

# Do we need to treat psychopathy like psychiatry in criminal law?

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## **Abstract:**

This manuscript reviews the differences between psychiatry and psychopathy, as well as why modern laws have different punishments for psychiatric patients compared to normal people and then expresses the rationality of differentiating punishments for psychopaths in the legal system under contemporary research on the brain and genes, and discusses the serious consequences this behavior may bring.

**Keywords:** criminal law, psychiatry, psychopathy, legal system

## **Preface**

“On May 7, 1896, Henry Howard Holmes was sentenced to death by hanging. ”You’re relieved to hear that. Having been in the courtroom to witness the trial, you are appalled by Holmes’s disregard for human life. He always looks cold and indifferent. Until his last breath, Holmes smiled at the executioner before his execution, and his “My birth, brought the devil into the world; No more heroic poetry can arouse my enthusiasm, only killing. The devil gave me orders, and I rose up and rushed into the world. The devil is with me.” still fills your mind. This man brings you not only fear, but doubt. Unlike previous murderers, it was not only how many people Holmes had killed, but also that he was neither afraid of his imminent death nor repentant of the harm he had caused to others. “Conventional wisdom tells you that this person has mental illness, but he is so logical, so articulate, so quick that you can’t relate him to people who have mental illness in any way.” “Maybe this is just an exception,” you console yourself. But, contrary to everyone’s expectations, Holmes was just the beginning. The crimes committed by Dennis Rader (BTK), Gary Ridgeway (Green River Killer), and so on, are

terrifying and infuriating, as is the fact that each of them has a similar thinking ability and mental state as normal people. Meanwhile, in contemporary times, many films depicting psychopathy have also appeared in public life, whether it is Hannibal Lecter in *Silence of the Lambs* or Alex DeLarge in *A Clockwork Orange*, they have brought great impact to the audience. No one wants to have a potential serial killer around, so perhaps it’s time for justice policy to focus on those psychopaths, somewhere between normal and mentally ill.

## **I. Propaedeutics**

Due to the fact that the target readers of this article are not only experienced specialists in psychology, law, or philosophy, but also ordinary people with limited knowledge of professional knowledge, there are some preliminary knowledge to be shared before the key discussion section of this article.

### **A. Psychopathy**

Psychopathy is a personality disorder that manifests as a syndrome characterized by a constellation of affective, interpersonal, lifestyle and antisocial fea-

tures.<sup>[1]</sup> Affectively, individuals with psychopathy lack empathy, guilt or remorse, are callous, and have shallow and deficient affect, whereas interpersonally they are grandiose, arrogant, deceitful and manipulative. From an early age, individuals with psychopathy often engage in instrumental, planned acts of antisocial behaviour and aggression, but can also display impulsive and irresponsible behaviors. The affective and interpersonal features of individuals with psychopathy distinguish them from those with the broader diagnosis of antisocial personality disorder (ASPD)<sup>[2]</sup>, defined by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition(DSM5)<sup>[3]</sup>.

To be specific, the pathological characteristics of psychopaths are mainly manifested in four aspects: first, the nervous system function of psychopaths has a disorder, including serious deficiency or abnormal development, deviating from the normal development track and serious defects. Second, psychopaths only have obvious obstacles in emotional and behavioral activities, and there are no consciousness disorders and obvious intellectual disabilities. The emotional disorder of psychopaths is manifested as large emotional fluctuations, extremely unstable, indifferent to people and even cold. Their behavior and activity disorder is easy to impulsive, the lack of purpose, planning and integrity of the behavior, self-control is very poor, often with the people around and even their relatives have contradictions and conflicts, the result not only damages the interests of the people around, but also brings adverse consequences to themselves. Third, psychopaths have no self-awareness. They often have conflicts with others and society and run into obstacles everywhere, but it is difficult to learn lessons and correct them. They are unable to properly handle interpersonal relationships, do not adapt to society, and from time to time carry out behaviors that endanger society in a pathological state. When they are caught, they have a very good attitude toward confession, and they still commit crimes after being released. Fourth, the pathologies of psychopaths are relatively stable and persistent. Once a personality disorder develops, it is difficult to completely correct it. This kind of disease generally starts from the infancy of the person, experiences the fixed puberty, and weakens in middle age, but it is not uncommon to accompany the patient for life.

Due to the uncoordinated development of personality, it is often difficult for psychopaths to correctly evaluate the requirements of society on themselves, to correctly evaluate their behavior patterns and consequences, and to correctly deal with interpersonal relationships and various social relations. The most important is that psychopaths have difficulty in responding appropriately to the stimuli of the surrounding environment, and their reactions are either excessive or insufficient, tending to constitute pathological

reactions. psychopaths are prone to pathological reactions in specific situations, especially adversity, and some hysteria are accompanied by hallucinations, auditory hallucinations, and hallucinations.

## B. Difference between Psychiatry and Psychopathy

Throughout the eighteenth century, medical understanding categorized mental illnesses into three broad types: melancholy (depression), psychosis, and delusion.<sup>[4]</sup> Psychopathy, however, did not align with any of these categories. Even in contemporary times, the primary reference for psychiatric diagnosis, the Diagnostic and Statistical Manual of Mental Disorders (DSM), does not formally acknowledge psychopathy. Instead, it employs the broader term antisocial personality disorder (ASPD), which was initially meant to be equivalent to psychopathy. As will be elaborated later, it has become evident that the DSM's authors, in their attempts to reach a consensus, failed to capture the essence of psychopathy accurately. Despite this, clinicians have long observed and recorded cases of individuals who, despite having intact cognitive and logical abilities, consistently demonstrate an inability to make ethical decisions.

The French physician Philippe Pinel was the first expert in the world to describe this group of people, in 1806, he described it as maniac sans dreamlike, that is, a kind of insanity without delirium. Pinel's student, Jean-Etienne Dominique Esquirol, called it "rational madness." Benjamin Rush called it a moral derangement. However, it was a German psychiatrist who made the systematic classification and documentation. Throughout the 19th and early 20th centuries, the term "moral insanity" gained widespread use in both the United States and England.

However, it was a German psychiatrist who made the systematic classification and documentation. The term psychopastiche is derived from the German word psychopastiche, which is generally believed to have been first coined by German psychiatrist J.L.A.Koch in 1888 and refers to the suffering of the mind.<sup>[5]</sup> In 1891, Koch published a book *Die Psychopathischen Minderwertigkeiten in drei Abhandlung*, which believes that psychopathischen hypopersonality includes two kinds of mental disorders caused by congenital factors and acquired factors. However, these two abnormalities are only behavioral defects, and do not reach the level of mental illness. Later, the concept of Psychopathische Persönlichkeit was proposed by Kreplin. Psychopathische Persönlichkeit is inclined to believe that psychopathische personlichkeit is caused by genetic metamorphism, germ damage and other physiological reasons. One of the most influential members of

the Germanic language family is Kurt Schneider, who in 1923 proposed the classification of Die Psychopathischen Persönlichkeiten. The term “psychopathy” achieved clinical prominence during the initial third of the 20th century, yet it temporarily succumbed to the emergence of “sociopathy” in the 1930s. During this period, both terminologies were frequently employed synonymously by clinicians and scholars. Some professionals favored “sociopathy” due to the public’s tendency to conflate “psychopathy” with “psychosis.” Additionally, many experts preferred “sociopathy” as it implied that such antisocial behaviors were predominantly environmentally induced, a perspective widely accepted at the time. Conversely, “psychopathy” was associated with a more profound genetic or, at minimum, developmental etiology<sup>[6]</sup>. After the introduction of broader diagnostic criteria for antisocial disorder in the DSM-III in 1980, social acceptance of antisocial individuals and individuals with such characteristics declined significantly.

At the turn of the century, many psychiatrists were uncomfortable with the simplistic characterization of mental illness as morally deficient. This classification seems full of subjective evaluation rather than objective scientific analysis. It undoubtedly touches the sensitive nerves of a growing discipline that has become somewhat conscious of its early vague definitions and inexperience. For example, psychiatrists such as Henry Maudsley in England and J.L.A. Koch in Germany began to explore and write more comprehensive descriptions of mental illness. Koch’s diagnostic criteria were even included in the eighth edition of E. Kreperin’s classic work on psychiatry. Yet in their quest for a more definitive theoretical diagnosis, the German school of psychiatry has broadened its diagnostic boundaries to include those who self-injure or harm others, seemingly ignoring the moral dysfunction at the heart of the condition. By the time of the Great Economic Crisis, the psychiatric field used the term “psychopath” to describe people who were depressed, lacking willpower, excessively introverted, and insecure - in other words, almost anyone who deviated from the norm was labeled a psychopath. In the process, genuine psychopaths are once again marginalized academically, even in clinical practice. This transformation started to take place in the late 1930s and early 1940s, primarily due to the contributions of two key figures: the Scottish psychiatrist David Henderson and the American psychiatrist Hervey Cleckley. In 1939, Henderson released his work, “The Psychopathic States,” which prompted a critical reassessment of the broad perspective held by the German School. Henderson emphasized that psychopaths often appear entirely normal, rational, and adept at pursuing their self-centered goals. Similarly, in the United States, Cleckley’s “The

Mask of Sanity” had a comparable impact. A small group of psychiatrists began to concentrate on the psychopath’s fundamental absence of moral judgment, but with a more refined diagnostic approach than previously employed.

However, the study of psychological pathology in traditional psychiatry, on the one hand, due to the focus on emotional characteristics (German school), on the other hand, because of the continuous violation of social norms (this issue has gradually become the mainstream of contemporary research), the study of mental illness is still in a dilemma. It is widely accepted that emotional factors play an important role in the diagnosis of mental illness, but many question whether clinicians can accurately detect criteria such as a stony heart. It’s this contradiction between the fact that emotional traits can be accurately diagnosed and the lack of belief that emotional traits can be accurately diagnosed, which is why the DSM has been revised over and over again. Another organic difficulty in including mental illness in the manual is that the manual has never been used in forensic medicine. What is clear, however, is that one of the hallmarks of mental illness is social deviance, which often takes place in the courts.

Since the DSM was first published in 1952, it has classified the problem as antisocial personality disorder and has broken it down into three different diagnostic types: antisocial reaction, antisocial reaction, and sexual behavior disorder. Although the book is consistent in its emotional and behavioral norms, it divides it into two diagnostic categories: antisocial and antisocial.

In 1968, the DSM-II combined the two types of diagnosis to form a unified classification of antisocial personality disorder, while maintaining the original emotional and behavioral norms. In 1980, the publication of the DSM-III marked the end of traditional German thinking, updating the definition of psychosis for the first time to a persistent violation of social norms and discarding emotional traits altogether, although it retained the title of antisocial personality disorder.

The DSM-III methodology and its 1987 revision, the DSM-III-R, dropped the emotional dimension, resulting in criteria that were both too general and too limited. Its generalization is reflected in that the program is limited to behavior, but ignores personality characteristics, and includes many people with different personalities who are not suffering from mental illness. At the same time, it appears to be too limiting, because this behavior standards-based antisocial disorder sets boundaries for everyone, but fails to get to the core elements of mental illness. Amid fierce skepticism from clinicians and psychiatric researchers, there has been a significant change in definition, in sharp contrast to the position taken by the architects of the DSM-III. They believe that well-trained phy-

sicians can reliably identify emotional traits. Widespread skepticism about the DSM-III's treatment of antisocial personality disorder prompted the American Psychiatric Association to launch a field survey aimed at expanding the description of traditional psychiatric symptoms. As a result, the DSM-IV restores some of the emotional indicators that were left out of the DSM-III, however, as a compromise, it does not provide a specific way to merge the two diagnostic systems. As Robert Hale points out, "The ambiguity inherent in the DSM-IV can lead to disputes in court, where one clinician may conclude that a defendant has antisocial personality disorder based on the DSM-IV criteria, while another doctor may conclude otherwise, and both claims to be correct."

Since the 1980s, some clinicians have had new thinking about the standards of psychiatric diagnosis and treatment. Based on the guidelines published by Cleckley, Hare introduced the Psychiatric Assessment Scale (PCL) in the same year and updated it in 1991 and 2003 (PCL-R). By 1995, his team members had developed the Psychiatric Assessment Scale: Simple Version (PCL: SV), followed by the Psychiatric Assessment Scale: Adolescent Version (PCL-YV) in 2003. These scales are gradually regarded as standardized tools for psychiatric diagnosis by clinicians and researchers. They integrate the two major criteria of emotional and social bias and formulate detailed scoring rules to ensure the validity and consistency of diagnostic results.

### C. The Insanity Defence

Although the defense of mental illness is incompatible with the traditional concept of "a life for a life", it can be affirmed that in modern rule of law society, even if a mentally ill person is suspected of intentional homicide, they will be exempted from punishment or have reduced punishment due to the lack of criminal responsibility or limited criminal responsibility caused by mental illness. This is an inevitable requirement of modern legal concepts and also a necessary requirement for the protection of human rights. The defense of mental illness is a defense activity conducted to convince the judge that the defendant is a mentally ill person who does not have criminal responsibility or only has limited criminal responsibility. It is not denied that a small number of criminals may be exempted from criminal punishment through this system, but this is only the "cost of the system" and is not enough to shake the position of mental illness defense in modern criminal justice.

#### a. History

The legal provisions regarding mental illness first appeared in Article 278 of the Corpus Juris Hammurabi

(1792-1750 BC), promulgated by the 6th king of the Babylonian Kingdom, Hammurabi, in the 18th century BC: If someone purchases a male or female slave and suffers from epilepsy and madness before the first month, the buyer can return it to the seller and recover the money he paid. In the 6th century BC, there was a slang in Hebrew for 'the mentally ill being without fault'. In the Twelve Tables of the Roman Republic (449B.C.), it was proposed that individuals suffering from mental illness or dementia lose the ability to handle property, buy and sell, marry, and make wills, and should be placed under guardianship. This is the earliest legislation on the behavioral capacity and guardianship of individuals with mental disorders. The Greek philosopher Plato (427-347BC) proposed in the Republic that mentally ill individuals should receive good care from their relatives, otherwise they should be fined; And it is believed that if a mentally ill person causes harmful consequences, only the material losses caused by him should be compensated, and no other punishment should be imposed. This is the earliest legislative proposal put forward to protect mental patients. But before the 12th century, the defense of mental illness did not have much significance in common law criminal law. British precedents even believed that mental disorders had nothing to do with crime, and it was not until the early 12th century that it was recognized that the defense could be based on the defendant's mental illness. During this period, both the church and the state would routinely exonerate mentally ill individuals from their responsibilities. Since the mid-15th century, the defense of mental illness has been widely accepted in Britain, and concepts such as "the act and wrong of a mad man should not be impulsively attributed to him" and "idiots and lunatics are not chargeable for their own actions" have become well-known.

#### b. Rationality

Utilitarianism and retribution, as the guiding principles of punishment, have undergone many revisions and improvements by legal scholars, and their content has been greatly enriched. Both have their own theoretical scientificity and also have unsolvable problems. Both theories have dominated the history of criminal law thought in the United States, and with the development of American society, their proportion in the purpose of punishment is constantly changing. Both utilitarianism and retribution support the defense of mental illness. Imposing the same punishment on mental patients as on normal people is not the original intention of punishment, nor can it achieve the expected effect of punishment. Both believe that if a mentally ill person engages in criminal behavior, they should be exempt from liability. In addition, the Eighth Amendment to the United States Constitution also states that overly cruel



punishments cannot be imposed on criminals.

#### 1. Utilitarian theory

Bentham believed from the perspective of utilitarian philosophy that the role of law should not only be to retaliate against criminal acts, but also to prevent their occurrence. Bentham believed that past criminal acts were ultimately just one act, while the future has no limits. So the punishment of the perpetrator is mainly aimed at preventing similar crimes from happening. Utilitarians consider punishment, while for mentally ill individuals who have severely lost their cognitive or volitional abilities, abnormal cognitive factors undermine their ability to accurately observe facts, and abnormal volitional factors undermine a person's ability to control their own behavior. His abnormal behavior, to be precise, does not conform to the evil that utilitarianism aims to punish. Punishing atypical evil would deviate from the goals that utilitarianism aims to achieve. Even if punishment is imposed for his criminal behavior, based on the same illness and pathology, he may continue to commit crimes next time. Punishment has no preventive effect on oneself. In the view of utilitarians, crime is an evil, and behavior pursues the desired benefits by committing this evil. Punishment itself is also a kind of evil, a necessary evil, but this evil is aimed at preventing greater evils that harm society and reduce the overall happiness of society. Traditionally, criminal behavior refers to the act of obtaining necessary benefits through illegal actions. The criminal law imposes punishment on them in order to prevent crime by rendering the benefits obtained through the crime useless. However, the illegal behavior of mental patients is not carried out for the subjective expected benefits. The criminal behavior of mental patients does not bring the necessary benefits to themselves, and even brings burdens. Therefore, the basis for imposing punishment on mental patients is not consistent with utilitarian punishment. On the other hand, punishing mental patients cannot achieve the goal of prevention for others. In the eyes of the general public, the behavior patterns of mental patients and normal people are clearly different fields, and no matter how cruel punishment is imposed on mental patients, it is impossible to educate and guide normal people. Bentham also summarized this and believed that punishment that is ineffective against the will of the perpetrator and cannot prevent similar behavior is called ineffective punishment. For example, the punishment applied to those who are ignorant of the law, unintentional actors, and those who do wrong things without reason due to misjudgment or force majeure is useless. Furthermore, in cases involving children, intellectually disabled individuals, and fools, the punishment is also ineffective. The inability of a mentally ill person to act is predictable by society, and courts generally do not deprive her of her

freedom, as there is no need to sentence her and degrade her personality in order to achieve the goal of isolating her from society. Furthermore, proving the guilt of a mentally deranged person and sending her to prison does not have the effect of repairing social relationships. Therefore, excluding such individuals from the criminal justice system and treating their mental state as a medical issue is more rational for them.

#### 2. Retribution theory

As a defense, mental illness is more supported by the theory of retribution. As Hebert L. Packer said, 'We... endure the interference of the mental illness defense on us because if we exclude this defense, it is equivalent to abandoning the principle of people's freedom of will, which is the main principle of criminal law.'. Free will plays a very important role in identifying people's sensory intuition. Firstly, we will make judgments about people based on their behavior. We punish those who have committed crimes and condemn their wrongful behavior. At the same time, we also commend brave actions and praise their good deeds. In fact, according to the true meaning of "free will" - people can, and indeed can, choose whether to do good or bad things, our actions are not restricted by others or the outside world, and all of our actions are based on our own free will, whether condemned or praised. Another human feeling cannot be erased, as people with mental illnesses seem different from normal people. They look very strange, very 'crazy'. We sympathize with them (but sometimes we are also afraid of them) because others can act rationally or control their own behavior, but they have lost this ability. We usually do not blame mental patients who have done wrong things, because we feel that blaming them is like blaming a patient who sneezes or a newborn who has just been weaned, which is unreasonable. Our impression of mental illness patients deepens our fundamental belief in human free will. It seems to have become a general rule of criminal law to include mentally deranged individuals as exceptions to punishment. The behavior of individuals with mental disorders validates our normal behavior; The fact that they lack the ability to act and their desire to act freely confirms the fact that as normal people, we need to make the right and rational choices. The fact that we do not condemn mental patients proves that we should condemn the criminal behavior of normal people. Therefore, the defense of mental illness can be used to distinguish what is evil, what is disease, and which people have the ability to make free choices and whose ability to make free will choices has been damaged. We can use the theory of retribution as a premise and use rational thinking to understand these feelings. Whether the perpetrator should be rewarded or punished morally depends on whether they are morally

responsible for their actions; Whether the behavior of the actor is morally responsible is determined based on their personality traits, that is, their rationality and self-control ability. However, people with mental disorders lose this personality trait, so they are no different from infants or even stones in moral evaluation. Punishing a person who has lost their ability to think rationally, like punishing an inanimate object or an animal, is undignified and not worth it. People without rational thinking ability should not be condemned or punished, and our conscience does not allow us to punish those who should not be punished.

## II. Rationality of expanding the scope of application of the insanity defence

Expanding the scope of the insanity defense holds significant rationality from multiple perspectives, all of which are deeply intertwined with the fundamental principles of justice, human rights, and the pursuit of a more enlightened and equitable legal system.

The etiology of psychopathy, akin to that of the majority of intricate psychiatric conditions, remains poorly understood. Accumulating evidence suggests a robust correlation between psychopathy and atypical neuronal activity within discrete brain regions. These neurobiological underpinnings are likely rooted in either genetic anomalies or early developmental pathologies. Indeed, the clinical observation of psychopathic traits in early childhood challenges the classical blank slate model positing that psychopathy in adulthood is solely the consequence of childhood adversity. While debate persists, a consensus among many psychopathy scholars inclines toward an interactive model, wherein a genetic or developmental predisposition to the disorder is exacerbated by adverse environmental interactions.

Because most psychopaths lack moral cognition, studies have indicated that injuries to the frontal lobe area are linked to aggressive behavior. Early investigators hypothesized that mental disorders might arise from abnormalities in the frontal cortex, a region known for higher-order processes like reasoning and executive function. For instance, Antonio Damasio and his team have documented several case studies involving damage to the underside and inner portions of the frontal lobe, which can lead to significant psychosomatic behaviors. Using structural magnetic resonance imaging, Adrian Raine and his team found that in psychopaths who at least failed to recover, there was a reduction in gray matter, a decrease in the number of neurons, and an increase in white matter. The connections between neurons become more complex. The decrease in gray matter indicates degenerative neurological damage,

while the increase in white matter is consistent with some abnormalities in the loss of white matter that is common in the growing brain.

Until the late 20th century, the neurobiological basis of mental illness remained unclear, with no definitive biological markers for diagnosis. In addition, the general notion of reduced frontal activity in psychopaths seems to contradict the results of a series of long-term follow-up studies conducted since the 1940s, which have shown that psychopaths actually have more pronounced frontal lobe electrical activity during wakefulness and sleep. With the use of functional magnetic resonance imaging (fMRI) technology, the neurological secrets of mental illness are gradually being revealed, and the patterns of brain activity during interpersonal communication, or the lack of such patterns, have become the core symptoms of mental illness. Still imaging of brain structure, however, reveals only the tip of the iceberg. Observing the dynamic activity of the brain in solving social problems allows us to find with a fair degree of confidence that the brains of psychopaths are dysfunctional at dealing with these problems.

In the early 1990s, Kwong and his colleagues successfully developed functional magnetic resonance imaging (fMRI). It can monitor and map changes in blood oxygen levels inside the brain. Just as muscles use oxygen to function, neurons use oxygen to function. MRI technology can pinpoint the parts of the brain that are consuming oxygen. In conventional fMRI studies, subjects are shown various stimuli, such as video, images, audio, or text, while they are inside an MRI scanner. In this way, the regions of the brain that respond to specific stimuli can be mapped and analyzed by comparing them with the rest of the brain. Mastering fMRI technology requires understanding many technical details and statistical methods, which requires researchers to undergo extensive professional training to understand its advantages, disadvantages, and scope of application. Nevertheless, fMRI technology provides unprecedented new insights into a wide range of clinical diseases, especially psychiatric disorders.

In 2001, the first paper on the use of functional magnetic resonance imaging to investigate the brains of people with criminal psychosis was published. However, many functional magnetic resonance imaging studies, including this one, face a common problem, which is, insufficient sample size. It is difficult to recruit psychopathic individuals, and the Hare assessment tool is costly and time-consuming to evaluate them. Statistics show that prisons are one of the most frequent places where psychopaths are found. However because prisons are often not equipped with MRI facilities, early researchers had to move mentally ill patients from prison to a nearby medical facility for imaging. This approach has created logistical, financial,

and security-related challenges, resulting in very limited participation in studies.

In 2007, with support from the National Institute on Drug Abuse, the U.S. Department of Energy, and the State of New Mexico, the scientist and author successfully built and introduced the first-ever mobile functional magnetic resonance imaging device. In collaboration with the local correctional system, the device is not intended for regular users, but for inmates on a special basis. In the first three years of the device's use, more than 1,100 detainees volunteered to work on fMRI. This collection of brain scan data forms the world's largest forensic brain imaging database. The data obtained by fMRI revealed a stable and distinct pattern of abnormal brain function in psychopaths: significantly reduced neural activity in limbic regions of the brain, particularly those located below the neocortex, including limbic structures and their adjacent regions.

Even though the specific causes are not yet clear, what can be agreed upon is that psychopathy is not a subjective choice to become a psychopath, but is shaped by genetic and environmental influences. From this perspective, the similarity between psychosis and mental illness is precisely the basis for my next argument.

According to Hare's PCL-R assessment form, it is known that psychopaths exhibit significant characteristics such as excitement, deception, lack of remorse, pathological lying, etc. The assessment results reflect the tester's long-term stable personality traits. However, these personality traits cannot directly determine whether the tester has the ability to recognize or control when committing a criminal act.

At present, crimes committed by psychopaths who are not mentally ill are mostly considered to have the ability to identify and control, and should be punished according to the general punishment for crimes committed by ordinary people, or even more severely punished.<sup>[7]</sup> This is because such people often commit crimes with cruel means and heinous circumstances, and there is no sense of remorse after committing the crime. The various signs indicate that the perpetrator has complete identification and control abilities. In the United States, psychopaths are generally heavily punished in judicial practice. However, with the development of forensic psychiatry, new perspectives have emerged. Damasio proposed the body symbol theory in 1994, which mainly believes that the human body can make certain actions or expressions, also known as body symbols, which can guide people to determine someone's emotions. If the bodily symbolic function is impaired for some reason during the early development of a person, the normal acquisition of moral knowledge will be affected to varying degrees. Furthermore, when children with abnormal personality tendencies have their bodily symbol func-

tions impaired in childhood, their ability to acquire moral knowledge will be weakened or even severely reduced. This means that psychopaths have a tendency to gradually weaken their recognition and control abilities during their development. Such changes cannot be attributed to them personally in terms of morality, so there is no legal justice to hold them criminally responsible. This theory provides necessary support for lenient punishment for crimes committed by psychopaths.

So in summary, even if we believe that psychopaths have normal recognition and control abilities when committing crimes, and they can still have a clear understanding of their criminal behavior afterwards, their judgment ability may be somewhat distorted, which may lead them to be unable to clearly recognize the degree of harm caused by their actions. And when the condition of psychopaths worsens further, it is likely to develop into a complete mental patient. From this perspective, it may be necessary to impose lenient punishment on psychopaths, but it could also lead to several issues that will be listed below.

### III. Possible serious consequences

Nevertheless, several serious consequences that treating psychopathy like psychiatry in criminal law may lead to. For example, firstly, in our social system, the elderly and children who are also considered to have limited criminal responsibility have guardians to take care of and manage them. However, how should psychopaths be treated? If they are handed over to the government, this may lead to a tight financial situation. After all, this may involve long-term supervision, treatment, and various aspects of resource investment such as living security, and the government's financial resources are limited and need to be reasonably allocated to various social affairs.

In the second place, there will also be labeling issues. In fact, there are many psychopaths who have certain judgment abilities but only have some cognitive problems. So in this situation, if they are labeled as 'psychopaths', will it cause great obstacles in their process of reintegrating into society, making it very difficult for them to reintegrate into society? Meanwhile, this labeling behavior can further increase their recidivism rate. Once labeled like this, their acceptance by society may decrease, and they may face discrimination in employment, social interactions, and other aspects, leading to negative emotions such as self abandonment and increasing the risk of recidivism. Finally, this situation may also trigger landslide effects. Since psychopaths need to have their sentences reduced, according to this logic, people with impulsive personalities and women in their menstrual cycle also have reasons for their punishment reduced. People with impulsive per-

sonalities may also be influenced by their own personality traits when committing crimes, making it difficult for them to fully control their behavior. Women in their menstrual cycle may experience significant emotional fluctuations due to changes in body hormones, which in some cases may also affect their self-control ability. If the passage of the Psychopath Defense extends to these groups to require commutation, then the justice and stability of the entire criminal law system may be greatly challenged.

## IV. Conclusion

The question of whether psychopathy should be treated like psychiatry in criminal law is a complex and contentious issue that has significant implications for the criminal justice system, public safety, and the rights of individuals involved. This manuscript has explored the differences between psychiatry and psychopathy, the historical development and rationality of the insanity defence, the emerging rationales for expanding the scope of the insanity defence to include psychopaths, and the potential serious consequences of such an expansion.

The differences between psychiatry and psychopathy are not always clear-cut. Psychopathy, often considered a personality disorder, has distinct characteristics such as lack of empathy, superficial charm, impulsivity, manipulative behavior, and disregard for laws and rules. The development of psychopathy is influenced by both genetic and environmental factors. The insanity defence, which has a long-standing history, is based on the principle of protecting individuals with mental illnesses who lack criminal responsibility or have limited criminal responsibility. However, the application of the insanity defence to psychopaths is a matter of debate. New perspectives from forensic psychiatry, such as Damasio's body symbol theory and the findings from neuroimaging studies, suggest that psychopaths may have impaired moral knowledge acquisition and recognition and control abilities. These findings provide support for the idea of imposing lenient punishment on psychopaths. Functional magnetic resonance imaging (fMRI) technology has also revealed abnormal

brain function patterns in psychopaths, further fueling the argument for a different approach to their punishment.

In summary, while there are scientific and ethical reasons to consider treating psychopathy more like psychiatry in criminal law, the potential consequences cannot be overlooked. A balanced approach is needed. The criminal justice system should take into account the latest scientific research on psychopathy while also safeguarding public safety, maintaining public trust, and ensuring justice for victims. Further research is required to better understand the nature of psychopathy, develop more accurate diagnostic tools, and explore effective treatment and rehabilitation methods. Only through a comprehensive and cautious approach can we hope to find a solution that is both fair and effective in dealing with the complex issue of psychopaths in the criminal justice system.

## References

- [1] Hare, R. D. & Neumann, C. S. Psychopathy as a clinical and empirical construct. *Annu. Rev. Clin. Psychol.* 4, 217–246 (2008).
- [2] Blair, R. J. R., Mitchell, D. G. V. & Blair, K. S. *The Psychopath: Emotion and the Brain* (Blackwell, 2005).
- [3] American Psychiatric Association. *Diagnostic and Statistical Manual of Mental Disorders: DSM-5* 5th edn (American Psychiatric Association, 2013).
- [4] Kim S J ,Ilaria S ,Hundal J , et al. Coffin-Lowry Syndrome: A Case of Clinical Convergence for Psychology, Neuropsychology, Psychiatry, Genetics, and Neurology. [J]. *Journal of child neurology*, 2025, 8830738241308605.
- [5] Felice F Carabellese, Lia Parente. The Italian general psychiatry and forensic psychiatry treatment model: a unique story.[J]. *CNS spectrums*, 2025, 1-5.
- [6] Godman M ,Jefferson A . On Blaming and Punishing Psychopaths [J]. *Criminal Law and Philosophy*, 2017, 11 (1): 127-142.
- [7] Jorde P L ,Petter L ,Kjersti N , et al. Are symptoms assessed differently for schizophrenia and other psychoses in legal insanity evaluations of violent crimes? [J]. *BMC psychiatry*, 2023, 23 (1): 487-487.