



Psychiatry & Behavioral Sciences Section – 2009

I10 Can the Presence of Psychopathy Constitute a Diminished Capacity Defense?

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After attending this presentation, attendees will have a better understanding of the concept of psychopathy with an emphasis on the neurobiology, acquired psychopathy, and the psychiatric legal arguments for and against applying the principles of diminished capacity to psychopaths who commit crimes.

This presentation will impact the forensic community by helping behavioral scientists, criminologists, and the legal communities understand more about the condition of psychopathy and the controversies that it presents.

An argument can be made that psychopathy is a well defined and serious mental disorder with increasingly replicable evidence of neurobiological dysfunction. There is increasing scientific evidence that individuals with psychopathy like those with autistic spectrum disorders (ASD) may have abnormalities in the neurobiological substrates of empathy. Various brain structures and systems have been implicated. This includes the “paralimbic system” consisting of the cingulate, orbitofrontal cortex, amygdala, the parahippocampal region, the anterior superior temporal gyrus, and the insula mirror neuron systems. The difference between ASDs and psychopaths appear to be at least in part, that ASDs cannot recognize another person’s emotions or empathize whereas the psychopath is able to recognize the emotion and pain of the other but is unable to feel empathic. For the psychopath, the knowing (cognition) of another person’s emotion may simply be just another piece of information like the physical build, spatial details, or if they are armed or unarmed, information to be used by the psychopath in a self serving manner

Is it fair for society to punish individuals who lack the neurological “hardware” for empathy and moral reasoning for their acts in the same manner that society punishes an individual who knows and appreciates that an act is immoral and cold hearted, but chooses to still do so?

Can the presence of psychopathy constitute a diminished capacity/responsibility defense?

Psychopathy presents a challenge and an opportunity for the forensic psychiatrist to look at this complex issue. Advances in imaging genomics and molecular genetics may help establish that in some psychopaths, a finding of diminished capacity or responsibility may be appropriate. Demonstrating the overwhelming deterministic effects of genetic and developmental insults may compel against punishment in a traditional sense. A pragmatic viewpoint is that even if psychopathy is the result of “hard” determinism, wrongful conduct by psychopaths should not go unpunished since it does not result in bad behavior in every instance.

However, science may make it difficult to ignore statistically robust findings linking violence and criminal offending to brain and genetic abnormalities. Evidence that some groups of individuals are “built” differently in a way that causes them to think, feel, and act differently may compel us to consider that they not be treated or punished the same. Acknowledging biological determinism currently impacts how the criminal justice system deals with the mentally retarded, the young, the demented, and even those with chemical and behavioral addictions

Psychopathy, Limbic System, Diminished Capacity