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On Blaming and Punishing Psychopaths

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Abstract:

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 who have committed criminal offences should still be subject to some legal repercussions such as civil commitment. We argue that consequentialist and norm-expressivist considerations analogous to those that support punishing psychopaths, or at least retaining some legal liability, might also be drawn on in favour of holding psychopaths morally accountable.

Introduction

Psychopaths are frequently introduced in the literature by citing their typical character traits, i.e., grandiose, arrogant, callous, superficial and manipulative (Hare 1999). Much as we often disapprove of such traits, there are more serious systematic challenges to our moral and legal community posed by psychopaths. Although psychopaths represent a small proportion of all criminal offenders, they commit a disproportionate number of crimes compared to other psychiatric groups (Coid *et al.* 2009). Psychopaths are also over-represented in the criminal statistics listing the most appalling offences, including predatory violence and serial killings (Hemphill *et al.* 1998; Hare 1999). But our moral and social engagements with psychopaths are not limited to such sensational settings. For example, research from the corporate world shows that psychopathy ratings are positively associated with others' perceptions of charm and charisma (Babiak and Hare

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2007). The same individuals are known to also exploit their charm to further their own ends. In short, relationships with psychopaths pose problems in both criminal and non-criminal contexts.

It is clearly extremely difficult to remain neutral towards psychopaths; but the question is: how *should we respond*? Stephen Morse along with several other philosophers and legal experts has argued that evidence from psychology and neuroscience shows that psychopaths have considerable deficits in moral cognition and empathy and that therefore blaming psychopaths is either futile or unjustified as psychopaths are not (fully) morally responsible for their actions. In contrast, current legal practice holds that a diagnosis of psychopathy does not remove criminal responsibility and suggests that we are justified in punishing psychopaths for their crimes; psychopathic traits are in fact often regarded as an aggravating factor in sentencing (Lee 2007; Hart 2009).

But having opposing views concerning psychopaths' moral responsibility, on the one hand, and criminal responsibility, on the other, seems problematic given the assumption that the law should, at least to some extent, react to similar considerations as our ascriptions of moral responsibility. Insofar as the criminal justice system is precisely a system of *justice*, it is natural to think that legal responsibility should largely rest on the same notion of "just desert", as does moral responsibility. Indeed, Morse has argued that it is simply that legal practice lags behind and that the law should indeed be reformed so as to excuse at least those with severe psychopathy from blame and criminal responsibility. At the same time, he suggests that for consequentialist reasons we should consider subjecting psychopaths to some legal repercussions such as involuntary civil (or quasi-criminal) commitment (Morse 2008, 2010, 2011a, 2011b).

In this paper, we argue that insofar as we maintain consequentialist and norm-expressivist considerations in support of punishing psychopaths, or at least retaining some legal liability, we should also apply analogous considerations in our moral practice. We proceed as follows. In section 2, we discuss desert-based arguments pertaining to the moral responsibility and blameworthiness of psychopaths. We argue that, as it currently stands, empirical evidence cited in arguments regarding

psychopaths' moral responsibility is frequently inconclusive, although it is clear that psychopaths display significant impairments in their moral reasoning. In section 3, we outline consequentialist and Strawsonian considerations, according to which it is both pointless and inappropriate to hold psychopaths responsible. In section 4, we show that there is a persuasive line of argument from Morse and others that even if psychopaths are not fully morally responsible, they should at least still be subject to, if not punishment, some legal repercussions such as involuntary civil commitment, which can be justified on consequentialist grounds. We further argue that there are norm-expressivist grounds for punishment, which arguably require a weaker notion of desert.

In section 5, we argue that similar consequentialist and norm-expressivist considerations can be applied in the moral case. This line of argument concedes that, as pointed out in section 3, psychopaths may be incapable of moral responsiveness and moral changes of heart. Rather the argument is that holding psychopaths accountable may not be entirely pointless for the psychopath or for the moral community, as there is some evidence that, if we hold people with psychopathic traits accountable over time, they are capable of some, if not moral, at least behavioural and social improvement. Second, the norm-expressivist rationale from the legal case also holds true for non-criminal context, namely that blame and condemnation functions as a means to reasserting and reinforcing the norms we care about. Finally, we will suggest that in moral practice we are often not in a position to judge whether an individual is psychopathic or not; thus it is better to err on the side of blaming rather than withholding judgment.

2. Desert-based Arguments against the Moral Responsibility of Psychopaths

Desert-based arguments for or against moral responsibility are normally concerned with the questions of whether an action was under the agent's control and whether the agent understood the moral quality of his or her actions. While psychopaths exhibit psychological deficiencies in the area of self-control, empathy and in moral judgment (which correspond to distinctive neurological anomalies), the focus has generally been on moral judgment. We too will mainly focus on the question whether there is

something wrong with psychopaths' moral understanding because, as Morse (2011a, 928 f.) points out, the issue of control is extremely hard to assess and operationalize.²

According to an influential argument against the moral responsibility of psychopaths, they lack moral knowledge and the requisite understanding of the moral character of their actions for full moral responsibility. (Cf. Fine and Kennett 2004; Levy 2007a, 2007b, but also Litton 2008, who argues that psychopaths also suffer from more general deficits in rationality.) One form of this argument relies on findings by Blair, which show that psychopaths fail to distinguish between conventional and moral rules prohibiting certain actions in the moral/conventional task (Blair 1995, 1997). In these studies, psychopaths, as diagnosed by a high score on the psychopathy check-list scales (Hare 1991), differed from non-psychopathic individuals in their assessment of the severity of moral vs. conventional transgressions, and the justifications they gave for something being wrong; they were far less likely to appeal to the harm done to another person when explaining why a moral transgression is wrong. Most strikingly, psychopaths differed in their assessment of the modifiability of rules. From a young age, non-psychopathic individuals do not think that a suspension of a rule makes moral transgressions which harm others permissible, whereas they do take this to be the case with purely conventional rules.

This latter aspect concerning the modifiability of rules has been the main focus of arguments regarding psychopaths' moral understanding. In Blair's 1995 study, psychopathic individuals did not change their assessments of permissibility in the way controls did. So, for example, when asked whether it was ok for children to talk in class if the teacher (authority) permitted it, they were far more likely to claim that talking in class still wasn't ok. The data on the perceived modifiability of rules shows that psychopaths treat conventional rules much in the same way as controls treat *moral* rules, i.e. as authority-independent.

² However, for an interesting argument that the capacity for self-regulation is a key part of moral agency and one on which psychopaths are likely fall short, see Kennett 2010. While we do touch on the issue of control in the context of psychopaths' prudential deficits, we do not make it the focus of our discussion.

The inability to perceive a fundamental difference between moral and conventional transgressions has led Levy (2007a, 2007b) and others to assume that psychopaths have no genuine understanding of moral transgressions but rather understand moral transgressions as conventional ones. Levy takes behavioural findings demonstrating deficiencies in the recognition of emotions in others and neuroscientific evidence which shows that psychopaths exhibit amygdala dysfunction to explain why psychopaths lack moral understanding:

[T]he psychopath's amygdala dysfunction causes him or her ... to have impaired representations of emotions. This leads to an impaired ability to recognize fearful and sad expressions in others; more crucially it interferes with the ability to categorize harms in terms of their effects on the emotional states of others. Hence the psychopath's inability to categorize transgressions into moral and conventional categories. (Levy 2007a, p. 249)

However, this line of argument has been cast into doubt by recent empirical and philosophical work. On the empirical side, recent studies on psychopaths and the moral/conventional distinction have not reproduced Blair's original results. Aharoni *et al.* (2012) tested psychopaths' ability to distinguish between moral and conventional transgressions in a forced choice setting, telling the participants that half of the transgressions described were moral and the other half, conventional. They could not reproduce Blair's results.³ Instead they found that the main factor in the ability to draw the moral/conventional distinction was IQ—although affective and antisocial characteristics were also correlated with reduced performance in the task. Psychopaths' performance in the moral/conventional task is therefore not as clear-cut as Blair's original studies suggested (however, see Levy (2014) for a response to these studies).

Not only has the performance of psychopathic individuals in the moral/conventional

³ Dolan and Fullam (2010) also conducted a study with youths with conduct disorders where performance in the moral-conventional task only partially corresponded to what would be expected from Blair's studies.

task come under attack, but also the validity of the distinction itself. In an online survey (Kelly *et al.* 2007) tested the hypothesis that judgments of moral impermissibility are in fact universal, authority-independent and sensitive to harm, by confronting participants with different examples from the ones used in the original moral/conventional task. They found that in a significant number of cases, participants' judgments were sensitive to whether an authority had permitted the action in question even when another person was clearly harmed. These results do not provide a clear counter-example against the psychological validity of the moral/conventional distinction because there are complicating factors.⁴ However, the results do cast doubt on the notion that, in the minds of healthy individuals, there is a class of specifically moral transgressions, which are authority-independent, whose wrongness is independent of historical or geographical contexts, and which always involve harm, the violation of justice or rights (cf. Stich *et al.* 2009).

Finally, Shoemaker (2011) provides an important philosophical critique of the distinction, arguing that the moral/conventional distinction subsumes a cluster of distinctions which only sometimes overlap. He suggests that both moral and conventional rules are authority-dependent, but in the case of moral infringement, the authority implicitly prohibiting the rule violation is the person who would be harmed by that violation. In one of the original examples, this would be the child whose hair is being pulled.

It therefore seems that the moral/conventional distinction is unable to play the decisive role which it is often assigned in determining psychopaths' moral desert. First, the jury is still out on whether psychopaths are, by and large, able to draw the morally relevant distinctions drawn by non-psychopaths, but simply fail to care about them, or whether they are indeed unable to understand what makes an immoral act wrong. Arguably, the jury is also still out on what exactly constitutes a moral/conventional distinction, and whether it is the unified distinction it is made out to be. At this point, any stance which

⁴ In some of the examples used, the harm occurs for some perceived future benefit and in others it is a reaction to a preceding transgression. This latter point is also made by Rosas (2012) in a criticism of Kelly *et al.*'s (2007) experimental setup. He also raises a further issue, which is that many of their examples are mixed domain situations where an authority's rule differs from the moral rule.

crucially relies on the claim that psychopaths are incapable of understanding distinctions which healthy individuals readily understand is not sufficiently well supported by the empirical evidence. (Note that this is compatible with psychopaths' deficits in representing and caring about the emotional states of others being crucial both for explaining their antisocial behaviour and disregard of the welfare of others.) At the same time, they do seem to have some awareness of the moral distinctions and justifications, which the majority of the population draw and the ability to cite these in explaining why a transgression is a moral one.

Recently, Levy (2014) has also put forward a second argument against psychopaths' moral responsibility. He argues that at least some psychopaths do not have a conception of what it is to be a person and due to this impairment they are unable to intend the specific type of harms that can only be done to persons. The argument draws on other authors' work on the relation between the ability to project oneself into the past and the future and moral capacities and depends on empirical evidence, which point towards psychopaths having a specific problem with Mental Time Travel (MTT) (Among others, Levy cites McIlwain 2010). For Levy, the moral wrong of harming persons is inextricably linked to their personhood, since in harming them we interfere with their autonomy and their ability to shape their own lives. If psychopaths are incapable of understanding what personhood is, then any harm they do to others does not (from their perspective) have the character of being harm done to a *person*. In other words, they do not fully understand the moral character of their actions. Levy's claim is that psychopaths do not have the capacity to understand what personhood is: "[A]n inability to engage in full blown MTT ... also very probably entails impaired ability to grasp what it is to be a person, with plans and projects" (Levy 2014, p. 13).

But this argument will only be successful if it can be shown that psychopaths genuinely lack a conception of certain harms, rather than just not *caring* about the harms done to others, for example because of their diminished capacity for empathy. In order to establish this, Levy needs to show that they have a similarly impaired understanding of harms done to themselves *qua* persons as they do when it comes to others. In so far as they resent harm done to them and have a concept of harm as applied to themselves,

they should be able to understand that this harm can befall others. In order to further support his argument, Levy would have to show that psychopaths' perceptions of harms done to them and harms done to others are analogous. In other words, his thesis needs further empirical support. However, it is plausible that the argument applies to some extreme cases of psychopathy, characterized by strong impulsivity and disregard for the future repercussions of one's actions for oneself (such as the cases described by Litton 2008).

To summarize, the empirical evidence shows that many psychopaths do exhibit abnormalities both in the area of moral cognition as well as that of moral emotions and motivation. However, the evidence is not strong enough to warrant the thought that psychopathy *per se* cancels out moral culpability and desert. For this to be the case, it would need to be shown that it is generally the case that psychopaths do not understand the moral quality of their actions and so far we do not believe this has been done. What does seem to be true is that individuals with psychopathy find it more difficult to master moral rules and care about them due to their impairments in emotion and cognition. Fine and Kennett (2004) and Kennett (2010) argue convincingly that a number of factors, including reduced fear, insensitivity to cognitive dissonance and reduced empathy jointly impair psychopaths' moral development and competence. As psychopathy ranges over a continuum (Guay *et al.* 2007), it seems likely that there are cases where the deficits are so severe that they might cancel out moral desert.

3. Blaming Psychopaths and the Argument from Moral Colour Blindness

As we have seen in the above section, existing literature on moral responsibility has tended to focus on desert—on the question of whether blame is warranted. However, whether someone is morally responsible is also often answered with a view to the question: is there any point in blaming psychopaths? In what follows, we would like to argue that quite apart from what one concludes with respect to the question of desert or warrant, this second question is equally important. In other words, we want to propose that there is a legitimate issue about what holding psychopaths responsible or accountable *achieves*, irrespective of the question of whether blame is warranted on the ground of desert.

This question is arguably addressed by both consequentialist and also Strawsonian approaches to moral responsibility as they are concerned with whether an individual is a suitable addressee of certain reactive attitudes. From such perspectives, it has often been held that psychopaths are unsuitable candidates for blame or punishment because of their insensitivity to moral considerations. Blame, along with moral condemnation and holding individuals accountable more generally, are thus inappropriate reactions to the transgressions of psychopaths.

While Morse's reasons against holding psychopaths morally responsible are not consequentialist ones, his arguments are congenial to a consequentialist reading:

[I]f a person does not understand the point of morality and has no conscience or capacity for empathy, only fear of punishment will give that person a reason not to violate the rights of others ... the psychopath is not a member of the moral community, is not someone with whom moral engagement is possible ... psychopaths know the facts and the rules and are capable of manipulation of others to achieve their own ends, but they do not get the point of morality. It is as if they are morally colour blind. (Morse 2008, p. 208-209)

Morse here claims that, as psychopaths are insensitive to moral considerations which would typically move normal individuals, the inclusion of psychopaths in our moral community is impossible. They are not responsive to moral reasons—they are, as he puts it, "morally colour blind". Notice that for this argument to hold it does not matter much whether this is because psychopaths do not see a distinction between different kinds of rules, e.g., moral or conventional, or because they do not care about a distinction that they are intellectually capable of drawing. People who are unresponsive to other people's moral demands and needs will not consider others' moral claims as something that provides them with reasons for action. The fact that the plight of others leaves them cold means that moral reasons do not motivate them. They will not feel the need to justify their actions morally and neither moral disapprobation nor indeed

approbation will have any impact on them.

While Morse himself does not appear to take his argument against the moral responsibility of psychopaths to be primarily consequentialist, arguably once we start talking about “the point” of engaging with someone as a moral agent, concerns about present and future impact of blame and punishment become relevant. We agree with Morse that concerns regarding psychopaths’ lack of responsiveness or indifference to moral considerations should have a bearing on the nature and degree of our moral engagement with them. However, even if people with psychopathy are not fully responsive, there might nevertheless be *further* consequentialist reasons for retaining our moral demands on them. In the following sections, we will thus argue that there is on balance still “a point” in holding psychopaths accountable for their actions. To give a better appreciation of the type of considerations we might draw on, we will first turn to the criminal context and the legal discussion of non-desert-based concerns in the treatment of psychopaths.

4. Psychopaths’ Legal Accountability

Many lawyers, psychiatrists and philosophers think that the law should *not* mitigate *legal* or *criminal* responsibility on the basis of psychopathy and that psychopaths are punishable for their crimes (Pillsbury 1992; Reznek 1997; Hare 1999; Schopp and Slain 2000; Litton 2008; Fox *et al.* 2013). Legal practice is in line with this opinion; indeed, it sometimes favours more severe punishment to psychopaths. For example, scoring high on the famous psychopathy checklist is often regarded an aggravating factor, resulting in harsher judicial sentencing (Lee 2007; Hart 2009; however, cf. Aspinwall *et al.* 2012). Psychopathy has even been used to justify imposition of the death penalty rather than a life sentence (Edens *et al.* 2001).

Some of these legal opinions of course rest on the assumption that there are grounds for holding psychopaths morally responsible, such that they genuinely deserve their punishment. However, Morse is less convinced that such firm grounds for moral desert hold and therefore takes purely retributivist grounds for punishment to be inappropriate. As we have argued in section 2, we take the issue of desert to be

unresolved at this stage (although it is plausible that extreme cases of psychopathy do not fulfil the criteria for moral responsibility). But if there is any doubt regarding the moral responsibility of psychopaths, one arrives at the question of how one might justify their punishment or any other forms of legal accountability?⁵

It is at this point that Morse and others suggest that various forward-looking considerations about psychopaths' dangerousness and the norm-affirming role of legal institutions might be given some legitimate weight in the legal process. Such concerns can be raised in relation to different stages of the legal process as alternative justifications for legal accountability that are not, or at least not primarily, related to the issue of desert. Perhaps most commonly, they enter into the sentencing stage and in the assignment of punishment,⁶ e.g., as aggravating—or mitigating—factors. However, Morse (2010) suggests that even if one accepts that psychopaths should be excused, e.g., by means of a successful insanity defence,⁷ consequentialist considerations can enter as justifications for some other legal repercussions, e.g., civil or quasi-criminal commitment. For the purposes of this paper, we do not wish to take a position as to whether the concerns should be construed as, for example, supporting increased punishment, preventive detention or involuntary civil commitment. Our point here is rather to indicate that there are other reasons for holding psychopaths legally accountable as well as possibly punishing them that do not directly rest on desert-based justifications alone.

Typically, the considerations for holding psychopaths legally accountable for their

⁵ An additional and related problem for the law is how to deal with psychopaths who may not have committed crimes yet but are likely to do so.

⁶ These justifications for punishment may either represent considerations that replace the notion of desert altogether or they may be conceived of as additional justifications for punishment that are constrained by the just deserts (Feinberg 1970; Fine and Kennett 2004; Pardo and Patterson 2013).

⁷ The insanity defence is the primary vehicle for excusing individuals of responsibility who, due to their mental condition or disorder, have insufficient moral understanding or impaired rationality at the time their crimes were committed. If an individual is acquitted after a successful plea of insanity, the court typically automatically commits her to psychiatric treatment and surveillance. Psychopathy is currently not amongst those psychiatric disorders that are considered to be a necessary (though not sufficient) part of such a defence by the American Model Penal Code and most analogous codes in other countries. However, the evidence of psychopaths' impaired moral cognition discussed in the last section may be seen to count in favour of changing this.

criminal conduct centre on the negative implications of *not* doing so. In other words, it is either unfair or undesirable to the rest of society—including, perhaps, other criminals—not to punish psychopaths. One salient consequence that we may deem undesirable is the threat posed by psychopaths. According to an extensive recent review of recidivism amongst psychopaths, individuals who scored high on the Hare Psychopathy Checklist—Revised were three times more likely to recidivate and four times more likely to *violently* recidivate than those who did not score high on the checklist (Hemphill *et al.* 1998). On balance, we might therefore think that it is in the interest of societal security and the future protection of citizens to sentence psychopaths to prison or at least find some alternative means of confinement. In fact this is precisely the type of consideration that might push one toward regarding psychopathy as an aggravating factor in the sentencing stage (Pillsbury 1992; Hart 2009).

Even those who are opposed to holding psychopaths fully legally responsible worry about the negative consequences to society of excusing psychopaths. Cordelia Fine and Jeanette Kennett suggest that some form of preventative detention can be justified on the ground of society's right to protect itself against future crimes: "If a real threat persists to the serious interests of members of the community, then measures such as preventive detention may be justified by the right to self-defence" (2004, p. 438). Morse also discusses the possibility that psychopaths could be preventively detained due to their dangerousness (2008; 2011b). As he recognizes, however, allowing risk assessment of violent and sexual recidivism to play a role in sentencing and detention comes at a high price—even on consequentialist grounds. A rationale can also be raised *against* increasing punishment or preventative detainment when we consider the interests of individuals who are deprived of their freedom, some of whom might in fact not re-offend. In evaluating the prospects for introducing such a generalized condition for civil commitment of psychopaths, Morse thinks there will be a trade-off between infringements on individual rights and liberties and the risk for false positives (i.e., psychopaths who are contained but would in fact not re-offend), on the one hand, and the need to secure public safety on the other. He doubts that the current method of predicting re-offending is reliable enough for introducing such generalized policies

toward groups like psychopaths (2011b, p. 1124 f.). At the same time, he concedes that psychopathy is a valid risk variable in predicting future dangerousness (2010, p. 60).

Morse and others also raise legitimate consequentialist concerns associated with the possibility of excusing psychopaths under the insanity defence (2011b). Fine and Kennett (2004) worry that admitting psychopaths under the insanity defence might impose more threats of harm and disruption to other patients/inmates and staff upon their admittance to psychiatric institutions.⁸ One alternative that Morse suggests is that the insanity defence could be specifically tailored to psychopaths. Psychopaths might first be acquitted on the basis of a successful insanity defence, but might then be committed to civil commitment that is subject to review. This would amount to an involuntary civil commitment within an extended form “disease jurisprudence”. But as Morse rightly acknowledges, even if civil commitment is in principle subject to review (unlike preventative detention), because of the lack of fully effective treatment of psychopaths, release for psychopaths is going to be very unlikely upon commitment. Besides, Morse argues, psychopaths will probably not plead insanity anyway, as they would then knowingly subject themselves to probably indefinite civil commitment, a practical consequence that would be much worse than punishment that has the possibility of parole (2010, p. 53f., 2011b, 1119f.; see also Edens *et al.* 2001). This alternative is thus unlikely to be used by psychopaths. It therefore seems that even in those cases where disease jurisprudence would in principle be applicable, it will not in practice be invoked.

But even if the insanity defence were feasible in practice, there are further reasons for retaining psychopaths’ criminal responsibility. One expressivist reason is the

⁸ Another rather common but unpersuasive proposal about subsuming psychopaths under the insanity defence is that they cannot be as successfully rehabilitated or treated, as offenders with mental disorders where the insanity defence tends to be evoked, e.g., psychosis and schizophrenia (Reznek 1997; Lee 2007). There are several problems with this proposal. First, it is not clear whether therapy and interventions are as futile as they are commonly thought to be. More importantly, the insanity defence is perceived as legitimate in other cases where there is no chance of rehabilitation, such as disabilities and dementia. In general, the possibility of and susceptibility to treatment do not constitute the grounds of defence.

maintenance of public trust and credibility in juridical institutions. If the juridical system can't punish blatantly "bad" people like psychopaths, the public might very well worry about what legitimacy it has. If we want to secure trust and confidence in our courts, we must be able to hold psychopaths legally responsible for their offences; or so the reasoning goes (Levy, K. 2011). This worry can be understood in expressivist terms of the law's role as a system of justice and of norm-affirmation, i.e., reinforcing society's rules by showing what behaviour we collectively agree is unacceptable or immoral. However, it should be noted that this communicative understanding of punishment tends to presuppose at least some level of desert. It has been suggested that, for this it may be sufficient that psychopaths understand what the rules and the sanctions are, even if they are unable to relate to the moral reasons for refraining from certain actions, as some have suggested (Shoemaker 2011; Levy, K. 2011; Fox *et al.* 2013). Thus, unlike Morse, who thinks the *same* concept of desert must be fundamental both in the legal and moral setting, this approach recommends a minimal notion of (legal) responsibility where, at least for purposes of affirming and communicating norms, we would only require an understanding of those norms and some grasp of their rationales. One would then take punishment to be *principally* an expressive act which communicates the kinds of behaviour and actions which are impermissible. That the psychopath is able to categorize his action correctly and that it *was* an action is all that is required—the moral character of the psychopath is not the focus.⁹

Although our point here is more to highlight the legitimacy of both expressivist and forward-looking considerations in the legal domain (and then to urge their applicability in the moral domain in the next section), we would like to comment more specifically on Morse's suggestion that disease rather than desert jurisprudence might be more appropriate in at least some cases of psychopathy. We agree with Morse that it is only if an individual with psychopathy has been excused and a sufficient level of dangerousness has been established that we are allowed to practice disease jurisprudence. That is, these are the only cases when it may be justifiable to commit

⁹ The concern about upholding public confidence in legal institutions arguably also arises in a consequentialist analysis about the justice system's role in giving individuals a sense of security and also in doing something that *actually* deters individuals with the threat of punishment or indeed involuntary commitment.

non-responsible people and thereby deny them their autonomy. It seems clear that this would apply to some psychopaths with extreme impulsivity and irrationality. On the other hand, as Morse also seems to recognize, we believe that *most* people with psychopathy do not seem to easily fit either disease or desert jurisprudence. As the discussion in the last section suggested, people with psychopathy tend to be in touch with reality and at least know how their actions are classified in the legal and moral systems—although it is doubtful whether they have a full grasp of moral right and wrong.

On the assumption that this minimal level of moral understanding is present, we believe that norm-expression and prevention of future harm are sufficient grounds for keeping the majority of psychopaths on the side of desert jurisprudence. It should however be noted that our understanding of desert jurisprudence is clearly more impure than Morse's, as it sees a larger role for consequentialist and norm-expressivist considerations once desert has been established. One point worth mentioning in this context is that if we allow consequentialist considerations into desert jurisprudence, the question arises whether containment beyond the length of the sentence is justified. We agree with Morse that it is inconsistent to tack involuntary civil commitment onto criminal punishment, the way this is done with sexual offenders in some places (cf. Morse 2011). We are, however, less opposed to letting reliable predictions of dangerousness influence the length of sentences, within limits.¹⁰

We hope to have shown that there are justifications for legal punishment of psychopaths or at least other legal measures that go beyond desert-based concerns alone. But once norm-expressivist and forward-looking considerations are legitimately introduced into the legal domain, we see no *prima facie* reason not to also consider them in the moral context. As we saw in the last sections, the discussion of moral responsibility of psychopaths has primarily been concerned with desert, but why should not analogous concerns, such as those about intervention and norm re-affirmation also apply in the moral context?

¹⁰ Where these limits should lie is beyond the scope of this article and is of course strongly dependent on the crime and the length of the sentence normally handed out for that type of crime.

5. Blaming Psychopaths Revisited

As it stands, there is some evidence that at least some psychopaths do not satisfy desert constraints, though in section 2 we raised some worries about how conclusive this evidence is. However, in the last section, we saw that, at least in the legal context, there are compelling reasons for detaining psychopaths, but perhaps also for deeming psychopaths punishable, that do not rest on desert alone. It thus seems legitimate to ask whether analogous reasons hold in the moral domain of accountability. In this section, we will argue that there are.

As we have shown, much of the resistance to holding psychopaths morally accountable is of the “there’s no point” variety; psychopaths are utterly insensitive or unresponsive to moral reasons and condemnation and we should not expect any change in either outlook or behaviour from them. The thought is also reinforced by the considerable “clinical pessimism” surrounding the treatability of individuals with psychopathic traits (Caldwell *et al.* 2007, p. 574). From a perspective concerned with desert, the question of prospective change and treatability of course appears orthogonal to that of responsibility. Whether someone can change in the future does not change whether he understood or was able to control his past actions. However, as we suggested in section 3, holding psychopaths accountable for their actions might *also* be rejected on consequentialist grounds because it is perceived as pointless.¹¹ The lack of treatability can thus be taken as a further consideration that shows why it is not worthwhile blaming or holding psychopaths accountable because there either are no good consequences or the consequences even make the “blamer” or the psychopath worse off. However, in this section, we will argue that to the extent that one is committed to a consequentialist analysis, the empirical results about interventions and prospective treatability matter. It also turns out that the empirical research on the possibility of achieving significant behavioural improvement through treatment is not as uniformly grim as is often claimed (Salekin *et al.* 2010). Since there seems to be some prospect of beneficial consequences, we think there are some consequentialist reasons for holding

¹¹ As we have argued, the objection from pointlessness can also be given an expressivist reading. We further discuss the expressivist rationale below.

psychopaths accountable.

The strongest evidence for successful intervention is for children or adolescents with psychopathic traits. Evidence from developmental studies suggests that even if psychopathy arises early in development, the social and developmental setting contributes a great deal to the expression of the disorder. For example, harsh and inconsistent parenting is strongly associated with psychopathy (Frick *et al.* 2003; Pardini and Loeber 2007). It is therefore natural to expect that the contrasting parental strategy would reverse a detrimental impact on the children. Indeed there are positive signs from cognitive and behavioural programmes that involve family. Dynamic interventions that focus on teaching parents to use unequivocal and consistent signs of moral disapproval/approval over time have also been shown to yield some improvement in moral and social behaviour of children that scored high on Hare's psychopathy checklist (McDonald *et al.* 2011). Conversely, such programmes suggest that exempting individuals from the responsibility and treating them as "lost causes" early in development might lead to worse behaviour and might even become a self-fulfilling prophecy (Shaw 2003).¹²

More generally, there is a lot of psychological evidence showing that the belief that one can affect outcomes through one's efforts or free will is important both to the motivation to achieve instrumental results and to moral and pro-social behaviour (cf. Mueller and Dweck 1998; Baumeister *et al.* 2009; Vohs and Schooler 2008). As with healthy subjects, a precondition of demanding change from psychopaths is arguably that we communicate that such change is actually possible (and current behaviour is not immutably fixed by psychopathic traits). The importance of holding individuals responsible for their behaviour even in conditions where their self-control or decision-making abilities are impaired has also been noted both in the context of addiction and that of psychopathology (Pickard 2011; Charland 2011). Interestingly, Kochanska and Aksan have suggested that having positive social relations, including the positive behavioural responses like compliments, trust and praise, might be particularly

¹² On some accounts of moral responsibility it may be that the possibility of intervention is itself evidence for desert. We leave it to others to explore the plausibility of this line of argument.

important for psychopaths' development in order to compensate for the morally detrimental behavioural effects of fearlessness and lack of inhibition (2006, p. 1604).

Taken together, these points supports the importance of sanctioning immoral behaviour by word or deed in order to make clear what is and is not acceptable, that unacceptable behaviour has negative repercussions and that change is possible and expected. By doing so we might affect the psychopath's social and moral behaviour over time, thereby achieving desirable results for the individual with psychopathy and for society at large.¹³

Two related worries might be raised at this point. The more general worry is how much change can actually be expected from psychopaths. As we have seen, it is often asserted that, no matter what we do, psychopaths will not have a change of heart. A first response is that we need not achieve *maximum* effectiveness for moral engagement through blame to be worthwhile; even some improvements on the psychopath's social and moral behaviour would be beneficial to society—and it seems for the psychopath themselves (see Ullrich *et al.* 2007). Moreover, the demand for deep change would ask too much from other disorders where there are social deficits, such as autism, but where we tend to (or at least arguably should) adapt our expectations to fit with the constraints of the disorder.

But even if we concede that some minor, predominantly behavioural, changes are in and of themselves a worthwhile end, we might wonder why we need *moral* blame and praise in our interactions with psychopaths and whether these truly lead to an improvement in moral understanding and motivation. This worry arises because it is frequently supposed that to the extent that any behavioural improvement is possible it is psychopaths' self-interest which is used as a lever for treatment and behaviour

¹³ In fact, one of the authors believes that the impact of the social responses and environment on the development of some psychopathic traits provides some grounds for arguing that there may also be a fairness dimension of our responsibility attributions. That is, the argument for holding psychopaths accountable is not only that we might affect the psychopath's social and moral behaviour over time with some hope for desirable results for the individual with psychopathy and for society at large, but also out of fairness continue to morally engage with individuals thereby acknowledging that their traits may be partly a failing on the part of the moral community as a whole.

modification, not any moral insight into the wrongness of their actions (cf. Wong and Hare 2005). When we resort to approaches which only aim at compliance with the rules, the thought is that we do not engage with psychopaths as moral agents, but rather take a harm reduction approach. It is worthwhile pointing out that in this respect our reactions to psychopaths are continuous with more normal cases of displaying approval and disapproval, which typically neither require deep moral insights nor distinctively moral condemnation. Furthermore, the question about whether the moral discourse of blaming and praising specifically is required for change in the case of psychopathy is largely empirical. We have seen that there is at least some evidence that various therapeutic and cognitive/behavioural programmes, whose interventions employ some means of conscience training and reciprocal moral engagement with others, achieve some improvement, albeit to a lesser extent than with normally developing individuals (Shaw 2003; Salekin *et al.* 2010; McDonald *et al.* 2011).¹⁴

But of course blame and accountability do not only function as a forward-looking intervention. Most people believe that blame should fundamentally express a *retrospective* judgment about a wrongdoing. Morse takes this to be a central feature of blame: “Blaming fundamentally expresses retrospective disapproval and respect for persons. Even if it has the good consequence of decreasing future wrongdoing, our current focus of blame is undeniably focused in large measure on past events” (2011b, p. 1122). Thus, at least on one reading of Morse, the act of blaming also serves to express our judgment about what past actions we morally disapprove of and the fact that we take an agent seriously as a moral agent.

Still, as in the legal context, for such norm-expressivist concerns to apply we might only require a minimal notion of desert, such that the agent has some understanding of those norms and some grasp of their rationale. It may even be possible that we can bracket the issue of responsibility if we target our disapproval primarily at the behaviour, rather than at the person who behaved in such a way.¹⁵ This would allow us to reaffirm

¹⁴ It is of course entirely possible that these findings only hold for a subgroup of youthful psychopaths or for so-called “secondary” psychopaths (for this distinction, see Mealy 1995).

¹⁵ We would like to thank Jeanette Kennett for alerting us to this important possibility.

our norms without explicitly committing ourselves concerning the agent's blameworthiness.¹⁶ After all, it is typically not only the wrongdoer whom we address in our expressions of blame: when we blame psychopaths for transgressions, we are expressing and reaffirming moral norms and values to ourselves and our community. The norm-expressivist concern about blame is then linked to a broader concern about affirming our moral practices and norms. Even if the wrongdoer cares more about the actual social disapproval itself or the threats of negative repercussions involved in blaming than the rationales explaining *why* some action is blameworthy, this does not detract from our need to express, reaffirm and clarify why a certain kind of behaviour is morally unacceptable. The point is analogous to the one about the law's role in sanctioning norms and encouraging public trust and confidence that we raised in the previous section. By holding individuals accountable, the law signals that we expect all members of the community to abide by certain principles and that it will act if we do not. Thus, to the extent that we are convinced by this argument in the case of the law, we believe that it should have equal if not stronger weight in the moral case.

Finally, we would like to suggest a reason for holding people who exhibit psychopathic behaviour morally accountable that is more specific to the moral context. In many encounters with people with psychopathic traits who commit moral transgressions such as in schools, on the street, and in the workplace, there is typically very little evidence available about their conditions. At the very least, there is typically much less than there is in court, where one has access to psychiatric expertise, a record of past behaviour and offences, and perhaps even a diagnosis. Given the uncertainty of the exact condition of a putative psychopath, we should err on the side of accountability. In other words, we should err on the side of keeping putative psychopaths within our moral community by retaining behavioural demands and expectations and allowing for moral condemnation as well as forgiveness.

¹⁶ While it has to be admitted that this is a difficult feat to accomplish, Pickard (2011) recommends a similar course of action in the context of the interaction between health care providers and individuals with personality disorders. She stresses the importance of holding service users responsible for their behaviour while not rejecting them as individuals. It should however be pointed out that Pickard distinguishes between holding responsible and blaming in a way we do not. This is because she takes blame to be emotionally charged and to have a characteristic "sting" attached to it (cf. Pickard 2013).

This is also important as it is now widely accepted that psychopathy falls on a spectrum, where there is considerable heterogeneity amongst the group (Guay *et al.* 2007). This variability is especially clear in the context of children and adolescents, where the characteristic features of adult psychopaths can be identified, but appear to be distributed along a continuum (Murrie *et al.* 2007). At the same time, we have seen that it is amongst this group where interventions are likely to be the most successful. Although it is often helpful to know a person's psychiatric background so that we can tailor our expectations and reactions to some extent, we are unlikely to know exactly how severe a case of psychopathy a person has and how much change is possible for that person. In lieu of such detailed information, it thus seems better to err on the side of accountability.¹⁷

Conclusion

Irrespective of whether psychopaths are truly blameworthy, the state must find a way of dealing with them and their transgressions. It needs to protect its citizens, provide incentives against committing crimes, and communicate its moral rules and their importance. We believe that—excepting those cases where psychopaths exhibit severe rationality deficits—these goals are best achieved by treating psychopaths as legally responsible for their actions. This has the added benefit of preventing a use of disease rationales, which Morse criticizes, i.e., to justify indefinite commitment when it really is an unacknowledged form of further punishment. Similarly, it is important to find a way to respond to immoral behaviour of psychopaths outside the legal context. Contrary to Morse's assertion, we believe that in most cases, there *is* a point to blaming and punishing psychopaths. In fact, there are moral reasons for doing so that have to do

¹⁷ We thank our anonymous referee for pointing out that this conclusion only holds if we can be sure that blaming and holding responsible do not have negative repercussions. There is some evidence that blame in understood as an emotionally charged condemnation of the *person* is counterproductive (cf. Pickard 2011). However, in this section we have cited evidence which at least shows some beneficial effects of holding psychopaths responsible in the sense of pointing out that behaviour was morally wrong and imposing negative repercussions for such behaviour (e.g., Shaw 2003; Caldwell *et al.* 2007; Salekin *et al.* 2010; McDonald *et al.* 2011). As mentioned, there is a growing body of experimental work that shows the belief that one can change is also an important precondition to attempting such change (Mueller and Dweck 1998; Baumeister *et al.* 2009; Vohs and Schooler 2008; Charland 2011). Holding people responsible is one way of expressing one's confidence that this can be done.

with possible intervention and improvement, the need to affirm moral norms, and perhaps not least, human fallibility and the need to not give up on people who are on the fringes of our moral community. Since we are not at the stage of agreement with respect to the issue of psychopaths' moral desert, there is an even stronger case for allowing such consequentialist and norm-expressivist considerations some weight in the discussion.

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