

Psychopathy: Psychopathological Features and Criminal Responsibility

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Abstract

Psychopathy, as a psychiatric construct, presents a unique challenge in the forensic context, characterized by traits of emotional insensitivity, manipulation, and antisocial behavior. The aim of this article is to describe the main psychopathological characteristics of psychopathy, highlighting its key concepts and implications in the forensic assessment of criminal responsibility, from the perspective of Brazilian jurisprudence.

Keyword: Psychopathy; psychopathology; crime; criminal responsibility; antisocial personality disorder.

Introduction

The concept of psychopathy and the use of this nomenclature were only firmly established with the 1941 work of Hervey Cleckley, *The Mask of Sanity*¹, which is considered a decisive contribution to the definition of the construct. Cleckley¹ provided a systematic clinical portrait of psychopathy, presenting a renowned list of 16 characteristics to define a psychopathic individual.

Another important aspect of Cleckley's¹ work on psychopathy was his conception of the disorder in terms of personality traits, emphasizing interpersonal and affective dimensions. Although typical descriptions of psychopathy were mainly drawn from case studies of criminals, Cleckley sought to detach the concept from crime itself, highlighting the personality traits and atypical behaviors of indi-

viduals considered psychopathic².

The characteristics of psychopathy listed by Cleckley¹ were as follows:

1. Superficial charm and good intelligence;
2. Absence of delusions and other signs of irrational thinking;
3. Absence of nervousness and psychoneurotic manifestations;
4. Unreliability;
5. Tendency toward lying and insincerity;
6. Lack of remorse or shame;
7. Antisocial behavior inadequately motivated;
8. Poor judgment and failure to learn from experience;
9. Pathological egocentricity and incapacity for love;
10. General poverty of affective reactions;

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11. Specific loss of insight;
 12. Lack of interpersonal reciprocity;
 13. Fantastic and uninviting behavior with and sometimes without alcohol;
 14. Suicide threats rarely carried out;
 15. Impersonal, trivial, and poorly integrated sexual life;
 16. Failure to follow any life plan.

On the interpersonal level, psychopaths usually display superficial charm, talkativeness, and manipulation, frequently accompanied by pathological lying. These features allow them to maintain an appearance of sociability and seductiveness, though aimed at exploiting others³. Another common aspect is the grandiose sense of self, marked by exaggerated self-confidence and feelings of superiority⁴.

The affective dimension constitutes the distinctive core of psychopathy. Individuals exhibit lack of empathy, absence of remorse or guilt, emotional coldness, and shallow affect. Even in the face of violent or harmful behaviors, they tend to justify their actions or minimize the damage caused^{5,6}. Neuroscientific studies point to deficits in emotional processing related to the amygdala and ventromedial prefrontal cortex, suggesting a neurobiological basis for this affective insensitivity^{7,8}.

On the behavioral level, marked impulsivity is observed, accompanied by chronic irresponsibility, difficulty maintaining jobs or commitments, and a parasitic lifestyle based on material and financial exploitation of others³. The tendency toward risk-taking and constant stimulation-seeking is also typical, leading to frequent involvement in criminal behavior^{6,9}.

Robert D. Hare is considered the leading global authority in the study of psychopathy, having systematized the construct in both clinical and forensic fields. His most important contribution was the development of the Psychopathy Checklist (PCL) and later the Psychopathy Checklist-Revised (PCL-R), which became the gold-standard instruments for psychopathy assessment in clinical, criminal, and research contexts³.

According to Hare¹⁰, psychopathy is strongly associated with criminal recidivism, especially in violent and sexual crimes. Research¹¹ shows that psychopaths have recidivism rates three to four times higher than non-psychopathic offenders. Furthermore, they present increased risk of institutional violence (within prisons) and failure in rehabilitation programs, making them a major challenge for the penitentiary and justice system.

Criminal Responsibility in Psychopathy: The View of Brazilian Legislation

Current Brazilian criminal law¹² adopts the biopsychological criterion. This requires verifying the actual existence of a causal link between the abnormal mental state and the crime committed—that is, that this state, contemporaneous to the conduct, deprived the agent partially or completely of any of the mentioned psychological capacities (either intellectual or volitional). It is not enough merely to diagnose a mental disorder; responsibility depends on the stage or degree of the disorder's evolution, the individual's psychic structure, and the nature of the crime at the time it occurred. It is important that the expert investigate both criminogenic factors (which motivated the crime) and criminodynamic factors (how the crime unfolded).

The discussion of criminal responsibility in psycho-

pathy is complex, involving psychiatric, legal, and criminological aspects. The concept of criminal responsibility in Brazilian Penal Law is found in Article 26 of the Penal Code, which establishes non-responsibility only for individuals who, due to mental illness or incomplete or delayed mental development, are entirely incapable of understanding the illicit nature of the act or of acting according to that understanding¹².

Psychopathy, however, does not easily fit this definition. Unlike psychoses, psychopathic individuals retain preserved cognitive capacity; they fully understand the unlawfulness of their acts. Hare¹⁰ emphasizes that these individuals do not present delusions or hallucinations that compromise reality testing, distinguishing them from those with psychotic disorders.

The core of the controversy lies in the volitional component of responsibility. Some authors argue that, although psychopaths understand the unlawfulness of their acts, their capacity for self-determination is gravely compromised by a personality structure marked by impulsivity, emotional coldness, and disregard for social norms¹³. In this sense, it is argued that psychopathy could constitute a state of “diminished responsibility,” as provided in the sole paragraph of Article 26 of the Penal Code, reducing culpability but not excluding it¹².

In Brazilian jurisprudence, however, the prevailing understanding is that a diagnosis of psychopathy does not in itself lead to non-responsibility. Although there is academic debate on the possibility of sentence reduction for diminished responsibility, the dominant position, both in forensic psychiatry and in Brazilian law, is that psychopathy does not exclude criminal responsibility. The psychopath is

therefore considered responsible and must be held fully accountable for his acts, although the personality disorder may be considered in sentencing or in the application of complementary security measures.

Thus, the prevailing view is that psychopathy does not exclude criminal responsibility. The psychopath knows what he does and understands unlawfulness but chooses to act antisocially, which is why criminal accountability is maintained. Nevertheless, debate remains open regarding social risk and the effectiveness of traditional punishment in cases of severe psychopathy.

Discussion

Although there are associations between psychopathy and ASPD, psychopathy must be recognized as a distinct construct. There are relevant conceptual and empirical differences for research and clinical practice between both constructs. Moreover, these differences may be not only quantitative but structural.

It is crucial to differentiate psychopathy from other personality disorders, such as borderline and narcissistic. Although they share traits of manipulation and relational instability, emotional coldness and absence of anxiety distinguish psychopathy. Furthermore, primary psychopathy tends to be more stable and less associated with psychiatric comorbidities than secondary psychopathy, the latter often linked to a history of trauma and emotional instability⁴.

The clinical picture of psychopathy broadly undermines social adaptation, leading to recurrent conflicts with the law, failure in interpersonal relationships, and difficulties in the workplace. Despite

this, some individuals manage to operate in non-criminal spheres, using psychopathic traits as tools of advancement in competitive contexts¹⁴.

The diagnostic systems such as DSM-5-TR¹⁵ for ASPD include individuals with psychopathic personality as well as those with antisocial behavior but lacking the interpersonal and affective features of psychopathy, which are considered essential for its characterization. In other words, sociopaths, but not necessarily psychopaths. It is important to emphasize that criminality is not an essential component of the definition of psychopathy, but rather antisocial behavior. Antisocial behavior may include crimes or lawbreaking, but it is not limited to that; it encompasses exploitative interpersonal behaviors that may not amount to criminal offenses¹⁶.

With regard to violent behavior, it is common for psychopaths to exhibit a tendency toward instrumental violence, characterized by cold, premeditated, controlled, and predatory actions. Yet in some situations, aggression may occur due to loss of control in response to provocations or perceived threats or imminent risks. When psychopaths resort to this type of aggression, there is a high likelihood of disproportionality in the violence used and apparent indifference to others' suffering¹⁷.

In summary, psychopathy is not reducible to antisocial behavior: it is a complex syndrome in which emotional and interpersonal deficits are combined with maladaptive lifestyle patterns, forming a clinical profile of high relevance for forensic psychiatry and criminal law¹⁸.

Differential diagnosis with other mental disorders is especially important in forensic psychiatry, since psychopathy implies high risk of criminal recidi-

vism and direct impact on dangerousness assessment. Distinguishing psychopathy from other disorders helps in determining penal measures, security measures, and treatment strategies¹⁸.

Conclusions

Despite neurobiological and psychological findings suggesting differences between psychopaths and non-psychopaths, there is no evidence of impaired understanding or self-determination that would justify non-responsibility. Thus, psychopathy, as a rule, does not exclude criminal responsibility, and individuals are considered responsible. The debate then shifts to criminal policy: given the high dangerousness and limited treatment response, the recommendation is that psychopathy be considered an aggravating factor in risk assessment and in sentence execution, but not as a ground for excluding culpability.

Psychopathy, as a psychiatric construct, presents a unique challenge in the forensic context, characterized by emotional insensitivity, manipulation, and antisocial behavior. In legal contexts, it raises a number of complex questions about these individuals' capacity to understand and be held accountable for their acts. In this context, critical analysis becomes imperative for a fair and equitable approach within the legal system.

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