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## **Psychopaths and the Criminal Justice System**

Psychopathy is closely correlated with criminology and is the topic of many debates on whether it should be an excusing condition in criminal law. According to "Psychopathy and its relationship to criminal behaviour" by Nikos Theodorakis, "Psychopaths constitute only approximately 1% of the global population but they represent 25% of the prison population in the United States, and 4% among corporate CEOs" (52). A psychopath is a person who can think rationally and has the cognitive capacity to determine right from wrong but lacks the emotional capacity and moral understanding to feel remorse and empathy. Psychopaths feel indifferent to the suffering of others and tend to act only for their own gain. To improve judgements of psychopaths in criminal law, there must be a better understanding of the relation between psychopathy and criminal behavior. This can be accomplished by analyzing how psychopathy is measured by the law, examining how psychopaths have been held responsible in the criminal justice system, and by acknowledging different perspectives of the debate.

Methods of psychopathy assessment are key to determining legal treatment and punishment of psychopaths. One widely recognized way of measuring the degree of psychopathy is the Psychopathy Checklist (PCL-R) developed by Robert Hare in 1991. It is used in research studies and to determine what type of treatment subjects should receive. PCL-R results are used as factors in deciding the length and type of prison sentences. According to a research article called "The Criminal Psychopath: History, Neuroscience, Treatment, and Economics," the PCL-R considers two factors when creating a diagnostic score measured from 0 to 40, in which a score of 30 or more is defined as psychopathy (Kiehl and Hoffman 373). According to an article titled "A new legal treatment for psychopaths? Perplexities for legal thinkers," Factor 1 includes affective criteria like callousness and lack of remorse, while Factor 2 includes antisocial, behavioral traits (Gonzalez-Tapia et al. 48). While the PCL-R checklist is widely accepted as a reliable tool for diagnosing psychopaths, it also receives criticism from many scholars and researchers. The checklist focuses largely on personality traits and does not encompass neurobiological science or brain deficits of psychopaths. There is also uncertainty whether the PCL-R is really a diagnosis of psychopathy or just a measure of tendency toward criminal behavior. Many consider the elements measured in the PCL-R to be subjective and judgemental, making it difficult to be used for diagnostic purposes. Moreover, an article published in the *International Journal of Law and Psychiatry* states, "Individuals scoring high on the items assessing the antisocial component (Factor 2) are significantly more diverse than those who score high on the interpersonal/affective domain (Factor 1). For this reason, some researchers have questioned whether Factor 2 (primarily violent) individuals are truly psychopaths or not" (Gonzalez-Tapia et al. 48). There are stark differences between Factor 1 and Factor 2 individuals in terms of their temperamental profile. Factor 2 individuals show deficits in self-control, which may allow for mitigation by the law; however, not all psychopaths show deficits in self-control. Political institutions must continue to evaluate and improve methods of psychopathy assessment like the PCL-R to ensure they are fair and not misused in legal systems.

Furthermore, it is crucial to evaluate how psychopathy is handled by the law to improve the treatment of psychopathic individuals in the criminal justice system. The law, as it stands, reflects a longstanding notion that rationality is required for criminal responsibility, and does not include psychopathy as a sufficient mental disorder for the insanity defense. In fact, the American Law Institute's Model Penal Code proposed in 1962, excludes mental defects that are "manifested only by repeated criminal or otherwise antisocial conduct." Psychopathy is also excluded from "the Diagnostic and Statistical Manual-IV (American Psychiatric Association, 1994)" (Gonzalez-Tapia et al. 48). This shows that because psychopaths are able to act rationally, with the understanding that there are rules to be followed, criminal law does not recognize psychopathy as a reason for non-responsibility or the insanity defense. Rationality is dependent on cognition and emotions that guide moral behavior. However, psychopaths are emotionally deficient and may have brain impairments that compromise cognitive reasoning. This evidence must be accounted for in legal decisions. Advancements in neuroscience may also challenge the insanity defense and alter

legal systems. On the other hand, the insanity defense recognizes that “even if a defendant is sufficiently rational to form intentions and act on them, the law still excuses harmful acts if the defendant’s ability to perceive the world is so disabled that it renders his rationality useless to him” (Kiehl and Hoffman 370). This begs the question of whether psychopaths are able to perceive the world accurately enough to be subjected to criminal responsibility. Whether the law should consider emotional deficits of psychopathic individuals in legal judgements of criminals depends on politicians and lawmakers.

There are two main perspectives in the debate whether psychopaths should be held criminally responsible in the criminal justice system. The first is that psychopaths should be criminally but not morally responsible for their actions. According to an article by LSU Law Center Associate Professor Ken Levy, psychopaths are not morally responsible because of their impaired moral reasoning (1362). The article continues to say they are criminally responsible because all that is needed to be criminally responsible for breaking the law is knowledge of the law and sufficient self control, which psychopaths generally possess (1369). This perspective explains how even though psychopaths have different views on morals, they are still able to follow moral rules, and should be treated the same as non-psychopathic criminals because criminal responsibility does not require moral responsibility. Having a lack of moral understanding about laws prohibiting crimes does not excuse a psychopath from criminal punishment. Contrarily, others believe psychopaths should not be criminally responsible or morally responsible. A 2011 paper called “Is It Wrong to Criminalize and Punish Psychopaths?” describes why psychopaths should not be held criminally responsible:

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 ... Psychopaths should be subjected to other forms of social control, provided that society is still protected. (Glenn et al.)

This perspective considers how moral and emotional capacity is impaired in psychopathic criminals, so these factors should be accommodated in legal decisions of criminal responsibility. Essentially, psychopaths should not be subject to both criminal and moral responsibility due to their inability to understand moral rationale. They also lack the emotional capacity that motivates humans to behave morally. Nonetheless, most scholars agree there must be more research in the neurobiological aspect of psychopathy. Nikos Theodorakis, a Ph.D. candidate from the Institute of Criminology at the University of Cambridge states, “The yet emerging field of neuro-criminology may prove useful in creating and implementing new crime prevention and risk assessment tools that will be based solely on scientific criteria” (54). In light of neurobiological findings about psychopaths, lawmakers may adjust long-established and outdated laws to consider new, scientific approaches in criminal judgements. Biological research may offer a new perspective on psychopathy. Acknowledging these different perspectives on the issue of criminal responsibility will lead to increased awareness and understanding of psychopaths, which is needed for enhanced legal decision making.

Ultimately, it is important to improve understanding of the relationship between psychopathy and criminology. Lawmakers must reevaluate methods of psychopathy assessment and legal treatment of psychopathic criminals to encompass brain deficits and emotional impairments in criminal law. The criminal justice system can make more informed judgements about psychopaths by examining the arguments for and against criminal responsibility and punishment. As new evidence and neuroscience research emerges, legal systems and criminal law may change to accommodate these findings and allow for different, individualized approaches in cases with psychopathic criminals.