

Antisocial Personality Disorder, Psychopathy, and their Implications in Brazilian Criminal Jurisdiction

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ABSTRACT

This paper seeks to examine the concepts of antisocial personality disorder (ASPD) and psychopathy through the principal contemporary, theoretical and classificatory frameworks, as well as to analyze the application of these severe forms of personality disorders in penal responsibility. Although ASPD and psychopathy reveal disturbing and difficult-to-control behavioral profiles, Brazilian law treats such individuals as criminally responsible, except in extraordinary circumstances.

Keywords

Antisocial Personality Disorder (ASPD), Psychopathy, Behaviour.

Introduction

Personality disorders are patterns of inflexible and maladaptive personality traits that cause significant impairment in social or occupational functioning, subjective distress, or both. By definition, these disorders are not limited-time symptoms with a marked beginning and end during adulthood. Instead, they are chronic patterns of behavior with an early and insidious onset, typically evident in late adolescence or early adulthood. Personality disorders are not circumscribed syndromes that affect only one area of functioning; rather, they are pervasive disorders that impact all aspects of personality, including cognition, affect, behavior, and interpersonal style [1].

According to the ICD-11 [2], a personality disorder is characterized by problems in self-functioning (e.g., identity, self-esteem, accuracy of self-appraisal, self-direction) and/or interpersonal dysfunction (e.g., ability to develop and maintain close and mutually satisfying relationships, capacity to understand others' perspectives, and ability to manage conflicts in relationships) that have persisted for a prolonged period of time (e.g., 2 years or more). The disorder manifests in patterns of cognition, emotional experience, emotional expression, and behavior that are maladaptive (e.g., inflexible or poorly regulated) and expressed across a broad range of personal and social situations (i.e., not limited to specific relationships or social roles). The behavioral patterns characterizing the disorder are developmentally inappropriate and cannot primarily be explained by social or cultural factors, including sociopolitical conflict.

In ICD-11 [2], a new classification of Personality Disorders (PDs) has been adopted, representing one of the main changes compared to the previous edition. It abandons the categorical model of classifying PDs into distinct groups and instead adopts a dimensional model, essentially based on levels of severity of PD symptoms. Another innovation is the inclusion of optional qualifiers for pathological personality traits, which can be specified in five domains: negative affectivity, disinhibition, detachment, dissociality, and anankastia—or with the additional qualifier of borderline pattern.

Antisocial Personality Disorder (ASPD) is defined in the Diagnostic and Statistical Manual of Mental Disorders – DSM-5 [3] as a pervasive pattern of disregard for and violation of the rights of others, beginning in childhood or adolescence and continuing into adulthood. Diagnostic criteria include deceitfulness, impulsivity, irritability, aggressiveness, disregard for the safety of others, persistent irresponsibility, and lack of remorse after harming others. Although such traits indicate moral and social disorganization, ASPD alone does not imply legal incapacity.

Antisocial Personality Disorder and Psychopathy

ASPD is often confused with psychopathy. However, psychopathy is a more restricted and profound concept that goes beyond antisocial behavior and includes affective and interpersonal characteristics such as emotional coldness, manipulation, egocentricity, and lack of empathy [4]. The American psychiatrist Hervey Cleckley [5], in his work *The Mask of Sanity*, provided a significant contribution to the concept of psychopathy as it is currently recognized. Hare [4], Cleckley's disciple, developed the Psychopathy Checklist-Revised (PCL-R), an instrument that assesses the degree of psychopathy through 20 items. The PCL-R has been used in forensic settings worldwide as a tool for risk assessment, dangerousness evaluation, and recidivism prognosis.

The criminal responsibility of individuals diagnosed with ASPD, especially when associated with psychopathy, is a subject of great debate at the intersection of Criminal Law and Psychology. The complexity arises from the fact that these individuals, although often involved in unlawful behaviors, usually present normal cognitive functioning, which makes their criminal liability a sensitive issue [6].

In Brazilian law, criminal liability is established in Article 26 of the Penal Code [7], which states that a person is not criminally responsible if, due to mental illness or incomplete or delayed mental development, they are incapable of understanding the illicit nature of the act or of acting in accordance with such understanding. Therefore, two central elements are considered: knowledge of the illicit nature of the act and the capacity to act according to such knowledge. This means that the mere existence of a personality disorder, such as ASPD, does not automatically constitute grounds for non-liability.

Brazilian legal doctrine and case law are mostly firm in affirming that ASPD, in isolation, does not exempt individuals from criminal

responsibility. According to Mirabete [8], individuals with this disorder preserve their faculties of understanding and self-determination, despite presenting moral and emotional distortions.

Neurological and psychological studies support the idea that psychopaths have full capacity to understand social and legal norms. Blair [9] emphasizes that, from a neuroscientific perspective, psychopaths do not present significant impairments in brain areas responsible for abstract moral cognition. In other words, they know what is right and wrong but do not feel guilt or empathy toward others. This reinforces the legal understanding that they are criminally responsible, since the legal criterion does not require empathy, but rather understanding and self-determination.

Legal Aspects

Although psychopathy is not a cause of criminal non-liability, its presence can influence the criminal process in other ways. In many cases, the diagnosis is used to aggravate sentencing, as it suggests a higher degree of dangerousness, coldness, and risk of recidivism. Forensic literature shows that psychopaths reoffend more frequently and have a greater tendency toward violent behavior compared to other offenders [10]. Furthermore, the psychological profile may be considered in decisions regarding prison regime progression, parole, and other legal benefits.

In the Brazilian Penal Code [7], psychopathy can also be addressed in the context of diminished responsibility, when there is partial impairment of the capacity for self-determination. The sole paragraph of Article 26 of the Penal Code [7] provides for this possibility, allowing for the application of a reduced sentence or a security measure when the mental or psychological disorder does not exclude but significantly diminishes the individual's capacity to understand or self-determine. However, applying this provision in cases of ASPD or psychopathy is rare and depends on strong technical evidence demonstrating real impairment of the defendant's mental faculties at the time of the act.

In practice, courts face difficulties in assessing psychopathy, especially in jury trials, where emotional arguments may influence both the defense and the prosecution. The defense may invoke the diagnosis to attempt to reduce culpability, while the prosecution may use it to highlight coldness and extreme dangerousness. In this context, the work of forensic psychiatrists and psychologists is essential to provide technical expertise that enables the judge or jury to understand the extent of the disorder's effects on the defendant's conduct.

Discussion

An important issue concerns the treatment of psychopathy, which is considered a condition of difficult intervention. Salekin [11] notes that psychopaths are resistant to therapeutic change, and there is no strong evidence that traditional psychological interventions are effective in these cases. This contributes to the understanding that such individuals represent a high risk of recidivism and require special monitoring within the prison system.

Thus, psychopathy and ASPD do not exclude criminal responsibility but must be carefully considered in criminal proceedings, both for culpability assessment and for ensuring public safety. Criminal responsibility in these cases should not be confused with moral responsibility or empathy but should be based on the objective capacity to understand and self-determine in light of legal norms.

Although they are not causes for exemption from liability, ASPD and psychopathy may influence other stages of the criminal process [12]. At the sentencing stage, for example, the defendant's personality may be considered as an aggravating judicial factor, pursuant to Article 59 of the Penal Code. A forensic report indicating psychopathic traits may justify increasing the base sentence due to coldness, cruelty, or high risk of recidivism. Moreover, these disorders are taken into account in decisions on prison regime progression, parole, and post-sentence security measures.

Conclusion

It is concluded, therefore, that although ASPD and psychopathy reveal disturbing and difficult-to-control behavioral profiles, Brazilian law treats such individuals as criminally responsible, except in extraordinary circumstances. In fact, psychopathy, far from being a ground for exemption from punishment, may in practice function as an aggravating factor, considering the gravity of the acts committed and the ongoing risk posed to society.

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