

## Chapter 1

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# **Introduction: interfacing law, philosophy, and psychiatry**

John McMillan and Luca Malatesti

The moral responsibility of psychopaths has attracted a significant amount of philosophical attention.<sup>1</sup> This is unsurprising given that moral responsibility is a perennial philosophical problem and that psychopathy is a useful lens through which to view important issues around responsibility, moral motivation and moral knowledge.

There are also important legal and public policy questions about the responsibility of those with psychopathy and related conditions such as antisocial personality disorder (ASPD) and sociopathy. Psychopathy and other similar concepts have been discussed by academic lawyers and there is a fairly extensive literature in this area. More recently, policy proposals in the United Kingdom (UK) and other countries have aimed at making it easier to preventatively detain those with ASPD who are judged to be a risk to the public.

Both public policy and philosophical debate needs to be informed by the best available accounts of the nature and aetiology of ASPD. While there is no ultimate and unifying scientific account of ASPD, Robert Hare's Psychopathy Checklist (PCL) has created a paradigm for studying the narrower notion of psychopathy. Psychometric studies and investigations on criminal recidivism offer evidence in favour of the scientific plausibility of this construct. Moreover, the PCL has been used in a growing body of empirical research that delineates the distinctive functional and neurological correlates of psychopathy. For these reasons, this book discusses the concept of psychopathy as defined and measure by PCL. (For a more detailed formulation of our stance towards PCL, see Chapter 6).

The principal aim of *Responsibility and psychopathy* is to interface current empirical work based upon the PCL with philosophical and legal scholarship

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<sup>1</sup> For an online bibliography, see Malatesti 2006.

on psychopathy and responsibility. This book is an introduction to leading-edge scholarship about the responsibility of psychopathic offenders and promotes philosophical investigation that is informed by recent scientific advancements and legal medical practical requirements.

This book is divided into three parts, each containing chapters written by specialists on policy, the empirical study of psychopathy, and philosophical accounts of responsibility and psychopathy.

Part I, 'Psychopathy and the law', discusses public policy and legal responses to psychopathy and ASPD while also discussing the historical context of these concepts. This part of the book, besides offering an introduction to the central practical issue of how public policy should respond to psychopathy, offers insights for those arguing about the responsibility of psychopaths.

Tony Ward discusses the legal history of concepts that are precursors to psychopathy and their development into the contemporary constructs of psychopathy (moral insanity, sociopathy, etc.) that have a significant role in the traditional legal debate in Europe and North-America. This chapter describes the emergence and evolution of important concepts relevant to the ascription of criminal responsibility to individuals classified as falling under these psychiatric constructs.

In 'Stabbing in the dark: English law relating to psychopathy', Peter Bartlett discusses the rise and fall of psychopathy as legal concept in English law. The furore that has surrounded, in UK, proposed changes to mental health law, so that those with 'Dangerous Severe Personality Disorders' can be preventively detained, delayed the implementation of new legislation to replace the 1983 Mental Health Act. Bartlett offers a critical overview of the vicissitudes of recent policy proposals in the UK and contemporary legal responses to psychopathy.

In Chapter 4, Stephen Morse describes the ways in which psychopathy and responsibility have been discussed in a North American legal context. Like Bartlett, Morse raises a number of excellent issues, including questions about how the legal discussion of responsibility can be independent of accounts of moral responsibility. This matters for the structure of this book because the chapters that follow in Part III are largely devoted to moral responsibility.

Matt Matravers broadens the discussion, in 'Policies, law and psychopathy', to include insights from political philosophy and moral theory. He raises questions about the tendency of law to sort agents into categories such as those who are or are not criminally responsible and suggests that psychopathy is an important condition precisely because it demands that we reconsider sharp boundaries such as these.

Part II of the book, 'Psychopathy: a new research paradigm' begins with an introductory essay by Luca Malatesti and John McMillan. They investigate

the plausibility of psychopathy as a kind and its emergence in the psychiatric literature. They consider issues about the nature of mental disorders, their classification, and their relation with social and other values, which is important given the significant critical literature about the reification of these constructs.

In 'Psychopathy: assessment and forensic implications' Robert Hare and Craig Neumann explain the operationalization of the notion of psychopathy through the different versions of the PCL-Revised (PCL-R). They also review the comparative studies on the relation of PCL-R with other psychometric constructs targeted at ASPDs and critically survey the studies on the factorization of PCL-R and its reliability as a predictor of criminal recidivism.

A key development in the recent empirical literature is the investigation by means of brain-imaging techniques of the neurological correlates and causes of the functional impairments of those diagnosed as psychopathic on the PCL. In Chapter 8, Carla Harenski, Robert Hare, and Kent Kiehl review the literature on this topic and analyse its significance for the prediction of risk.

In Chapter 9, James Ogloff and Melisa Wood consider the plausibility of the oft-stated claim that psychopaths cannot be treated. Their literature review illustrates how a variety of treatments are less effective with psychopaths than other offenders, not effective at all, or even counterproductive. However, they also suggest that our state of knowledge does not authorize the conclusion that psychopaths are untreatable. They conclude their chapter with a series of recommendations on how to deal with psychopaths in a therapeutic setting.

The third part of the book ties together discussions from the two previous parts and focuses on responsibility and psychopathy. McMillan and Malatesti begin this part of the book with a chapter that sketches the terrain and explains the main issues surrounding responsibility and psychopathy. Principally, there are two areas of philosophical debate about the responsibility of psychopaths: moral understanding and control. Chapter 10 will present the principal lines of argument about whether psychopaths' emotional or cognitive shortcomings should be taken into account when evaluating their moral responsibility.

In the 1970s, Antony Duff wrote an influential paper which argued that psychopaths lack moral understanding and can not be considered to be members of the moral community (Duff, 1977). Chapter 11, 'Answerability and responsibility', is a development of his early, highly influential, account.

Similarly to Duff, Neil Levy thinks that moral action and being morally responsible involve acting on and recognizing moral reasons. In Chapter 12, 'Psychopathy, responsibility and the moral/conventional distinction', he explains both the emergence of the ability to act on moral reasons and why psychopaths might be said to lack this ability. Levy concludes, as does Duff, that psychopaths are not morally responsible.

Philosophical debate on the moral understanding of psychopaths intersects broader philosophical debates about rationalism and sentimentalism in ethics. Some philosophers have used psychopathy as test case and evidence for or against these competing positions about the nature of morality. Heidi Maibom discusses this debate and considers whether the functional impairment of psychopaths, as described in the previous parts of the book, provide evidence for one of these competing views of moral understanding. Her conclusion is that there is evidence for both views and that this philosophical debate is not settled by the facts about psychopathy.

This theme is continued but given a different slant by Jeanette Kennett in Chapter 14. She argues that another dimension to this debate is the discussion between internalists and externalists about moral understanding. She advances the thesis that no reasons are normative for psychopaths and this is a fundamental condition of moral agency and, therefore, of moral responsibility.

While the preceding chapters in Part III have discussed whether or not psychopaths appreciate and are motivated by moral considerations, there is an important, broader issue about the way in which their ability to act on moral considerations develops. In Chapter 15 and Chapter 16, both Ishtiyaque Haji and Grant Gillett consider this issue and arrive at a similar position albeit via different means. Haji thinks that the way in which an agent's ability to act on reasons develops is important for deciding whether or not she is responsible for acting on those reasons. Gillett, on the other hand, argues for a richer conception of practical reason that takes into account the development of agency and the ability to act on reasons, thereby providing another argument for thinking that psychopaths are not morally responsible.

Given that the overwhelming weight of argument in this book leads towards the conclusion that psychopaths are not morally responsible, it is appropriate to conclude with a chapter that considers what revisions we should make to our moral psychology and concepts. In 'Will a Stroke of Neuroscience ever Eradicate Evil?', Ronald de Sousa and Douglas Heinrich argue that we must reconsider the ways in which we attribute strongly punitive reactive moral attitudes to all agents and not just psychopaths.

## References

- Duff, R. A. (1977). Psychopathy and moral understanding. *American Philosophical Quarterly*; 14:189–200.
- Malatesti, L. (2006). Psychopathy in psychiatry and philosophy: an annotated bibliography. Available at: <http://www.hull.ac.uk/php/pislm> (Accessed: 03 February 2010).