



Diagnosis of antisocial personality disorder and criminal responsibility

Marleen Spaans ^{a,*}, Marko Barendregt ^b, Bernadette Haan ^c, Henk Nijman ^{d,e}, Edwin de Beurs ^b

^a Netherlands Institute for Forensic Psychiatry and Psychology (NIPF), Department of Research and Development, The Netherlands

^b KZN Benchmarking, PO Box 281, 3720 AG Bilthoven, The Netherlands

^c Forensic Psychiatric Outpatient Clinic Het Dok, Zomerhofstraat 76-90, 3032 CM Rotterdam, The Netherlands

^d Academic Center of Social Sciences, Radboud University Nijmegen, The Netherlands

^e Altrecht Mental Health Institute, Dolderseweg 164, 3734 BN Den Dolder, The Netherlands

ARTICLE INFO

Available online 8 September 2011

Keywords:

Criminal assessment
Forensic psychiatric setting
Personality disorder
Psychopathy
Enforced forensic treatment

ABSTRACT

The present study empirically investigates whether personality disorders and psychopathic traits in criminal suspects are reasons for diminished criminal responsibility or enforced treatment in high security hospitals. Recently, the tenability of the claim that individuals with personality disorders and psychopathy can be held fully responsible for crimes has been questioned on theoretical bases. According to some interpretations, these disorders are due to cognitive, biological and developmental deficits that diminish the individual's accountability.

The current article presents two studies among suspects of serious crimes under forensic evaluation in a Dutch forensic psychiatric observation clinic. The first study examined how experts weigh personality disorders in their conclusions as far as the degree of criminal responsibility and the need for enforced forensic psychiatric treatment are concerned ($n = 843$). The second study investigated associations between PCL-R scores and experts' responsibility and treatment advisements ($n = 108$).

The results suggest that in Dutch forensic practice, the presence of a personality disorder decreased responsibility and led to an advice for enforced forensic treatment. Experts also take characteristics of psychopathy concerning impulsivity and (ir)responsibility into consideration when judging criminal accountability. Furthermore, they deem affective deficiencies sufficiently important to indicate suspects' threat to society or dangerousness and warrant a need for forensic treatment.

© 2011 Elsevier Ltd. All rights reserved.

1. Introduction

Full criminal responsibility implies that an individual who commits a crime was fully aware of the (illegal) nature, character and consequences of that crime. When an individual suffers from a severe mental disorder that leads to a crime, it is generally agreed in most jurisdictions that he or she cannot be held criminally responsible for it and should be exempt from its penal consequences. A number of countries, such as Canada and a number of U.S. states, use a dichotomy of options when it comes to criminal responsibility. An offender is viewed either as fully responsible and receives a prison sentence, or the crime was the result of a mental disorder, the offender is viewed as criminally insane, and the court imposes enforced treatment in a high security forensic psychiatric hospital. Elsewhere, a graded system is used, allowing for various possible grades of criminal responsibility.

Not all mental disorders are considered a potential cause for diminished criminal responsibility. In many jurisdictions the mere presence of a personality disorder is not viewed as sufficient grounds for criminal insanity and forensic treatment. This holds especially for antisocial personality disorder and psychopathy with crucial diagnostic criteria such as criminal versatility and repeated unlawful behaviors. Some authors have questioned, however, the tenability of the claim that individuals with personality disorders can be held fully responsible. They argue that personality disorders and psychopathy can be interpreted as serious mental disorders, based as they are on developmental disabilities or particular deficits such as cognitive deficiencies and biological impediments. Mei-Tal (2002), for instance, argued that the complete absence of empathy in persons with high psychopathy scores implies that they should never be regarded as responsible agents or blameworthy. Earlier, Herpertz and Sass (2000) concluded that violence in persons with high psychopathy scores is rooted in emotional deficiency. Due to deficient emotional learning they show poor conditioning processes, cannot be conditioned to avoid punishment, and are unable to evaluate the consequences their actions will have. They therefore make no effort to avoid harmful behavior or suppress violent impulses. Emotional deficiency is also associated with a general under-arousal, which in turn may lead to

* Corresponding author at: NIPF Pieter Baan Centrum, Gansstraat 170, 3582 EP Utrecht, The Netherlands. Tel.: +31 88 0710934; fax: +31 88 0710703.

E-mail addresses: marleen.spaans@dji.minjus.nl (M. Spaans), marko.barendregt@kznbenchmarking.nl (M. Barendregt), h.nijman@altrecht.nl (H. Nijman), edwin.debeurs@kznbenchmarking.nl (E. de Beurs).

sensation seeking and risk-taking in the form of violence or other illegal behavior (Herpertz & Sass, 2000). According to Ciochetti (2003), punishment is inappropriate for persons with high psychopathy scores due to their failure to understand the significance and influence of their responses to the acts of others. They cannot appropriately interpret punishment because they cannot understand the wrongfulness of their actions or the significance of any punishment they are given. Fine and Kennett (2004) argued that psychopathic offenders are incapable of forming genuine moral concepts because they failed to pass through a crucial moral developmental stage in early childhood and therefore cannot meet the requirement of being criminally responsible. Palermo (2007) argued that under conditions of severe stress, individuals suffering from psychopathic or antisocial personality disorders may decompensate and experience either fleeting or short-term psychotic thinking and behavior that can severely impair the ability to reason or act rationally, to distinguish right from wrong, and to conform to the law. According to Palermo, the best legal option in such a case would be commitment to a mental forensic institution for suitable treatment.

1.1. Criminal responsibility in the Netherlands

Under current Dutch criminal law, a crime committed due to a disorder that rendered the offender unable to act differently and the offense unavoidable is not considered punishable. According to Barendregt (2006), this legal decision finds its origin in the traditional image of man, which includes the idea that individuals can, to a certain degree, take control over their actions. Without any such degree of freedom of will, individuals cannot be held responsible for their actions, either personally or criminally. Freedom of will exists in the ability of humans to self-reflect. Reflective understanding, or self-consciousness, allows for actions to be planned, controlled, inhibited, reviewed and revised. Hence, the ability to self-reflect indicates the freedom to perform an act or to refrain from it. Should this capacity have been affected by a mental disorder, an individual's actions are not completely planned or controlled. As a consequence, responsibility for that action may be diminished. The court may take the diminished responsibility into account and, for instance, decide for a mitigated sentence or compulsory treatment.

Dutch criminal practice distinguishes five possible degrees of criminal responsibility, as opposed to the sane-insane dichotomy used in some other jurisdictions. The 5-point scale ranges from complete responsibility, slightly diminished, diminished, severely diminished to total absence of responsibility. These grades of responsibility are related to the intensity of the role played by a psychiatric disorder, if found, in the crime. The more serious the disorder and the role it played in the crime, the less responsible an offender will be held. The Dutch dimensional approach to criminal responsibility fits in well with the dimensional nature of psychiatric or personality disorders. Mental illness is not an all-or-nothing phenomenon, but symptoms wax and wane, sometimes reaching levels above disorder threshold (so-called syndromal states). This is especially the case in personality disorders which has led to the proposal of a dimensional model of classification (Widiger, 2000). Dimensional diagnoses reflect the differences in the number and severity of disorder criteria with the diagnostic groups of persons below the disorder threshold (Ullrich, Borkenau & Marneros, 2001). However, the fine grained categorization of criminal responsibility has also been criticized, as it suggests an accuracy and reliability of its assessment that cannot be guaranteed in practice. Nevertheless, it is firmly founded in Dutch forensic practice and in the judiciary system. In cases of diminished or severely diminished criminal responsibility, courts in the Netherlands can impose an equivalently diminished prison sentence followed by enforced treatment in a high security forensic psychiatric hospital.

Prior to the trial the court can request a forensic psychiatric evaluation. Around 90% of all *inpatient* forensic assessments in the

Netherlands are carried out by the Pieter Baan Center (PBC), the official forensic psychiatric observation clinic of the Dutch Ministry of Justice. These assessments cover roughly 5% of all forensic evaluations; the remaining 95% are regular *outpatient* evaluations that take place in a non-specialized forensic setting (usually where the defendant is being detained). Possible reasons for the court to order such a specialized inpatient assessment of defendants in the PBC include the severity of the crime, the severity of the assumed psychopathology, the maximum security level within the PBC, and potential societal disturbance or media attention associated with the defendant's case. As a result, the population of the PBC covers the more severe cases as far as criminological and psychiatric backgrounds are concerned. All defendants are evaluated during a seven-week period by a multidisciplinary team consisting of a psychiatrist, a psychologist, two social workers, and a lawyer who supervises the assessment process along with a second psychiatrist. One of the social workers investigates the life history and social background of the defendant through interviews with informants such as family members, the other is a supervisor on the defendant's ward whose task is to observe and describe the activities and behavior of the defendant during his or her stay in the institution. The psychologist and psychiatrist carry the final responsibility for the PBC's conclusion in its report concerning DSM-IV psychiatric diagnoses, if any, and criminal responsibility (based on structured instruments and clinical judgment). The latter two experts also advise the court whether forensic treatment of the defendant is indicated if convicted of the charge.

Existing research from the U.S. and Canada demonstrated that (antisocial) personality disorder decreased the chance that a defendant was judged insane, which is in line with current legislation in these countries (Warren, Murrie, Chauhan, Dietz & Morris, 2004; Rice & Harris, 1990). However, Barendregt, Muller, Nijman and de Beurs (2008) found that in the expert opinion of Dutch forensic psychologists and psychiatrists, a personality disorder, while decreasing the chances of total absence of responsibility, was associated with a judgment of diminished responsibility as well as a higher chance of enforced forensic treatment in a high security hospital. These results suggested that the sane-insane dichotomy used in many jurisdictions around the world may be in need of revision. A more nuanced categorization, might better allow for the subtle role that psychopathy or personality disorders can play in matters such as criminal responsibility and freedom of will.

1.2. Research questions

This study aims to examine how, in pre-trial psychiatric forensic evaluations, Dutch experts weigh the presence of a personality disorder in their conclusions regarding criminal responsibility compared to other psychiatric conditions, and how they advise on the necessity of enforced treatment in a high security hospital for personality disorders. Furthermore, how do Dutch experts weigh various aspects of psychopathy as measured by the Psychopathy Checklist-Revised (PCL-R), in the above-mentioned judgment regarding criminal responsibility and how do they advise regarding the need for enforced treatment? To answer these questions, two studies using the files of the Pieter Baan Center were carried out.

2. Study 1: How do experts weigh personality disorder in their forensic evaluations?

2.1. Method

A total of 1209 reports of defendants, admitted to the PBC between January 1, 2002 and December 31, 2007, were examined to obtain information on the presence of psychiatric disorders, the conclusion regarding criminal responsibility and the experts' advice on possible forensic treatment in a high security hospital. Forty files could not be retrieved

متن کامل مقاله

دریافت فوری ←

ISIArticles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات