psychopaths are not morally responsible, Morse says, they should not be blamed and punished for their actions, and thus the American legal system is morally wrong with regard to its treatment of the criminal responsibility of psychopaths (Morse, 2008).

The position I will argue for, and the third line of thought delineated by Watson, is Conduct Rationality Holism (CRH). As the name implies, CRH attempts to frame psychopathic

moral responsibility in a holistic manner, considering not only the motivational systems proposed by RMI and SMI, but incorporating neurological and psychological evidence to form a broad-based view of psychopathy that partially or fully excuses psychopaths from moral responsibility. While difficult to describe, the view may be understood more clearly through the work of Paul Litton. In his 2010 paper Litton surveys the state of the field up to that point, drawing on the works of RMI and SMI scholars, as well as neurologists and psychologists studying specific features of psychopaths, in arguing that it is unreasonable to hold psychopaths morally responsible. Thus, the distinction between CRH and the previous two lines of thought is in its broader incorporation of evidence and reluctance to embrace internal motivation as the sole factor in determining moral responsibility.

Finally, Watson presents Motivational Externalism (ME) as the remaining line of thought. ME distinguishes itself from the other three models by its sharper divide between moral understanding and moral motivation. In the ME framework, motivation to act morally is based on sentiment, usually empathy, while moral understanding lies on a cognitive foundation (Watson, 2012, p. 52). Thus, psychopaths can be held morally responsible for their grasp on rationality, or they can be excused from moral responsibility by their empathetic deficit which creates in them a lack of motivation to follow moral rules. True, full accounts of ME are virtually non-existent in the contemporary literature according to Watson, but many scholars incorporate some element of the line of thought into their work, such as Morse, referred to above, whose notion of an empathetic lack in psychopaths creating in turn a motivational lack animates his dismissal of their responsibility.

Argument

After surveying the positions taken by contemporary philosophers in the psychopath moral responsibility debate, I argue that Conduct Rationality Holism (CRH) provides the best framework through which to analyze the issue, and should thus form the basis of our evaluation of the moral responsibility of any given psychopath. An extension of this position is that psychopaths cannot be held fully morally responsible for their actions; they can be held only partially responsible or not at all responsible. I come to this conclusion through three interlinked lines of argument, which, along with a defense of CRH, will form my argument: first, that to be morally responsible requires one to control one's actions[2], requires the ability to understand morality, and requires the ability to act on one's understanding of morality; second, that psychopaths' moral psychology is quite different from non-psychopathic moral psychology; and third, that this difference in moral psychology makes psychopaths less able or totally unable to control their actions, and that psychopaths understand morality either to a lesser degree or not at all when compared to non-psychopaths, again due to their moral psychology.

Defense of Conduct Rationality Holism

Conduct Rationality Holism currently provides the best approach among the four outlined by Watson (2012) with regard to the evaluation of moral responsibility in a causal agent. Of the four approaches, CRH provides the most holistic approach, incorporating evidence from neurology and physiology as well as classic philosophical analysis. Such a view is to be preferred over other accounts that do not draw from such a wide evidentiary base, as such accounts, primarily the three other lines of argument mentioned by Watson, run the risk of making a faulty judgment about an agent's moral responsibility due to the under- or non-

[2] Full-fledged views of determinism may prove troublesome for this account of moral responsibility, but that debate is outside the scope of this paper. For my purposes an assumption of some form of causal free will must be allowed for the argument to proceed.

utilization of evidence that may change the analysis. CRH reduces this risk by considering a broad body of evidence taken from the social and natural sciences and incorporating it with philosophical arguments about moral responsibility.

A prime example of CRH's synthetic evaluative process occurs in Glannon's 2008 study of psychopathic responsibility. Glannon cites evidence from imaging studies of lesions in the orbitofrontal cortex that create psychopathic traits in patients so lesioned. He additionally draws on the classic psychological case study of Phineas Gage – a man whose accidental damage to his orbitofrontal cortex caused marked increases in antisocial behaviors and attitudes – and connects it with broader findings implicating the ventromedial prefrontal cortex in creating impulsivity in humans. In doing so Glannon connects deficits in both reasoning and affect to deep-seated structural brain issues. This insight leads Glannon to conclude that traditional moral responsibility frameworks, such as the Kantian Categorical Imperative (CI), largely fail to include affective states in their analysis and thus ignore a large part of human moral reasoning. Specifically, the CI seeks to describe morality at its most fundamental level as a variety of commands that are knowable *a priori*, or independent of experience, using pure practical reason (Johnson, 2014). A person's moral responsibility hinges therefore on their adherence to such commands. However, as Glannon has demonstrated, human reason is inextricably intermingled with affect in the brain structures that produce rational thought. Therefore the CI relies on a construct, pure practical reason, which appears to be unsupported by evidence and thus remains theoretical at best, unsuitable for application to real-world events.

This marriage of contemporary physiological evidence with philosophical argument results in the emergence of a more holistic, complete picture of moral responsibility evaluation. CRH can be conceived of as roughly analogous to a complete, wide-ranging police investigation.

The best, most preferred police investigations are those that seek to investigate the crime from multiple angles, incorporating witness testimony, participant statements, crime scene reconstructions, interrogations and application of forensic investigative techniques to build their case. CRH is similarly preferable because it draws not solely on philosophical argumentation or on external, neurological evidence, but combines these forms of evidence with broader physiological and psychological findings. A similar view is espoused in the sciences, where converging evidence from multiple vectors allows more accurate knowledge to be formed and strengthens the judgments made on the basis of such evidence. While science need not be seen as a guide for philosophical matters, I suggest that in this case the principle of convergent evidence – that evidence drawn from multiple sources and types of sources, all pointing to the same conclusion, moderates errors within any individual source and is thus less likely incorrect in its conclusions (Stanovich, 2013, p. 128) – supports CRH's usage of varied sources of data regarding moral responsibility.

This marriage of evidence points to an additional feature of Conduct Rationality Holism that strengthens the view's usage in evaluation of moral responsibility: it allows for finer gradations of moral responsibility than any other view. Watson's other three lines of argument have more limited evidentiary bases on which to assign moral responsibility, as previously established. This tends to lead these views to more simplistic attributions of moral responsibility as they often fail to see or take into account evidence which may moderate their conclusion. CRH, on the other hand, faces this problem to a much smaller extent than the other three views; by examining more of the available evidence it forms a more complete picture of the responsibility of the causal agent, and is thus less prone to simple yes/no answers with regard to the moral responsibility question.

An obvious objection to this view is that simple yes/no answers are to be preferred because they eliminate ambiguity and provide a clearer course of corrective or punitive action than the claims of partial responsibility that CRH is partial to. These arguments fail, however, when confronted with the state of affairs in reality, which is that moral responsibility is already viewed as ambiguous, and that such ambiguity enables flexibility in the corrective and punitive measures taken. The legal notions of "aiding and abetting" and of being an accessory to a crime track the ambiguous nature of assignment of moral responsibility already extant in society – we do not view the friend who provided the gun to the killer as equal in responsibility to the killer herself[3]; nor do we view the person who harbors a fugitive in the same moral light as the fugitive himself. That such shades of moral responsibility already seem to exist suggests that moral responsibility paradigms which tend towards such gradation, as CRH does, are more in line with the world as it is, as well as current practices in the legal world, than those moral responsibility paradigms that tend towards hard and fast answers.[4]

In examining some critical features of Conduct Rationality Holism I have contended that it is preferable to Watson's other moral responsibility views. I have done so on the basis of the breadth of evidence considered in CRH, which is considerably greater than that taken into account by Watson's other views. This breadth of evidence naturally leads to more gradation in assignment of moral responsibility, which is preferable because it harmonizes with contemporary societal and legal views on moral responsibility and is thus more pragmatic. All of this taken into account, Conduct Rationality Holism emerges as the best candidate moral responsibility system

[3] The question of whether we ought to, while fascinating, lies outside the scope of this paper except in cases of psychopathy.

[4] Implicit in this view is the argument that we ought to prefer realistic, pragmatic ethical systems in consonance with the world as it is over more aspirational, less pragmatic ethical systems. Again, such considerations lie beyond this paper.

on offer by Watson; because it is so, I choose it as the framework on which my contention about the moral responsibility of psychopaths rests.

Moral Responsibility – Control and Competence

While no particular view can claim to capture the breadth of conceptions of moral responsibility, it is nevertheless both possible and necessary to establish a fairly general view of moral responsibility, in order to judge psychopaths against that view. A charitable and common-sense notion of what it means to be morally responsible can be found in Brink's discussion of the implications of psychopathy on moral responsibility. Brink describes his conception of moral responsibility, the "fair opportunity conception of responsibility," like so:

> One plausible view about the architecture of responsibility conceives of responsibility as requiring the fair opportunity to avoid wrongdoing, where that is conceived as factoring into requirements of normative competence -- the ability to recognize and respond to moral and criminal norms -- and situational control -- the opportunity to act on one's deliberations free from undue interference from others. (2013, p. 1)

When viewed as a broad-strokes definition of the concept of moral responsibility I agree with Brink's definition. One strong indicator of the success of Brink's definition is that it captures two seemingly intuitive features of moral responsibility. The first is the idea that to be held morally responsible is to be judged as having had some foresight of the occurrence of the act for which moral responsibility is assigned. This is captured in Brink's concept of situational control. Take as an example a car collision in winter at night caused by a patch of black ice. Under otherwise standard highway conditions moral responsibility would not be assigned to either driver – neither of them could be expected to have foresight of the ice patch, their tires' wear patterns, and the thousand other variables that interacted to cause the collision. In this

situation nobody is morally responsible because the collision was essentially happenstance, unknowable until it occurred. In contrast, a driver speeding along at 100 miles per hour in icy, whiteout conditions would be held morally responsible for the accident they got into – they were engaging in a reckless behavior under conditions known to be dangerous, and thus are viewed as being able to have foresight of potential harm they could cause.

The second intuitive feature of moral responsibility that Brink's definition captures is the context-sensitive nature of morality, encapsulated in Brink's notion of moral and criminal norms. As a society we recognize that actions do not occur free of context, and we allow the circumstances surrounding any given action to affect the way in which we assign moral responsibility. This is why, in a very generalized sense, a soldier's killing of an enemy combatant is viewed as more morally upright or justified than a soldier's killing of a civilian.

Brink's fair opportunity view of moral responsibility seems in line with the way most people think about and act with regard to assignment of moral responsibility. An infant has no understanding of morality, an abstract concept that it simply cannot grasp until it has grown and developed, and so when it bites its parent it is not punished; this lines up with Brink's idea that moral responsibility can be assigned if and only if the agent assigned responsibility is capable of understanding moral norms. Similarly synonymous with real-world experience is Brink's stipulation of freedom from undue influence of others; in practice we as a society recognize that coerced actions are morally different than uncoerced actions.

Given that Brink's view of moral responsibility captures intuitive features of morality and responsibility, and that it lines up with the application of moral responsibility in the real world, I

suggest that Brink's fair opportunity conception of moral responsibility is a fair, good and accessible standard on which psychopaths may be evaluated.

Moral Psychology of Psychopathy

A bevy of research and analysis, especially in the past fifteen years, has firmly established a moral psychological profile of the psychopath. While the implications of such research are still very much in contention, every side in the psychopathy debate accepts the basic evidence, which shows three interrelated phenomena that psychopaths exhibit: the brain structure and usage of the average psychopath varies quite dramatically from that of the non-psychopath; psychopaths show an impaired ability to reason morally; and psychopaths demonstrate less emotional reactivity and a generally flattened affect compared to non-psychopaths. Each of these phenomena will be explored in greater detail as I make the case that the three, taken together, demonstrate the fundamentally different moral psychology psychopaths possess compared to non-psychopaths.

A survey of the cognitive neuroscience findings relating to psychopathy by Blair (2008) provides a starting point for the discussion of the differential moral psychology of the disorder. An important point to note is that one symptom of psychopathy is a flattened or reduced affect, including decreased emotional reactivity to events relative to a non-psychopath. This deficit in emotional processing is thought to be due to abnormalities in the amygdala, the emotional center of the brain. Such a deficit proves maladaptive for psychopaths, who show a reduced ability to process emotional facial expressions (Gordon, Baird, & End, 2004), process emotionally-laden words (Kiehl et al., 2001), and learn via aversive emotional conditioning (Birnbaumer et al., 2005), among other findings. Blair further notes that the ventromedial prefrontal cortex (vmPFC)

has been demonstrated to activate less in psychopaths than in non-psychopaths, and that the vmPFC plays a role in learning.

The functional impact of impairments in these two areas, Blair explains, is to reduce the psychopath's ability to learn in a classical-conditioning manner; because such learning relies on emotional reactivity, the very phenomenon the amygdala and to a lesser extent the vmPFC moderate, and because psychopaths show abnormalities in these areas, they are less able to pair a negative feeling (most commonly fear) with a punishment received for an action they have taken. Similarly, processing of facial emotion facilitates affective understanding of others, a key process in social interaction, and because psychopaths are poor at this skill, social learning in psychopaths is similarly damaged.

A secondary, but critical, portion of Blair's (2008) research relates to the causes of psychopathy – specifically, Blair notes that genetic factors appear to play a relatively large role in the acquisition of psychopathic traits. As evidence Blair points to a large study of twins that indicated a 67% heritability[5] rate of callous-unemotional traits, one of the primary markers of psychopathy (Viding, Blair, Moffitt, & Plomin, 2005). Additionally Blair notes that a link has been established between genetic factors and abnormalities in the amygdala and vmPFC, furthering the case for the influence of genetics on development of psychopathy. Such data suggests that the behavioral traits psychopaths possess are out of their control, furthering the argument against psychopaths possessing the ability to control their actions. Of course, social and environmental factors do appear to play at least some role in psychopathy, as Blair discusses the negative correlation between socioeconomic status and incidence of psychopathy.

[5] Here, heritability refers to the percentage of variation in behavior that can be attributed to genetic influences.

Psychopaths also demonstrate poor moral reasoning capabilities, showing a lessened ability to rationally engage with morality and apply it in their everyday actions. Damm (2011) compiles the moral reasoning research done on psychopaths and concludes that "individuals with psychopathy lack an adequate understanding and facility with moral concepts. This is because while individuals with psychopathy are sometimes capable of making the correct moral judgments, they do not appear to be reasons responsive to moral considerations as demonstrated by their shortcomings in moral reasoning tasks" (Damm, 2011, p. 279). Damm's conclusion is drawn partly from a 1995 study by Blair that shows psychopaths struggle to differentiate moral and conventional transgressions. Specifically, psychopaths appear largely unable to associate a victim's welfare with the morality of an act, and they judge conventional transgressions – violations of cultural or social norms or prohibitions, but not those that stem from deep-seated moral principles – to be wrong even when the source of the prohibition on that act is removed; essentially, they treat conventional transgressions the same as moral transgressions, and in so doing reveal an inability to reason about the source of an act's morality. Further evidence suggestive of impaired rationality in the psychopath appears in a study of retractor statements conducted by Kennett and Fine (2008). They find that psychopaths tend with much greater frequency to make retractor statements –statements contradicting earlier statements in a moral explanation – than non-psychopaths, exemplifying their lessened ability to reason and do so consistently about morality.

Although I have cited but a tiny portion of the research into the psychopathic profile, it serves to reveal three essential facts about psychopaths. Psychopaths possess brains that operate in impaired ways compared to non-psychopaths, particularly in the area of emotional processing. The lessened emotional processing ability and reactivity of psychopaths makes them ill-suited to

learning via emotions in classical and operant conditioning situation. A marked deficit in moral reasoning is also present in psychopaths. These three findings add up to the conclusion that psychopaths present a significantly different moral psychology than that of non-psychopaths.

Putting It Together

From a Conduct Rationality Holism standpoint, the import of the unique moral psychology of psychopaths is clear: it reduces or entirely mitigates their moral responsibility for their actions compared to non-psychopaths. Returning to Brink's fair opportunity conception of responsibility, we see that moral responsibility entails two parts: normative competence and situational control. The extant literature on the moral psychology of psychopathy undermines both aspects of Brink's conception, and thus provides the grounds on which to excuse psychopaths from moral responsibility.

Psychopaths are, by and large, normatively incompetent, as their moral psychology indicates. As described previously, psychopaths cannot navigate the moral/conventional transgression distinction, suggesting that they lack the ability to truly understand moral and social norms, a key component of Brink's normative competence. Kennett and Fine's 2008 retractor statement study adds weight to this view of psychopathic normative competence. Furthermore, social and moral norms are learned, either in part or in whole, through exposure to and effective parsing of social situations; as discussed above, psychopaths are uniquely unfit to parse social situations due to their affective processing deficits, which shows that not only do psychopaths not understand social and moral norms, in many cases they *cannot* come to understand such norms, and thus cannot be said to be normatively competent.

Similarly inapplicable, Brink's concept of situational control cannot hold for psychopaths in light of their unique moral psychology. The notion of impulsivity is implicit in psychopathy as

defined by the PCL-R – psychopaths rarely consider their actions in a deeper-than-superficial manner and are prone to acting on the first impulse that strikes them. Indeed, Blair captures this notion in his 2008 paper wherein he discusses the instrumental-reactive aggression dichotomy. Blair explains that instrumental aggression is planned and goal-directed, whereas reactive aggression is unplanned and not specifically goal-directed, often sparked by strong emotion. Psychopaths appear to have higher incidences of both instrumental and reactive aggression than non-psychopaths. In the case of reactive aggression, Brink contends, psychopaths are operating impulsively according to the dictates of their deficient rational and emotive brain structures, and thus often lack real conscious control over their actions – precisely the situational control Brink requires for moral responsibility.

Blair (2008) also contends that instrumental aggression in psychopaths further distances them from situational control, a counterintuitive position but nevertheless one I agree with. Blair argues that because psychopaths have a diminished ability to reason, their reasoning faculties involved in the weighing of costs and benefits that occurs in situations of instrumental aggression are diminished. I extend this argument in the following way: situational control implies not only the ability to act on one's deliberations, but on the perception of the presence of alternative actions involved in the deliberative process. Because psychopaths' reasoning faculties are impaired, they perceive fewer alternative actions in their deliberation than would a non-psychopath in the same situation, and thus can be said to have either a diminished or total lack of situational control.

The final piece of the puzzle comes from Blair's (2008) discussion of the genetic factors contributing to psychopathy. While a conclusion that psychopathy is primarily caused by inborn genetic factors is unfounded, there is support for the notion that some portion of psychopathy's

presence in a given person can be explained by appeal to the presence of inborn genetic factors. The import of this lies in the fixedness of psychopathy and the implications this has for the notion of situational control. It is tempting to contend that psychopaths are responsible for their psychopathic existence given the interplay of environment and social factors on development of psychopathy, and thus that even though they may not currently be possessed of situational control, they themselves created that fact and can thus be held responsible for their lack of situational control. The presence of genetic factors complicates this position greatly – if psychopathy is to some degree fixed by genetics, then psychopaths cannot be held fully responsible for their psychopathy, and thus cannot be held entirely responsible for their lack of situational control.

By examining the moral responsibility of psychopaths from a Conduct Rationality Holism standpoint, we come to see that they cannot be held fully morally responsible for their actions. Using the fair opportunity conception of moral responsibility, psychopaths fail to fully meet both criterion for moral responsibility due to their unique moral psychology comprised of reasoning and emotional deficits driven by structural and functional brain deficiencies.

Objections and Replies

One objection to the arguments offered above is that it is unclear how partial moral responsibility is possible, and that if no sufficient account of partial responsibility can be given, CRH should absolve psychopaths completely of their moral responsibility, an unpalatable option to many. I reply that a sufficient account of partial responsibility may be given by appeal to the concepts that Brink (2013) requires for moral responsibility – normative competence and situational control. On this account, the degree to which a person possesses normative competence and the degree to which they possess situational control combine to create a continuum of moral responsibility. To examine this issue in greater detail I will first view the continuum applied to a non-psychopath, then analyze the psychopathic case.

It seems readily acceptable that non-psychopaths can possess situational control and normative competence to varying degrees. Certainly the control an infant has over their situation is considerably less than that of a functional adult, with children of various ages falling in between these two extremes. However, even within similar age groups situational control is highly variable and context-dependent. If I crash my car into another car because I was fiddling with my car's radio rather than paying attention to the road, I certainly conceivably had the ability to control my actions and thus prevent the collision (again, assuming some notion of causal free will). The epileptic who has a seizure while driving, and subsequently crashes because she loses motor control in her arms, has markedly less situational control and thus less moral responsibility for the collision. Similarly, young children are less normatively competent than adults – they lack even the ability to grasp and apply abstract ideas such as morality, and are less overtly able to moderate the influence of their emotions on their decision making. Other more situational factors may also influence normative competence – if I am in a country with a

culture and language I do not understand, I am simply less able to navigate social and cultural norms; if I violate a law that is not extant in my native culture, I am less morally responsible because I lacked the capacity to rationally understand, or perhaps even know, the law. Even so, I would still be held somewhat morally responsible for my failure to learn the language and laws before I went to this foreign culture, indicating that I am partially morally responsible.

Psychopaths also demonstrate variability in both situational control and normative competence, although they tend to cluster towards a lack of both elements. Glannon supports this notion when he recognizes that "the neurobiological underpinning of the cognitive and affective capacities necessary for responsibility may be dysfunctional to varying degrees" (2008, p. 165). Not all psychopaths present precisely the same neurological deficits, and these deficits are often not all-or-nothing propositions. In that normative competence relies in part on possession of adequate emotional and rational faculties to understand morality, and that psychopaths lack such faculties *to differing degrees and extents*, psychopaths possess variability in their level of normative competence.

The case for situational control is similarly clear, as Glannon notes – because situational control relies on affective and cognitive understanding, and these two faculties have been shown to be variably deficient in psychopaths, the control one psychopath exhibits over a situation may be quite less than that of another psychopath in an identical situation. On a more general note, the situational control a psychopath seems to experience in any given situation is illusory. Given the neurological differences psychopaths by and large possess, it seems that the range of alternative actions psychopaths (1) are cognitively aware of and (2) possess the motivation to pursue is quite limited compared to non-psychopaths. Thus, while psychopaths may appear to an outside observer to have the same set of options open to them, in practice due to their

neurological deficits they seem to lack many of those options and in this sense possess a reduced degree of situational control.

A second objection to the CRH project is its incorporation of genetic factors into the moral responsibility calculus, and its seeming exculpation of psychopaths on that basis. The thrust of the objection to genetics is this: genetic influences cannot enter into attributions of moral responsibility because to do so creates a slippery slope – if psychopaths can appeal to genetics to vitiate their moral responsibility, then everyone can claim the same given that each person has genetic influences on their behavior, leading non-psychopaths to have lessened or no moral responsibility due to circumstances that were out of their control.

The reply to this objection is to accept its conclusion, but not the implications of that conclusion. Specifically, I propose that genetic influences *should* play a role in the analysis and attribution of moral responsibility, even for non-psychopaths. The CRH project is attempting to create a framework through which all moral responsibility attributions can be made, not just those for psychopaths. Thus, the genetic influences on non-psychopath behavior should be taken into account as well. Where the objection fails is the implication that doing so would lead to incorrect, or at the very least unwanted, abrogation of moral responsibility for non-psychopaths. It is precisely *the nature* of the genetic influences – namely that they appear to influence development of brain structure in a relatively invariant way, which leads to the narrow, extreme norm of reaction observed in psychopathic behavior – of psychopathy that lessens or eliminates moral responsibility for psychopaths. The absence of these malign genetic influences in non-psychopaths upholds their moral responsibility, and thus takes the teeth out of the slippery slope objection to the use of genetics in attribution of moral responsibility under the auspices of CRH.

A final objection to the above arguments attacks one of the premises of moral responsibility as set forth by Brink – specifically situational control. This objection calls into question the very idea of situational control, asking both metaphysically and epistemically whether situational control exists. Such questions are of the same ilk as those that seek to undermine this argument based on its adoption of a free will framework, which is to say, they are largely outside the scope of this paper. However, even were situational control to be undermined, demonstrated not to exist or to such a small degree as to be practically ineffectual, this alone would not serve to defeat the broader claim that psychopaths by and large are only somewhat or not at all morally responsible for their actions. This claim rests on a holistic evaluation of the available data from philosophy, psychology and neuroscience, and even if one element of the claim is undermined, the holistic picture still takes shape and supports the claim for the lessened moral responsibility of psychopaths.

Implications

The implications of the view that psychopaths have a diminished or nonexistent level of moral responsibility lie primarily in the manner in which the judicial and corrections systems interact with psychopaths. The first major implication of this view is that psychopathy should cease to systematically act as an aggravating factor in establishing sentences after conviction in court. As Morse (2010) makes clear, American jurisprudence, if not explicitly, at least implicitly facilitates the use of psychopathy as an aggravating factor in determining sentences. This arises mainly in that predictions of future dangerousness are a key component of the deliberative process that goes into most sentences, and psychopaths, by virtue of their psychopathy, are much more likely to recidivate and therefore present a future danger to society. In practice this means that psychopaths, especially violent psychopaths, tend to receive longer prison sentences than non-psychopaths for comparable crimes.

While the logic of danger prevention that drives psychopathy as an aggravating factor is unchanged by the mitigation of their moral responsibility, the lessened normative competence and situational control of psychopaths are in Morse's words, "classic mitigating factors" (p. 54). This suggests that the sentencing process for a psychopath, rather than treat psychopathy purely as an aggravating factor, as seems to be the case now, should take into account the entire picture of the psychopath's particular circumstances. Let me be clear here: I am not arguing for the elimination of psychopathy as an aggravating sentencing factor; I am suggesting instead that it is balanced out by the understanding that they are not, or are less, morally responsible for their actions than an non-psychopath.

A second, even more crucial implication of this view of psychopathic moral responsibility is that psychopathic criminals should be treated differently from non-psychopathic

criminals. By this I mean to say that imprisoning psychopaths is not an effective corrective measure for them, and that imprisonment carries a retributive or punitive implication that does not apply to psychopaths. Psychopaths are mentally disordered individuals, and as such are unfit for a general prison population. Furthermore, treatment for psychopathy is most effective when it is intense and long-lasting, the sort of situation a mental hospital or ward is most equipped to provide, and precisely the type of care a general prison is ill-suited to provide. Additionally, despite masquerading as the correctional system, the prison-industrial complex functions primarily as a punitive system, a form of punishment for those who have violated the law. Inherent in the idea of punishment is the concept of the blameworthiness of the person punished, which in turn hinges on attribution moral responsibility to the punished for their actions. As has been demonstrated, such an attribution applies in a diminished or fully mitigated fashion to psychopaths, making punishment unfit for the psychopath. As Morse proposes, voluntary and/or involuntary civil commitment to mental institutions provides a more compassionate framework for the treatment of psychopaths and acknowledges their reduced moral responsibility.

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