

On the appropriateness of blaming and punishing psychopaths

Current legal practice holds that a diagnosis of psychopathy does not remove criminal responsibility. In contrast, many philosophers and legal experts are increasingly persuaded by evidence from experimental psychology and neuroscience indicating moral and cognitive deficits in psychopaths and have argued that they should be excused from *moral* responsibility. However, having opposite views concerning psychopaths' moral responsibility, on the one hand, and criminal responsibility, on the other, seems unfortunate given the assumption that the law should, at least to some extent, react to the same desert-based considerations as do ascriptions of moral responsibility. In response, Stephen Morse has argued that the law should indeed be reformed so as to excuse those with severe psychopathy from blame, but that psychopaths that have made criminal transgressions should still be subject to some legal repercussions such as involuntary civil confinement (2008, 2011; Fine & Kennett 2004). In this talk we argue that insofar as we maintain consequentialist considerations in support of punishing psychopaths or at least retaining some legal liability, we should also apply analogous consequentialist considerations in our moral practice.

We first argue that current empirical evidence with respect to what desert-constraints in principle apply to psychopaths is at best inconclusive. In place of a conclusive verdict on whether psychopaths *deserve* moral responsibility and blame or not, we contend that consequentialist considerations (such as deterrence, and protection etc.) may therefore be our main guide for how to respond to moral transgressions of psychopaths. For example the influential argument that psychopaths lack requisite moral knowledge for being blameworthy as they are unable to distinguish between moral and conventional transgressions, seems dubious in light of recent research which shows that the moral/conventional distinction is philosophically problematic (Shoemaker 2011) and that even convicted psychopaths are able to offer some morally relevant justifications for why a transgression is wrong (Aharoni et al. 2011). Another recent argument for excusing psychopaths proposed by Neil Levy (forthcoming) is that psychopaths fail to understand the concept of personhood due to deficits in mental time travel. We show that the empirical evidence falls short of supporting this claim.

Second, even if we concluded that psychopaths should be excused of moral responsibility in *principle*, there might still be consequentialist reasons for holding psychopaths accountable for their actions in moral *practice*. Morse suggests that our normal strategies of attributing blame is futile also in practice since he thinks our moral discourse simply has no purchase on psychopaths (2008). But even supposing that keeping psychopaths within a moral community is pointless for them in that they are insensitive to moral considerations, there may be other broader benefits that outweigh these costs, e.g. general deterrence and reinforcement of shared moral principles. Moreover, recent research on treatment of incarcerated psychopaths shows that psychopaths may be capable of developing a more pro-social and proto moral lifestyle as a means of reducing the frequency and the extent of violent behaviour (Wong et al. 2007). This suggests that appropriate reactions from the community might to some extent be a motivating factor for psychopaths in trying to change behaviour – at least if that behaviour is detrimental to the psychopath's own wellbeing.

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