Moral Understanding and Criminal Responsibility of Psychopaths: Evolution of a Meta-ethical Niche

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Abstract

A growing body of moral and legal philosophical analysis both highlights the relevance of research findings on psychopathy for the theory of responsibility, and argues for the responsibility, non-responsibility or partial responsibility of psychopaths, in most cases taking criminal responsibility to flow from moral responsibility. Although not the only grounds of analysis, the moral psychological concern with the nature of moral understanding, and the questions of whether and to what degree psychopaths have it, are issues at the centre of the debate. This paper identifies four approaches to these issues: Rationalist Motivational Internalism; Sentimentalist Motivational Internalism; Conduct Rationality Holism, an emerging line of argument; and Motivational Externalism. Some contributions fall squarely under one or other of these categories, but many combine elements form more than one. A version of Conduct Rationality Holism is defended that accommodates Sentimentalist Motivational Internalism and some motivational elements not treated in Motivational Externalism. This position suggests the moral responsibility of psychopaths is at least compromised, to a degree that is relevant to their criminal treatment. The implications for meta-ethical moral psychology are indirect but significant.
INTRODUCTION

The phenomenon of psychopathy, in which people, often criminal offenders, exhibit deficits in morality, empathic relating and impulse control, has acquired a significant place in meta-ethical debates. Philosophical analyses of moral reasoning, understanding and adherence, claims about the moral and criminal responsibility of diagnosed psychopaths,¹ considerations of their human rights, and even their humanity, and contemporary neuroscientific and more broadly psychological² research findings


² By ‘broadly psychological’, I am not including everything to do with Mind, but referring to the findings of scientific psychology, which I take to be framed by the intuition that, whatever the nature of consciousness, and whatever the relations of consciousness, thought and action, there must be some complex ‘inner workings’ of Mind, of which we are not routinely and non-inferentially aware, that make them possible. Different kinds of scientific psychology obviously model the inner workings of Mind in different ways. Some argue that psychiatry is not committed to this intuition. See especially Michael Moore, Law and Psychiatry: Rethinking the Relationship, 195-204 (1984). I will, however, take the central intuition framing psychiatry to be complementary; that these ‘inner workings’ can be abnormal and, specifically, defective,
regarding psychopaths and non-psychopaths have coalesced in a rapidly developing analytic field. Work on psychopaths animates, and is animated by, the broadest meta-ethical controversies, especially those in moral psychology: Kantian Moral Rationalism versus Humean Sentimentalism; Motivational Internalism, where moral understanding motivates moral conduct, versus the view that moral understanding and the motivation to follow moral precepts are separate; the Incompatibilist claim that autonomous intentional conduct cannot be externally, including ‘psychologically’,\(^3\) caused, so that responsibility is preserved for Intentionalists and denied by Determinists, versus the Compatibilist alternative that allows causation, autonomy and responsibility to coexist.

The scientific research findings have been used to clarify, buttress and expose the broader meta-ethical positions, with some lines of argument proving fertile and resilient, and others virtually drying up.\(^4\) Previously central questions about limitations on individuals’ capacity for action choice - their ultimate ability to have ‘acted otherwise’ - in the specific acts under consideration for moral and criminal responsibility have become marginal.\(^5\) Most contemporary commentators accept Compatibilism, so that mental disorder non-responsibility cannot turn on the mere specification that criminal

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\(^3\) See supra note 2.

\(^4\) The import of the scientific findings for the broader philosophical debates is not vitiated by circularity, since the findings are substantially independent of the meta-ethical positions. For the opposing view, see Heidi L. Maibom, The Mad, the Bad, and the Psychopath, 1 Neuroethics 167 (2008).

behavior is psychologically caused.\textsuperscript{6} This leaves the possibility that non-responsibility might follow a special quality of psychological causation, one where identifiable psychological processes beyond the subject’s control, whether or not the causal mechanism is framed as a deficit or disability, overwhelmingly predispose her to criminal conduct, for instance. The neuroscientific findings regarding psychopaths, members of the most notoriously crime-prone psychological type, can clearly be mobilized in such an argument.\textsuperscript{7} Most participants in the debates under discussion adopt a different line, identifying the abilities necessary for moral agency (e.g. full moral understanding contributing to reasons for action, the capacity for empathy, other-regarding beliefs or participant reactive attitudes) and then demonstrating their presence or absence, wholesale or in degree, in psychopaths.\textsuperscript{8} In this way, as in the ‘special quality of causation’ argument, psychopaths can be argued to lack moral and criminal responsibility in relation to all, or some class of, their acts. Here, Compatibilism is preserved because

\textsuperscript{6} A popular alternative is to adopt Strawson’s reframing of the issue, which avoids the contrast between causation and ‘free will’, in favor of distinguishing practices which mobilize an objective approach to understanding conduct from practices characterized by ‘participant reactive attitudes’ such as forgiveness, anger and resentment. Peter F. Strawson, Freedom and Resentment, 47 Proc. Brit. Acad. 1 (1962). This strategy yields arguments both in favor of and against psychopaths’ non-responsibility; see below: 30-1; 32; 56.


both the abilities and disabilities are neurologically or otherwise psychologically caused
and, hence, scientifically explicable.

This paper concerns only the moral disability-based positions, and is conceived as
a contribution to the meta-ethical clarification that has been underway, drawing out
distinct lines of thought, analyzing the existing lines, and arguing that some are
potentially more fruitful than others. These lines of thought can be analyzed as purely
meta-ethical claims about the necessary characteristics of moral understanding and
adherence, and they can all profitably be related to the neuroscientific and more broadly
psychological findings regarding psychopaths and non-psychopaths. However, the
connections between the two forms of analysis are complex, and conclusions regarding
the moral and criminal responsibility of psychopaths do not necessarily generalize into
broader statements of moral psychology.

In the debate on the moral and criminal responsibility of psychopaths, I identify
four established meta-ethical lines: 1. Rationalist Motivational Internalism, where moral
understanding is a strictly cognitive business that provides the motivation for moral
conduct, so that the issue is whether psychopaths cannot understand moral precepts in
this sense; 2. Sentimentalist Motivational Internalism, where full moral understanding
requires both cognitive and affective faculties, and where such understanding provides
the motivation for moral conduct, so that the issue is whether psychopaths cannot
understand moral precepts in this sense; 3. Conduct Rationality Holism, a line not
formally identified in moral psychology schemata, but which is increasingly represented
in specific arguments about psychopaths, where moral understanding is bound up with
prudence, so that the issue is whether psychopaths demonstrate broad irrationalities
which might excuse their immoral or illegal conduct in an arguably more fundamental way than either version of Motivational Internalism; and 4. Motivational Externalism, where the motivation to follow moral precepts, usually sentimental, is separate from the ability to grasp them, so that the issue is whether psychopaths lack the required motivational resources. It is my hope that framing the range of views in this way can be done without injustice to the complexity of the issues and the subtleties of the detailed arguments of individual contributions, some of which reflect more than one line.  

My discussion suggests that Sentimentalist Motivational Internalism and Conduct Rationality Holism are emerging as the strongest lines, with Motivational Externalism rapidly in decline, at least in the debate about psychopathy. I identify some ambiguity in the consideration of motivational aspects of psychopathy, and argue that, while

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Motivational Externalism applied to psychopaths is wrong, some motivational disabilities in psychopaths remain important for the issue of their responsibility. In relation to psychopaths at least, I argue for Conduct Rationality Holism, with the moral understanding component modeled after Sentimentalist Motivational Internalism. Psychopaths are not morally or criminally responsible according to this formula. This reflects the dominant view within the meta-ethical dialogue; the center of gravity in the philosophical debates has shifted strongly towards the view that at least some diagnosed psychopaths lack, or have significantly reduced, moral, and hence criminal, responsibility.

These arguments challenge established criminal justice practice. Diagnoses of psychopathy, typically using Robert Hare’s diagnostic instrument, the Psychopathy Checklist-Revised, almost always aggravate sentences, including death penalty decisions, and time served in the common law jurisdictions of the United States, the United Kingdom and Canada. This did not always seem inevitable. The 1950s

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especially saw legal openings for the more lenient treatment of psychopaths. In the US, the Durham Rule that “an accused is not criminally responsible if his unlawful act was the product of mental disease or defect”\textsuperscript{12} gained wide acceptance. Durham himself had been consistently diagnosed as psychopathic, and less frequently as also psychotic. In the UK, the M’Naghten Rules continued to form the basis of the insanity defense, but s. 60 of the Mental Health Act of 1959 allowed the issue of the criminal responsibility of psychopaths, and others with similar personality disorders, to be sidestepped. The provision allowed for the indefinite secure hospitalization of convicted offenders deemed to be suffering from “mental illness, psychopathic disorder, severe mental impairment, or mental impairment”, with ‘psychopathic disorder’ defined as “a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned” (s. 4). Here, the criterion for hospitalization rather than imprisonment is not lack of criminal responsibility but that the mental disorder necessitates detention within a psychiatric hospital. In addition, following enactment of the Homicide Act of 1957, personality disordered offenders, among others, could be convicted of manslaughter rather than murder on the ground of ‘diminished responsibility,’ that is, where the accused “was suffering from such abnormality of mind (whether arising from a

\textsuperscript{12} Durham v. United States, 214 F.2d 862, 1954: 874-875.
condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts or omissions in doing or being a party to the killing” (s. 2(1)). It was intended that the two pieces of legislation work together, allowing the hospitalization of ‘psychopathically disordered’ killers.\textsuperscript{13} No equivalent development had occurred in Canada, but psychiatrists interested in psychopathy did occasionally persuade the courts to interpret Canada’s M’Naghten-based insanity defense as covering purely personality disordered offenders, and some psychopaths entered the forensic psychiatric system on this basis.

These initiatives have more or less fizzled. In the US, \textit{Durham} was superseded in 1972 by the more restrictive \textit{Brawner},\textsuperscript{14} through which insanity verdicts for purely personality disordered offenders were effectively excluded,\textsuperscript{15} and insanity law underwent further restriction with the Insanity Defense Reform Act 1984, which enforced a strict M’Naghten standard, with some states opting to abandon the insanity defense. In the UK, ‘psychopathic disorder’ was only ever used for a minority of personality disordered offenders, and did not have the intended effect in many homicide cases.\textsuperscript{16} In Canada, the courts enforced a narrower reading of the insanity law, effectively excluding psychopaths. The clarified doctrine allows a broad interpretation of the ‘disease of the mind’ element of the M’Naghten-based defense, and hence the potential inclusion of psychopathy, but insists on a tight interpretation of appreciating the nature and

\textsuperscript{13} See Holmes, supra note 11.
\textsuperscript{14} U.S. v. Brawner (471 F. 2d 969).
\textsuperscript{15} A case involving a diagnosed sociopath may have contributed to the doubts about the Durham Rule; see Ralph Slovenko, Responsibility of the Psychopath, 6 Phil. Psych. Psychol. 53 (1999).
\textsuperscript{16} Holmes, supra note 11, at 81-82.
consequences of the act, which prevents it. *Cooper*, the pivotal case, concerned a man whose primary relevant diagnosis was of intellectual disability bordering on retardation, with a cluster of personality disorders, but the issue of ‘psychopathic personality’ was broached, and the ruling was extended to a diagnosed psychopath in *Kjeldsen*.

That opportunities to deal with psychopathic offenders through psychiatric dispositions have been abandoned or only very occasionally used is, perhaps, unsurprising. Given a significant proportion of serious offenders, perhaps around a quarter, meet the diagnostic criteria for psychopathy, their potential non-responsibility would present enormous, and possibly insurmountable, challenges to criminal justice theory and practice. Such considerations cast a deep administrative shadow over abstract considerations of the moral and criminal responsibility of psychopaths. Despite this, many commentators advocate their non- or partial responsibility, a number only increasing with the development of neuroscientific research on psychopaths.

2. CURRENT RESEARCH ON PSYCHOPATHY RELEVANT TO META-ETHICAL THEORY

Despite a highly controversial history, and continued doubts about its validity, especially for those with a sociological orientation, psychopathy has recently become consolidated

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18 Id., at 1158.
20 Zinger, supra note 11, at 248-9.
21 E.g. Tom Mason, An Archaeology of the Psychopath: The Medicalization of Evil, in Forensic Psychiatry: Influences of Evil 89 (Tom Mason ed., 2010); Mick McKeown & Mark Stowell-Smith, The Comforts of Evil: Dangerous Personalities in High-security
as a valued psychological and correctional construct identifying a psychologically distinct group of offenders (who are also prone to a broader range of ‘bad acts’ than criminality).

It is defined variously, but convergently, as “a constellation of affective, interpersonal, and behavioral characteristics, including egocentricity, manipulativeness, deceitfulness, lack of empathy, guilt or remorse, and a propensity to violate social and legal expectations and norms,” an essentially predatory personality type with a grandiose self-structure, and a sociable, amoral and anxiety free personality formation marked especially by imprudence and failure to learn from adverse experience. Robert Hare’s development and refinement of a ‘Psychopathy Checklist’ based on the ‘Cleckley psychopath,’ has been hugely influential. The now ubiquitous revised version (PCL-R) dominates the judicial, correctional and research identification of psychopaths, and is seen by its supporters as providing sufficient discrimination between psychopaths and the

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22 Robert D. Hare, Psychopathy, Affect and Behavior, in Psychopathy: Theory, Research and Implications for Society 105, 105 (David J. Cooke et al. eds., 1998).
23 J. Reid Meloy, Introduction to Section 1, in The Mark of Cain: Psychoanalytic Insight and the Psychopath 3 (J. Reid Meloy ed., 2001).
rest of the criminal and non-criminal population to facilitate compelling research into the
nature and causes of psychopathy. Crucially, the PCL-R inventory is claimed to
articulate two distinct ‘factors’: core personality (interpersonal and affective) items,
summarized by Hare as the “selfish, callous and remorseless use of others,” and social
deviance items registering a “chronically unstable and antisocial lifestyle.”

Neurological and otherwise psychological research on PCL-R diagnosed psychopaths
holds the promise of discovering the underlying causes of the personality formation, and
hence of the behavioral manifestations registered primarily on the second factor.


27 Cooke and Michie’s statistical analysis suggests that PCL-R scores reveal a three-factor structure, with interpersonal and affective elements separate factors, although they lose some of the criminal behavioral items in the analysis. David J. Cooke & Christine Michie, (2001). Refining the Construct of Psychopathy: Towards a Hierarchical Model, 13 Psychol. Assess. 171 (2001) Williams et al. respond with a four-factor model, reintegrating the lost items and differentiating Antisocial Behaviour from Erratic Lifestyle; supra note 26. Widiger and Lynam claim that psychopathy can be represented using McRae’s and Costa’s general ‘five-factor model’ of personality dimensionality. Thomas A. Widiger & Donald R. Lynam, Psychopathy from the Perspective of the Five-factor Model of Personality, in Psychopathy: Antisocial, Criminal and Violent Behaviors 171 (Theodore Millon et al. eds., 1998); and see Donald R. Lynam & Thomas A. Widiger, Using the Five-factor Model to Represent DSM-IV Personality Disorders: An Expert Consensus Approach, 110 J. Ab. Psychol. 401 (2001); Joshua D. Miller et al., Personality Disorders as Extreme Variants of Common Personality Dimensions: Can the Five-factor Model Adequately Represent Psychopathy?, 69 J. Pers. 253 (2001); Robert R. McCrae & Paul T. Costa, Validation of the Five-factor Model of Personality Across Instruments and Observers, 52 J. Pers. Soc. Psychol. 81 (1987); Personality in Adulthood (1990). Whatever the relative merits of these rival claims, the key point is that all these models incorporate PCL-R items that are not merely descriptions of censurable behavior, so that explanations of criminal behaviour with reference to psychopathy are vitiated by circularity. DSM IV-TR’s Antisocial Personality Disorder is more or less reduced to such behavioral items. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders. Fourth edition, Text Revision, 701-6 (2000). Unsurprisingly, the vast majority of adult male serious offenders meet the criteria for APD, but only about a quarter do for PCL-R psychopathy. Zinger, supra note 11, at 248-9.
Evidence that the ultimate cause of the psychopathic personality is genetic has been growing, with behavioral variations possibly deriving from biographical contingencies. The scientific research based on the PCL-R is broad, covering a range of psychological and criminological abnormalities. Especially compelling is a raft of neurological and neurophysiological research which identifies a range of distinct structural and functional abnormalities strongly associated with PCL-R psychopathy. Crucially, these are contingent experimental findings undisclosed in the PCL-R diagnostic criteria; while their association with, and in some cases causation of, the PCL-R psychological traits may seem intuitive, and the robustness of the findings tends to validate the Cleckley/PCL-R psychopathy construct, they are not artifacts of the symptomology and hence diagnostic selection.

The neurological and neurophysiological research has yielded a range of important findings. Perhaps the longest established claim, now advanced almost entirely through research using the PCL-R, is that psychopaths exhibit peripheral autonomic hyporeactivity to aversive events, which is related to chronic cortical underarousal, indicated by a range of measures such as “low resting heart rate, poor

29 Ironically, this is one of the advantages of the preliminary stage of the research; if there eventually emerge plausible neural markers of psychopathy which can become diagnostic criteria, the situation will be more complex.
31 Meloy, supra note 23, at 5-7.
skin conductance, and slow wave (theta) EEG activity, and intuitively accounting for psychopaths’ widely recognized failure to learn from aversive experience, including punishment, and their reckless impulsivity.

A more recent and now very influential line of research identifies psychopaths as having neurologically-structured essential low anxiety and a correlative ‘fear deficit’. Patrick’s research on the startle potentiation of PCL-R psychopaths and non-psychopaths in the presence of nominally aversive visual stimuli is argued to demonstrate a likely constitutional abnormality which further explains psychopaths’ inability to learn from aversive experiences. This deficiency is linked to limbic abnormalities, specifically dysfunction in the amygdala, which is a center of broader emotion processing, learning, reward and fear processing, as well as, more narrowly, the startle response. Additional limbic abnormalities have been found, including abnormal hippocampal lateral volume asymmetry, and lower affect-related activity across the limbic regions in a sample of

32 Id. at 6.
34 Patrick, supra note 33.
criminal psychopaths, compared to criminal non-psychopaths and non-criminals, as revealed by magnetic resonance imaging.\textsuperscript{37}

Abnormalities in the frontal lobes, which are responsible for the higher executive functions, including both prudential and moral decision-making, have also been established.\textsuperscript{38} These findings are based on a range of experimental procedures, including experimental task performance,\textsuperscript{39} and volumetric analysis.\textsuperscript{40} The orbito-frontal cortex, the functioning of which is closely tied to the amygdala, is especially implicated.\textsuperscript{41} This research seems to account for a number of cognitive and behavioral characteristics of psychopaths, such as their failure to pay attention to the consequences of their actions and their inability to resist socially unacceptable urges.\textsuperscript{42}

\textsuperscript{38} Blair, supra note 28, at 83-92; Blair, supra note 35, at 296-297.
\textsuperscript{40} Yaling Yang et al., Volume Reduction in Prefrontal Gray Matter in Unsuccessful Criminal Psychopaths, 57 Biol. Psych. 1103 (2005); and see Adrian Raine et al., Reduced Prefrontal Gray Matter Volume and Reduced Autonomic Activity in Antisocial Personality Disorder, 57 Arch. Gen. Psych. 119 (2000).
\textsuperscript{41} R. James R. Blair, Neurocognitive Models of Aggression, the Antisocial Personality Disorders, and Psychopathy, 71 J. Neurol. Neurosurgery Psych. 727 (2001); supra note 30; The Roles of Orbital Frontal Cortex in the Modulation of Antisocial Behavior, 55 Brain Cog. 198 ( 2004); Blair, supra note 28, at 138-139.
\textsuperscript{42} Blair, supra note 41 (2001; 2004). Recent neurological research on impulse control suggesting that impulsivity is a product of dysfunctions in discrete areas of the brain (dorsal fronto-medial cortex) is identified by the authors as indicating important avenues
Another line of research concerns abnormal lateral brain function asymmetries in PCL-R psychopaths.⁴³ Such abnormalities are often associated with broader developmental abnormalities.⁴⁴ These findings regarding psychopaths are based on a variety of dichotic listening and split visual field tasks, and electroencephalograph measures.⁴⁵ Differences between PCL-R psychopaths and non-psychopaths are especially marked in relation to language processing. In (right-handed) non-psychopathic subjects, the processing of language occurs primarily in the left hemisphere, whereas the processing of the “emotionality of language,”⁴⁶ along with other emotion functions, occur primarily in the right. In psychopaths, in experiments where direct comparison is made to non-psychopathic controls, this simple pattern does not hold. While some tests show a normal response for psychopaths, in others there is no cerebral asymmetry or reverse asymmetry for psychopaths. In a review of a wide range of studies, Hare concludes that “[p]sychopathy appears to be related to inefficient inter- and intra-hemispheric distribution of cognitive and affective resources that control behavior.”⁴⁷ These gross differences appear to be related to differences in the lateralization of overall brain function of research concerning “personality traits that have been related to antisocial and criminal behavior.” Marcel Brass & Patrick Haggard, To Do or Not To Do: The Neural Signature of Self-control, 27 J. Neuroscience 9141, 9144 (2007). Impulsivity, and the resulting imprudence, is one aspect of psychopathy that is most obviously and uncontroversially a mental and behavioural disability, rather than a mere mental and behavioural abnormality. Elliott, supra note 24, at 90 (1991).

⁴³ Blair, supra note 28, at 81-83.
⁴⁴ Psychopathy has been framed by some as a developmental disorder. Blair, supra note 35 (2006). It has been also been described as one whose manifestation as subject to childhood influences. Lisa A. Marshall & David J. Cooke, The Childhood Experiences of Psychopaths: A Retrospective Study of Familial and Societal Factors, 13 J. Pers. Disorders 211 (1999).
⁴⁵ Hare, supra note 22, at 124-8.
⁴⁶ Id., at 125.
⁴⁷ Id., at 128.
function, but also to emotion processing itself. Non-psychopaths show enhanced attention and cognitive elaboration for emotionally-charged, compared to emotionally neutral, words. Psychopaths show neither, appearing to process emotional words as if they were emotionally neutral. While psychopaths have been shown in some research to appraise emotional cues correctly, they do not use them as effectively. In addition, recent research using functional magnetic resonance imaging shows that PCL-R psychopaths are able to infer emotional states from storylines in which subjects’ intentions are fulfilled and unfulfilled, but that they do this using regions of the brain usually associated with the monitoring of outcomes rather than those associated with the vicarious emotional responses involved in empathic grasp of others’ emotional states. Outside their linguistic deficits, deficits in facial affect recognition have also been reported. These various findings are consistent with a range of research suggesting semantic and emotion identification and especially processing deficits in psychopaths, often related to abnormal hemispheric function. They are also intuitively consistent

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48 Id., at 124-6.
49 Id., at 113-7.
with psychopaths’ global emotional superficiality, their ability to predict and manipulate the emotional responses of others but inability to enter into others’ emotional lives, and particularly their facile use of emotional language to manipulate. The salience of emotion processing for moral reasoning has been a central question in moral psychology, and the relevance of psychopaths’ emotional deficits to their moral inadequacy has been given neurological demonstration.\footnote{Andrea L. Glenn et al., Is it Wrong to Criminalize and Punish Psychopaths?, 3 Emotion Rev. 302 (2011).}

Finally, an important line of psychological research, which has been connected to the neurophysiological findings, indicates a deficit in psychopaths directly relevant to their moral psychology. It is well established that non-psychopaths, including children and high-functioning autistic people, can distinguish between ‘moral’ and purely ‘conventional’ transgressions, and that psychopaths cannot.\footnote{R. James R. Blair, A Cognitive Development Approach to Morality: Investigating the Psychopath, 57 Cognition 1 (1995); Brief Report: Morality in the Autistic Child, 26 J. Autism Dev. Dis. 571 (1996); Moral Reasoning in the Child with Psychopathic Tendencies, 22 Pers. Ind. Diff. 731 (1997); supra note 35; Blair, supra note 53; Blair, supra note 28, at 57-59; Fine, supra note 1, at 431-2; Stephen Finlay, The Selves and the Shoemaker: Psychopaths, Moral Judgment, and Responsibility, 49 South. J. Phil., Spindel Supp. 125 (2011); Fox, supra note 1; Kennett, supra note 9; Levy, Responsibility, supra note 9, at 131; Shoemaker, supra note 1.} Non-psychopathic children, for instance, recognize that some rules, basically rules concerning the fair and non-cruel treatment of others, should be followed because they are ‘right’ or moral, even if they were to be told by an authority figure it is alright to break them, and that other rules should be followed only because the conduct is institutionally and authoritatively proscribed, that is, by convention. Psychopaths fail to make the distinction. Psychopaths and non-psychopaths rate similarly those transgressions identified by researchers as
moral in terms of permissibility, seriousness and modifiability, but psychopaths tend to rate conventional transgressions as less permissible, more serious and less modifiable, and hence more like moral transgressions, than non-psychopaths.\(^{56}\) This might suggest that psychopaths’ difficulty is that they cannot see what makes conventional transgressions conventional. However, psychopaths are much less likely than non-psychopaths to identify victim’s welfare as the justification for moral prohibitions, although they are somewhat more likely to invoke victim’s welfare for moral than conventional transgressions.\(^ {57}\) On the basis of this research, psychopaths seem to have at best limited grasp of what makes moral transgressions moral, and can thus be claimed to lack true moral understanding.\(^ {58}\) This finding is consistent with neurological research suggesting broad structural deficits in psychopaths’ moral reasoning capacities.\(^ {59}\)

Overall, psychopaths’ neurological and psychological abnormalities do seem best described as deficits; their peculiarities of moral psychology are manifest in inability to make key moral distinctions and their chronic imprudence frequently leads them to conflict and frustration. These abnormalities are broad, involving the functions of large sections of the brain, sometimes observable through magnetic resonance imaging technology, and the performance of a wide range of experimental tasks both more and less directly connected to psychopaths’ core predispositions and moral psychological failings, but all consistent with them. Whatever the causal mechanisms involved, the


\(^{57}\) Id. For a critical analysis of the assumptions at work here, see Shoemaker, supra note 1.

\(^{58}\) Glover reports research indicating less equivocally that “psychopaths have an unusually strong tendency to define wrong-doing in terms of law-breaking.” Jonathan Glover, Responsibility, 138 (1970).

\(^{59}\) Glenn, supra note 54.
neurological observations are not compatible with accounts of psychopathic thought and
action which dissolve them in voluntarism, where ‘psychopathic’ becomes a mere
descriptor of certain kinds of thought and action choices. The breadth, consistency and
structured nature of the observable neurological phenomena are inconsistent with them
being merely a brain activity ‘shadow’ of choices to think, feel or moralize in
psychopathic ways. When Bloom, in opposition to what he sees as Baron-Cohen’s
medicalization of evil in his concept of ‘empathy disorders,’ points out that “empathy
erosion can be the result of choice. Muggers, rapists, pedophiles and killers have
diminished feeling toward their victims, but this is often because they have decided to
ignore the suffering of others in pursuit of their own goals,” he is only identifying the
kind of empathy ‘deficit’ implicit in the actions, and we should not expect such decisions
to involve the neurological phenomena seen experimentally in psychopaths in subjects
who otherwise display normal neuro-structural functioning. There is no evidence, for
instance, that (PCL-R) non-psychopaths can replicate the ‘psychopathic’
neurophysiological patterns by choice (in the case of fear potentiation and the startle
response, they presumably would if they could, notwithstanding the capacity for

fearfulness being adaptive.\footnote{A lively debate has developed over whether psychopathy might have evolved as a
functional niche variation allowing a distinct route to reproductive success, in the right
environments or circumstances, that exploits the honest and trusting non-psychopathic
majority that exhibits empathic morality, which is itself broadly adaptive in a highly
social species; see Andrea L. Glenn et al., Evolutionary Theory and Psychopathy, 16
Integrated Evolutionary Model, 18 Behav. Brain Sci. 523 (1995), and responses. For an
influential rejection of the evolutionary argument, see Larry Arnhart, Darwinian Natural

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early childhood, before the individual can make the kind of life-orientation choices that would be consistent with ‘psychopathy’ being voluntary.

Moral psychology cannot be reduced to neuroscience. It involves, at its core, philosophical analyses of the nature of morality and of adherence to it. Still, the neuroscience and psychology of moral decision-making, and of psychopaths’ morality problems, provide salient insights and raise sharp questions for moral psychology which have the potential to shape its basic contours. The same neuroscience and psychology may eventually undermine the official view of the moral and criminal responsibility of psychopaths.

II. LEAD UP TO THE CURRENT META-ETHICAL DEBATE

There has been a conspicuous increase in academic moral and legal philosophical analysis of psychopathy since the early 1990s, when the findings of the current program of neuroscientific study of PCL-R psychopaths began to be widely known, with some of it directly related to the scientific findings.62 A lively debate about the criminal
responsibility of psychopaths had, however, already developed, especially following the potential for at least partial exoneration and mitigation for psychopathy in Anglo-American law with *Durham* (1954) and the UK Homicide Act (1957) and Mental Health Act (1959). This was at a time when the only reliable neurophysiological findings for diagnosed psychopaths were EEGs showing a statistically significant tendency for an infant-like preponderance of large slow waves, and, less directly, low skin conductance. Some of the most significant contributors modeled psychopathy as a strictly limited deficiency of conscience and tendency to wrongdoing, but many took a broader view based on Cleckley, or the influential model of William and Joan McCord, which included asociality, primitive desires, impulsivity and general lack of future orientation, aggression and poor tolerance of frustration, and highlighted lack of guilt and incapacity for real love.


63 Antony Flew, Crime or Disease? (1973); Glover, supra note 58; Vinit Haksar, The Responsibility of Psychopaths, 15 Phil. Q. 135, 135-6 (1965).

64 Emily Campbell, The Psychopath and the Definition of “Mental Disease or Defect” Under the Model Penal Code Test of Insanity: a Question of Psychology or a Question of Law?, 69 Neb. L. R. 190 (1990).


66 Cleckley, supra note 25.

The McCords advanced an argument for the non-responsibility of psychopaths as part of a broader deterministic rejection of the idea of criminal responsibility and the substitution of a purely therapeutic response to crime. This position was generally rejected by the other commentators, who split on the narrower question of psychopaths’ criminal responsibility. Wootton’s insistence on the circularity of a special psychological excuse for psychopaths, given her view of psychopathy and ‘psychopathic disorder’ as identified by mere wrongdoing, was echoed by Fox. It was supported by Flew, despite his broader understanding of psychopathy. Walker systematically rebutted Wootton’s influential argument, but provided no clear answer on psychopaths’ responsibility, instead highlighting the challenges posed to psychiatric testimony regarding psychopaths by legal doctrine that resists both determinism and shades of culpability. Later, Campbell argued for psychopaths’ rationality and endorsed the American Law Institute’s exclusion of personality disorders like psychopathy as a ground of non-responsibility. Similarly, Rudnick and Levy argued that all personality disordered offenders are rational and responsible.

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68 Arrington and Haskar claimed only to clarify the empirical conditions which would make psychopaths non-responsible, and to leave the question of their responsibility or non-responsibility to the side. Arrington, supra note 67; Haksar, supra notes 63 and 67.
69 See references to Wootton, supra note 65; Fox, supra note 65.
70 Flew, supra note 63.
72 Campbell, supra note 64.
In opposition, a number of philosophers argued that psychopaths lacked distinct capacities necessary for moral responsibility, generally a kind of rationality necessary for action-directing moral engagement. Elliott suggested that psychopaths are only partially responsible in so far as they lack deep moral and emotional involvement, but can understand simpler aspects of their actions, such as the infliction of physical pain.  

Others pushed for more complete exoneration. Glover proposed that psychopaths lack the capacity for moral understanding, and that their bad actions are thereby caused by an antecedent character flaw which creates unalterable, and therefore irrational, intentions. He developed a position on moral responsibility that, he claimed, avoids the excesses of Kant and Hume in the specific sense that it allows for rational reflection on ends. 

Glover’s brief treatment of psychopaths’ deficiencies emphasized their lack of moral imagination, which he directly tied to their diminished empathic capacities. Fingarette suggested that psychopaths cannot be judged on a continuum of moral responsibility because they do not care about moral responsibility, and Duff argued that psychopaths are not rational rebels who have “seen through the illusions” to which conformists are subject because they cannot grasp the forms of practical/moral life they fail to follow.

Arenella similarly placed psychopaths outside the moral community and therefore not

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75 Glover, supra note 58, at 90-94.
76 Id., at 137-8; 177-8.
77 Fingarette, supra note 67.
properly subject to blame and punishment.\textsuperscript{79} Murphy (1972) famously argued that psychopaths’ deficiencies make them inhuman in Kantian terms; that is, in terms of those human qualities Kant identifies as conferring human dignity and responsibility, although he frames this as a failure to be motivated by duty which he sometimes expresses in decidedly unKantian Motivational Externalist constructions: “[t]hough psychopaths know, in some sense, what it means to wrong people, to act immorally, this kind of judgment has no motivational component at all.”\textsuperscript{80} Smith, who views psychopaths as rational law-breakers in relation to a deviant value of immediate egoistical gratification, suggested that, while we idealize non-psychopathic, that is, Kantian, values, our practical lives are more aligned with Hobbesian or Machiavellian self-centeredness and self-aggrandizement, seen “in a desperate, caricatured form” in psychopathy.\textsuperscript{81}

While arguments for the legal or human rights of psychopaths mostly flow directly from the attribution of responsibility or non-responsibility, with retributive imprisonment and hospitalization the respective logical outcomes, Flew and Haksar countenanced preventive incarceration,\textsuperscript{82} and Murphy went as far as to suggest we owe psychopaths only the non-cruelty we owe to animals.\textsuperscript{83} Arenella insisted that psychopaths should not receive the death penalty.\textsuperscript{84}

\textsuperscript{79} Arenella, supra note 1.
\textsuperscript{80} Jeffrie G. Murphy, Moral Death: A Kantian Essay on Psychopathy, 82 Ethics 284, 286 (1972).
\textsuperscript{82} Flew, supra note 63; Haksar, supra note 67.
\textsuperscript{83} Murphy, supra note 80.
\textsuperscript{84} Arenella, supra note 1.
Some commentators developed arguments in general moral philosophy in part from their analyses of psychopathy. In contrast to the McCord’s therapeutic imperialism, Arrington promoted the salience of the capacity for choice and Flew resisted responsibility-negating determinism.\textsuperscript{85} Rudnick and Levy argued for irrationality, as opposed to psychiatrically induced ignorance or compulsion, becoming the foundation of attributions or non-responsibility.\textsuperscript{86} Glover constructed moral agency as a distinct ability.\textsuperscript{87} Duff and Elliott argued for affect, inseparable from cognition, being necessary to moral reasoning.\textsuperscript{88} Duff, along with Arenella, and Fingarette emphasized the way in which moral capacity is only coherently theorizable in relation to a living moral community with a distinct, if dynamic, form of life.\textsuperscript{89} The relevance of this for psychopaths’ moral responsibility is given, very clearly in Duff, in Motivational Internalism.\textsuperscript{90}

In these ways, the central dimensions of moral psychological analysis - Rationalism versus Sentimentalism, Motivational Internalism versus Motivational Externalism and, behind these, Determinism versus Voluntarism and Compatibilism versus Incompatibilism - already animated the considerations of psychopaths’ moral and

\textsuperscript{85} Arrington, supra note 67; Flew, supra note 63.
\textsuperscript{86} Rudnick and Levy, supra note 73.
\textsuperscript{87} Glover, supra note 58.
\textsuperscript{88} Duff, supra note 78; and see Commentary on “Psychopathy, Other-regarding Moral Beliefs, and Responsibility,” 3 Phil. Psych. Psychol. 283 (1996); Psychopathy and Answerability, in Responsibility and Psychopathy: Interfacing Law, Psychiatry, and Philosophy 199 (Luca Malatesti & John McMillan eds., 2010); Elliott, supra note 24 (1992).
\textsuperscript{89} Duff, supra note 78; Arenella, supra note 1; Fingarette, supra note 67.
\textsuperscript{90} See McMillan, supra note 9, at 193.
criminal responsibility or non-responsibility by the time the current neuroscience-informed debate was initiated.

III. CURRENT LINES OF THOUGHT

Awareness of the contemporary neuroscience of psychopathy has gradually influenced and fuelled the debate on the moral and criminal responsibility of psychopaths, with many writers making direct\textsuperscript{91} or indirect\textsuperscript{92} reference to its relevance for the issue, and others directly\textsuperscript{93} or indirectly\textsuperscript{94} disputing it. Naturally, it has taken some time for the scientific findings to color the philosophical debates, and some writers from the mid-90s up till the present have developed philosophical arguments without reference to the neuroscience, with many of these picking up on themes inaugurated by the previous generation and developing them with greater clarity and sophistication.\textsuperscript{95} As a result,

\textsuperscript{91} Blair, supra note 62; Freedman, supra note 7, Levy, Norms; Responsibility, supra note 9; supra note 61; Litton, supra note 5; Mei-Tal, supra note 1; Mobbs, supra note 62; Reimer, supra note 62..

\textsuperscript{92} Fine, supra note 1; Fischette, supra note 9; Walter Glannon, Psychopathy and Responsibility. 14 J. App. Phil. 263 (1997); The Mental Basis of Responsibility (2002); Moral Responsibility and the Psychopath, 1 Neuroethics 158 (2008); Robert D. Hare, Without Conscience. The Disturbing World of the Psychopaths Among Us (1993); Jeanette Kennett, Autism, Empathy and Moral Agency, 52 Phil. Q. 340 (2002); supra, note 9; Morse, supra note 1.

\textsuperscript{93} Gwen Adshead, Psychopaths and Other-regarding Beliefs, 6 Phil. Psych. Psychol. 41 (1999); Piers Benn, Freedom, Resentment, and the Psychopath, 6 Phil. Psych. Psychol. 29 (1999); Grant Gillett, Intentional Action, Moral Responsibility, and Psychopaths, in Responsibility and Psychopathy: Interfacing Law, Psychiatry, and Philosophy 283 (Luca Malatesti & John McMillan eds., 2010); Matravers, supra note 9; Mullen, supra note 21.

\textsuperscript{94} Nichols, supra note 9; Shaun Nichols & Manuel Vargas, How to Be Fair to Psychopaths, 14 Phil. Psych. Psychol. 153 (2008); Manuel Vargas & Shaun Nichols, Psychopaths and Moral Knowledge, 14 Phil. Psych. Psychol. 157 (2008).

\textsuperscript{95} Arnhart, supra note 61; Christopher Ciocchetti, The Responsibility of the Psychopathic Offender, 10 Phil. Psych. Psychol. 175 (2003); Some Thoughts on Diverse Psychopathic Offenders and Legal Responsibility, 10 Phil. Psych. Psychol. 1195 (2003); John Deigh, Empathy and Universalizability, 105 Ethics 743 (1995); Fields, supra note 1; Response to
there is now an array of subtle philosophical contributions, many, but not all, neuroscientifically inflected, in which psychopathy is used as a foil for broader philosophical arguments, and the broader philosophical positions are used to underpin arguments about the moral and criminal responsibility or non-responsibility of psychopaths. These various positions are further tied to approaches to the human rights of psychopaths and the protection of the public in every conceivable combination. Overall, and despite the permutations regarding these issues, the impact of the neuroscientific findings has been to strengthen demands that psychopaths be regarded as having limited or no moral and criminal responsibility.

The issue of whether autonomous individual choice, here as a criterion of responsibility, is compatible with actions being caused or, more comprehensively, determined, seems close to settlement. The Compatibilist view has largely triumphed, as

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96 These philosophical debates about psychopathy have doubtless been encouraged by the inauguration of two academic journals in which the issues have a comfortable home; Philosophy, Psychiatry & Psychology in 1994, and Neuroethics in 2008.
the concept of ‘free will’ has receded, and the focus shifted to “how we form and respond to desires, beliefs, reasons, and intentions and how we express intentions in actions,” or, more specifically, “the ability to grasp and apply moral reasons, and to govern one’s behavior by the light of such reasons.”

This focus on the mental capacities necessary for morally responsible action is framed by some commentators as concerning psychopaths’ functioning within relationships, and more specifically their capacity to rationalize key aspects of relating. Ciocchetti argues that “psychopaths do not display an enduring understanding of how their acts alter the way they are related to others over time”, and that this renders them frequently non-responsible, in part because they cannot grasp punishment which, at its core, serves to ‘right’ wronged relationships. They are responsible only for crimes in which their limited understanding plays some part, such as when they intentionally manipulate others. Fields construes the issue more broadly, claiming that the core disability leading to moral non-responsibility is psychopaths’ inability to form other-regarding moral beliefs, a deficit presumably evident as much in their manipulations as their impulses. (He proposes they lack criminal responsibility for the quite different reason that their criminal conduct cannot be averted by the threat of punishment, a view of the purpose of punishment in sharp contrast to Ciocchetti’s.)

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97 See, for instance, Glannon, supra note 92, at 5 (2002); Stephen J. Morse, Determinism and the Death of Folk Psychology: Two Challenges to Responsibility from Neuroscience, 9 J. L. Sci. Tech. 1 (2008); Wallace, supra note 8, at 1 (1994); c.f. Arrington, supra note 67, at 79.
98 Glannon, supra note 92, at 5 (2002).
99 Wallace, supra note 8, at 1 (1994).
100 Ciocchetti, Responsibility, supra note 95, at 181.
101 Fields, supra note 1.
psychopaths’ non-responsibility in terms of an inability to exercise a coherent scheme of
evaluation of their desires, which prevents their grasping such self-evaluations in others
and hence others’ personhood. Morse claims Litton’s position targets a quality that
does not define psychopathy and he recreates the argument made earlier by Duff that the
psychopath “is not a member of the moral community, is not the person with whom
moral engagement is possible.”

In a variation on the relational question, a number of commentators go back to
Strawson’s unique framing of the determinism/voluntarism issue, in which the objective
approach to understanding behavior is analyzed as an atypical practice in a field normally
categorized by ‘participant reactive attitudes’ such as forgiveness, anger and
resentment, rather than as a metaphysical alternative to ‘free will.’ This focus on
attitudes in practice suggests the key questions regarding psychopaths’ responsibility are
whether it is appropriate to have such attitudes toward people who lack moral
understanding, and whether it is appropriate to have such attitudes towards people who
cannot form these same attitudes, considerations which lead the above cited authors to
find psychopaths always or frequently non-responsible. Others argue we should not or
cannot completely avoid forming participant reactive attitudes towards psychopaths.

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102 Litton, supra note 5
103 Morse, supra note 1, at 209.
104 Strawson, supra note 6.
105 Arenella, supra note 1; Fischette, supra note 9, at 1465-9; Wallace, supra note 8, at
155-66; 177-8 (1994).
106 Benn, supra note 93; Ciocchetti, Responsibility, supra note 95; Fischette, supra note 9,
at 1465-9.
107 Ronald B. de Sousa & Douglas Heinrichs, Will a Stroke of Neuroscience Ever
Eradicate Evil?, in Responsibility and Psychopathy: Interfacing Law, Psychiatry, and
Philosophy 299 (Luca Malatesti & John McMillan eds., 2010); Elliott, supra note 74;
Gillett, supra note 95; and see supra note 93.
while Greenspan suggests psychopaths are themselves capable of some participant reactive attitudes, both arguments implying their at least partial responsibility.108

Psychopaths’ inability to cogently rationalize their relations with others is often implicit in arguments the primary focus of which is whether or in what sense psychopaths’ moral and conative deficiencies are or are not deficiencies of rationality. The rationality question is in many ways the fulcrum of the current debates, more so than the broader issue of their inter-personal relating. This is true as much of those who integrate the neuroscience as for those who rely on more traditional arguments, with the responsibility or non-responsibility of psychopaths, and even the wider philosophical understanding of morality and responsibility, turning on the answers. I identify four general moral psychological approaches through which the issue of whether psychopaths have the necessary responsibility-bearing capacities is argued, and which are, in turn, illuminated by the psychopathy example: 1. Rationalist Motivational Internalism; 2. Sentimentalist Motivational Internalism; 3. Conduct Rationality Holism; and 4. Motivational Externalism.

In all these approaches to moral and criminal responsibility, the capacities required for responsibility are specified, and the question becomes whether psychopaths lack the specified capacities to a sufficient degree to be non-responsible. This is not, however, quite the issue at law when criminal non-responsibility is raised. In cases before the courts, the prosecution is primarily concerned to demonstrate that the accused had the requisite *mens rea* for the offenses charged, so that the focus is on the mental elements of the acts in question with the capacities necessary for responsibility assumed,

108 Greenspan, supra note 95, at 420-422.
and to disprove the defense contentions regarding diminished or absent capacities. In this way, the contrast is between the mental elements of acts and the possible mental incapacities of legal subjects. This approach tends to inculpate psychopaths. Despite some arguments for psychopaths’ moral and criminal responsibility, the focus in moral and legal philosophy on the capacities required for responsibility in general subtly shifts the ground at the outset.

I will treat each in turn.

A. Rationalist Motivational Internalism

Rationalist Motivational Internalism models moral understanding as a strictly cognitive process that motivates moral conduct. Here, lack of rational moral understanding can provide the basis for non-responsibility. This position is properly associated with Kant, although Wallace presents a position with strong affinities to Rationalist Motivational Internalism, but disavows the Kantian tag.\textsuperscript{109} Developing a Strawsonian account of our sentiments regarding those we hold responsible,\textsuperscript{110} he insists that the requirement for responsibility is that the subject is rational in a general sense. Responsibility inheres in the ability to grasp and apply moral reasons, and to control one’s behavior in light of this. Psychopaths may be able to parrot moral obligations but they cannot grasp them, or think intelligently about the application of moral reasons to new situations. As a result, they

\textsuperscript{109} Wallace, supra note 8 (1994; 2006).
\textsuperscript{110} See above: 30-1.
are not morally responsible.\textsuperscript{111} His Compatibilism leads him to reject Kant,\textsuperscript{112} despite many similarities.

The most unequivocally Kantian approaches find psychopaths responsible.\textsuperscript{113} Maibom’s explicitly Kantian argument to save Rationalism is that while psychopaths have deficits in sentiment, empathy is not the basis of morality,\textsuperscript{114} and their moral deficiencies are associated with deficits of rationality also associated with their imprudence.\textsuperscript{115} This last claim introduces an element of Conduct Rationality Holism but, because these morally-relevant rationality problems are not, in her view, extreme, and are anyway not evident in their most heinous crimes, psychopaths remain morally and criminally responsible. With Maibom’s somewhat diluted Moral Rationalism similar to Conduct Rationality Holistic arguments for psychopaths’ non-responsibility, there is a lot riding on her ungenerous reading of the research suggesting psychopaths’ attitudinally and behaviorally significant neuro-psychological impairment. Zaviliy similarly adopts a Kantian approach, which he links to Kohlberg’s developmental moral psychology.\textsuperscript{116} He (reluctantly) accepts evidence of psychopaths’ diminished empathy, but insists that empathy is not decisive for morality and, rejecting arguments for partial responsibility,

\textsuperscript{111} Wallace, supra note 8, at 177-8 (1994); at 128 (2006).
\textsuperscript{112} Wallace, supra note 8, at 12-15 (1994)
\textsuperscript{113} Kennett’s claim that “[r]ationalists and sentimentalists provide very different accounts of moral judgment but they are agreed that psychopaths do not make moral judgments and it seems to me they each think psychopaths cannot make moral judgments” is broadly correct, but ignores the positions I am analyzing here. Kennett, supra note 9, at 246, Emphasis in original.
\textsuperscript{114} Maibom, supra note 4, at 175.
\textsuperscript{115} Maibom, supra note 95 (2005; 2010).
\textsuperscript{116} Zaviliy, supra note 95, at 96-7; Lawrence Kohlberg, The Claim to Moral Adequacy of a Highest Stage of Moral Development, 70 J. Phil. 630 (1973); Moral Stage and Moralization, in Moral Development and Behavior 84 (Thomas Lickona ed., 1976).
finds psychopaths fully responsible. In both Maibom and Zaviliy, responsibility-relevant moral grasp is reduced to purely cognitive elements, and psychopaths are argued to have it. Here, the capacities for responsibility - the simplest modes of cognition - are sufficiently thin that they shift the balance of argument ‘back’ towards the rationality issues which favor findings of guilt for psychopaths in trials; knowing the nature and quality of their acts and that they are generally regarded as wrong, and hence their capacity to develop the mental elements of the offenses charged.

A cornerstone of Zaviliy’s argument is his treatment of evidence regarding autism; because high-functioning autistic people can develop and adhere to moral reasoning, but are understood to lack empathy to an extent similar to psychopaths, empathy cannot, he argues, be the basis of moral adherence and psychopaths’ deficiency cannot be a basis for non-responsibility.117 Kennett takes an initially similar tack, insisting that the evidence from autism and psychopathy supports Kantian Moral Rationalism over Humean Moral Sentimentalism.118 She does not, however, completely neglect the empathic dimension, suggesting psychopaths’ empathy deficit might negatively affect their development of capacities for rational moral agency,119 going so far as to conclude that “perhaps we should not move too fast to embrace the rationalist Kantian view of moral autonomy and moral agency on the evidence from autism,”120 and later asserting only that “[t]he data on early development suggests that the capacities focused upon by rationalists are as critical to human moral agency and moral judgment as

117 Zaviliy, supra note 95, at 95-6.
118 Kennett, supra note 92.
119 Id., at 356-7.
120 Id., at 356.
the more basic capacity to recognize and respond affectively to distress in others which we share with many other animals.”¹²¹ She further proposes, like Maibom, that psychopaths’ bad behavior is a product of their imprudence and disorganization.¹²² In these ways, she embraces elements of both Sentimentalism and Conduct Rationality Holism. While her Kantian argument seems to imply the moral and criminal responsibility of psychopaths, the other elements work against it, and Kennett, writing with Fine, argues they lack moral understanding, moral agency and moral responsibility.¹²³ Kennett’s position, like other purportedly and self-described Kantian positions in the debate about psychopaths,¹²⁴ turns out to deviate from Rationalist Motivational Internalism.

Neither Zaviliy nor Kennett succeed in showing that Sentimentalism is wrong. That high-functioning autistic people can identify the difference between moral and conventional transgressions,¹²⁵ and adhere to moral and conventional rules, is evidence of a specific kind of moral grasp; one turning on rational consistency, a symptomatic preoccupation of high-functioning autistic people, and fairness in this sense.¹²⁶ This is

¹²¹ Kennett, supra note 9, at 253.
¹²² Kennett, supra note 92, at 354-5.
¹²³ Fine, supra note 1, at 432-3.
¹²⁴ Fischette treats Fingarette’s and Morse’s positions as Kantian, although both emphasize the affective aspects of moral understanding. Fischette, supra note 9, at 1451-8; Herbert Fingarette, The Meaning of Criminal Insanity (1972); Stephen J. Morse, Culpability and Control, 142 U. Penn. L. R. 1587 (1994); Excusing and the New Excuse Defenses: A Legal and Conceptual Review, 23 Crime Just. 329 (1998); Crazy Reasons, 10 J. Contemp. Leg. Iss. 189 (1999); Uncontrollable Urges and Irrational People. 88 Vir. L. R. 1025 (2002). I have already described how Murphy’s famous “Kantian Essay” which concludes that psychopaths are, in Kantian Terms, sub-human, adopts a Motivational Externalist frame. Murphy, supra note 80; and see above: 25.
¹²⁵ See above: 18-19.
¹²⁶ Baron-Cohen, supra note 60, at 95-123. Roskies, in a paper calling for conceptual and empirical clarification in the debate about empathy and morality, gives a speculative
not necessarily the richest or most common kind of moral appreciation, and it cannot be dispositive of the relevance of empathy deficits for the moral and criminal responsibility of psychopaths; if psychopaths lack the rational consistency and prudence for this thin, ‘Kantian’ moral grasp and agency, and the mental resources for an alternate, sentimentalist kind that guides the rest of us, psychopaths’ empathic limitations would still prove decisive.

Deigh adopts an explicitly Kantian meta-ethical approach, focused on rational moral consistency, but suggests, somewhat like Fine and Kennett, that, as a matter of psychological fact, the empathic capacities psychopaths lack are necessary for moral relating; an intriguing attempt to have his Kantian cake and eat it. The limitations of Moral Rationalism conceded developmentally by Fine and Kennett and psychologically by Deigh are crucial for the debate about psychopaths; while their rationalist arguments may rebut an extreme sentimentalist moral psychology in which morality is not at all a

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explanation of the differences between autism and psychopathy which is more generous to the moral sense of autistic people: “It may be that psychopaths fail to behave morally not because they lack empathy, but because their deficit affects neural hardware important both for empathy and moral cognition, while the deficit in autism spares the circuits in moral cognition, but disrupts an input to empathy-related areas (one common theory is that theory-of-mind deficits underlie the empathy disorder of autistic subjects, whereas emotional deficits underlie the psychopathic phenotype.” Adina L. Roskies, A Puzzle About Empathy, 3 Emotion Rev. 278, 279 (2011); and see Alice P. Jones et al., Phenotypic and Aetiological Associations Between Psychopathic Tendencies, Autistic Traits, and Emotion Attribution, 36 Crim. Just. Behav. 1198, 1199-1200 (2009). This view would highlight, rather than obviate, the significance of sentiment in the potential non-responsibility of psychopaths. Blair et al. emphasize the differences in quality of empathic deficit found between psychopathic and autistic people, and their possible neuro-anatomical correlates. Blair, supra note 28, at 149-50. This would also allow for the significance of affective deficits in the potential non-responsibility of psychopaths. This suggestion would imply that high functioning autistic people are morally, and should be criminally, non-responsible for actions where their moral sense would provide little guidance.

Deigh, supra note 95, at 749-54.
matter of rational reflection, and the associated ‘expressive’ view of moral claims, these are not essential components of the arguments regarding the salience of psychopaths’ empathic deficits for their moral and criminal non-responsibility.

B. Sentimentalist Motivational Internalism

In Sentimentalist Motivational Internalism, full moral understanding requires both cognitive and affective faculties, with such understanding providing the motivation for moral conduct. This does not, then, entail a claim that moral judgment is purely affective, but it does take affect to be more salient than in Deigh’s and Kennett’s developed positions. Absence of the capacity for moral understanding in this sense generates moral and criminal non-responsibility. The affective element refers to specific kinds of feelings; not to feelings of distaste from the commission of moral violations *per se* (‘Kantian’ moral sentiments), or narcissistic emotions like anger derived from personal frustration, but to empathy, especially triggered by others’ distress, even more especially by others’ distress one has caused. Deficiency in these emotional capacities was at the core of Cleckley’s understanding of psychopathy developed in the 1940s, and Sentimenalist Motivational Internalism has long been applied to psychopaths to demonstrate their moral non-responsibility, despite their superficial understanding of

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moral norms.\textsuperscript{131} It offers a promising account of moral understanding, agency and responsibility, albeit one in which high-functioning autistic people prove an exception.

Sentimentalist Motivational Internalism is not a psychological construct - it is a meta-ethical theory about the nature of moral understanding that it is affective as well as cognitive and that it is conduct-motivating - but it chimes with some of the psychological facts. The psychological evidence includes demonstrations of the role of affect in the moral development,\textsuperscript{132} moral reasoning\textsuperscript{133} and violence inhibition\textsuperscript{134} of normal subjects, and of their disruption in psychopaths.\textsuperscript{135} There is also the evidence of psychopaths’ difficulty distinguishing moral from conventional transgressions,\textsuperscript{136} the most direct evidence of their weakness of moral grasp as opposed to moral motivation, which can be styled as reflecting the limits of moral understanding absent cruelty-avoiding empathy (or high-functioning autistic people’s asocial hyper-rationality).

Linking the claim for the salience of sentimental, and specifically empathic, faculties with the concision of Motivational Internalism, Sentimentalist Motivational Internalism allows for parsimonious but psychologically rich analysis of the broader

\begin{footnotesize}
\textsuperscript{131} See, for instance, Duff, supra note 78; Glover, supra note 58.
\textsuperscript{132} Blair, supra note 35; supra note 28.
\textsuperscript{133} Blair, supra note 35; Glenn, supra note 54, at 303. Mikhail makes the clever argument that what I have called the ‘Kantian’ feelings of moral distaste would explain neuroscientific evidence showing activation of emotion-processing centers during moral reasoning in normal subjects, thereby saving rationalist moral psychology, but this argument is rendered implausible by much of what we know about psychopaths, including the coexistence of their observable empathic and moral failings, and their difficulties differentiating ‘moral’ and ‘conventional’ transgressions. John Mikhail, Emotion, Neuroscience, and Law: A Comment on Darwin and Greene, 3 Emotion Rev. 293 (2011)
\textsuperscript{134} Blair, supra note 55 (1995).
\textsuperscript{135} Id.; supra note 35; Blair, supra note 28.
\textsuperscript{136} Blair, supra note 55 (1995); Blair, supra note 28.
\end{footnotesize}
meta-ethical issues and the question of psychopaths’ moral, and hence criminal, responsibility. The alignment of neurological and psychological findings and meta-ethical formulae, while not a logical necessity of meta-ethical reasoning, produces an especially compact argument about the moral and criminal responsibility of psychopaths and non-psychopaths. Given the neurophysiological and psychological evidence about psychopaths, it facilitates a straightforward explanation of psychopaths’ immoral and heinously illegal conduct, and a clear position on their moral responsibility; that they are not, or are only partially, responsible because their immoral acts spring directly from their lack of affectively-charged moral understanding.

Along these lines, Morse\textsuperscript{137} and Fischette\textsuperscript{138} argue that emotions, and specifically empathy, play a part in moral reasoning and hence moral conduct, a broad approach Vincent claims is “the developing consensus within the new field of moral cognition.”\textsuperscript{139} As a result of their affective limitations, which both Morse and Fischette link to some basic neuroscientific findings psychopaths, lack a key element of rationality.\textsuperscript{140} For Morse, this affects a relatively narrow sphere of moral, as opposed to executive, rationality, within which, “when they want to violate the rights of others, they lack the capacity to access the best reasons - conscience and empathy - not to do so.”\textsuperscript{141} Fischette provides an account in which affect-based moral reasoning plays a broader role, being central to cognition, organizing salience and disposition (a partly motivational issue), and

\textsuperscript{137} Morse, supra note 1.
\textsuperscript{138} Fischette, supra note 9.
\textsuperscript{139} Vincent, supra note 8, at 202 n. 11. Emphasis in original.
\textsuperscript{140} Morse, supra note 1; Fischette, supra note 9, at 1434.
\textsuperscript{141} Morse, supra note 1, at 211.
thus the “construction of reality.” With his narrower framing, Morse argues that psychopaths are generally not responsible because they lack the relevant moral rationality. Fischette concludes that psychopaths should not be held responsible for impulsive actions because they lack the capacities of moral self-reflection that prevent them, but that they could be responsible for offenses “where emotional capacities are unnecessary to the fairness of attributions of responsibility,” in effect, ‘conventional’ crimes.

A number of writers seem to drift towards Sentimentalist Motivational Internalism despite themselves. I have already described how Kennett, defending Rationalism within a Motivational Internalist frame, has increasingly conceded the relevance of empathic sentiment. Maibom, still one of the more forceful defenders of Rationalism, has similarly come to acknowledge the need to accommodate, rather than merely dismiss, the research on sentiment, concluding that “[p]sychopaths suffer both from deficits in moral emotions and deficits in practical reason. Either deficit is likely to impact their moral competence profoundly.” In assessing the moral responsibility of psychopaths, Levy aims to completely sidestep whether Motivational Internalism is true on the ground that, absent a criterion for the attribution of moral belief uncontaminated by behavioral indices, experimental and other empirical evidence can always be interpreted within Internalist and Externalist frames, “with internalists arguing that

142 Fischette, supra note 9, at 1475.
143 Id., at 1482.
144 See especially Kennett, supra note 129. Here Kennett is defending Rationalism against Nichols’ argument that Rationalism fails on both conceptual and empirical grounds. Nichols, supra note 9.
145 Maibom, supra note 95, at 239.
psychopaths could not really have moral beliefs, because they were not appropriately motivated, and their opponents arguing that because psychopaths were not motivated by their moral beliefs, internalism must be false.”\textsuperscript{146} He suggests, however, that psychopaths’ inability to make the moral/conventional distinction gives a ‘direct’ answer to the question of their moral responsibility because, while psychopaths “know, at least typically, that their actions are widely perceived to be wrong… they are unable to grasp the distinctive nature and significance of their wrongness,”\textsuperscript{147} a deficit obviously implicated in their heinous wrongdoing. His sentimentalist working of the moral/conventional distinction evidence, intended to provide a more direct basis for the moral responsibility assessment, leads directly to the claim that psychopaths lack responsibility-grounding moral understanding,\textsuperscript{148} a position especially congenial to Sentimentalist Motivational Internalism, given that psychopaths’ failure to be normatively motivated by their superficial grasp of norms is rendered indecisive.

Sentimental Motivational Internalism chimes with the established argument of Arenella, Duff and Fingarette that moral understanding and agency require deep moral engagement in a given form of life, including its moral and interpersonal sentiments, Duff’s Sentimentalist Motivational Internalism tied especially directly and influentially to his emphasis on moral community.\textsuperscript{149} With fellow-feeling the driver of moral

\textsuperscript{146} Levy, Responsibility, supra note 9, at 131.
\textsuperscript{147} Id. at 132.
\textsuperscript{148} Id., at 131-2; and see Levy, Norms, supra note 9; supra note 61.
\textsuperscript{149} Arenella, supra note 1; Duff, supra note 78; Fingarette, supra note 67. Fox et al., developing a neurologically-informed Sentimentalist argument for partial responsibility, somewhat similarly argue that “psychopaths appear to exist outside the moral community implicit in the deontological, and thus retributivist, account of the duties of ordinary persons.” Fox, supra note 1. However, they are not determined Motivational Internalists; thus: “affect appears to play a special role in reinforcing the sorts of other-regarding
development and reasoning, Sentimentalist Motivational Internalism nicely captures the internalization of richly textured moral foundations by socialization in a home culture, so that profound, albeit often unreflective, moral understanding bespeaks moral appreciation in an encultured sense quite different from the rational recognition of the Categorical Imperative. Here, Sentimentalist Motivational Internalism turns on inter-personal and cultural sociality, underpinned by the capacity for empathic connection, forged in relations with members of a community defined by some form of proximity and shared moral intuitions.  

In these various ways, the significance of affect for moral reasoning and judgment is more and more securely established, and attempts to save Rationalism are only at all successful when they make striking concessions to Sentimentalism, and are reduced to rebuttals of extreme versions of Sentimentalism that bear little relation to the neuroscience and psychology of moral decision-making in psychopaths and non-psychopaths underpinning contemporary Sentimentalist Motivational Internalism.

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behavior involved in ordinary moral judgment. Affect also appears to reinforce the sort of behavioral dispositions which ensure that, when someone has the capability to conceive of moral choices, she proceeds to make good on those obligations in her actions.”

150 It is a widely recognized human ‘failing’ that our empathic senses are at their most active in relation to people we see as part of our, rather than another’s, group. See especially Claus Offe, Democracy Against the Welfare State? Structural Foundations of Neoconservative Political Opportunities, 15 Political Theory 501 (1987).
C. Conduct Rationality Holism

As I have already indicated, some commentators argue that emotional capacities are essential to moral reasoning while going beyond the Sentimentalist Motivational Internalist script. In the approach I am calling Conduct Rationality Holism, empathy-based moral grasp and guidance are integrated with broader elements of rationality in organizing moral behavior, so that psychopaths’ limited moral grasp, reckless impulsivity and imprudence, failure to learn from aversive experience, and absence of stable goals, along with their neurological substrates,\(^\text{151}\) entail non- or partial moral and criminal responsibility.

Like Fischette,\(^\text{152}\) Glannon argues that emotion and reason are indissolubly linked in producing cognition and action, including at the neural (limbic) level.\(^\text{153}\) The Categorical Imperative is thus not the deepest form of moral knowledge because it is purely cognitive. Similar to the earlier position of Elliott,\(^\text{154}\) Glannon has psychopathy involving imprudence and irrationality, along with the empathy deficits that lead to incomplete moral understanding. Indeed, he highlights research on psychopaths that suggests a close link between moral and prudential reasoning. Psychopaths are, he concludes, partially responsible because, while they lack prudence and empathy, do not have full moral understanding, and cannot respond to moral reasons, they do not “lack

\(^\text{151}\) Mobbs et al. provide an avowedly monist materialist neuroscience of psychopaths’ behavior which hints at non-responsibility while it skips the rationality question altogether. Mobbs, supra note 62.

\(^\text{152}\) See above: 39-40.

\(^\text{153}\) See references to Glannon supra note 92; and see Haji, supra note 95.

\(^\text{154}\) Elliott, supra note 24 (1991; 1992); supra note 74; Harold, supra note 74.
moral understanding altogether.”¹⁵⁵ Litton similarly argues that psychopaths lack empathy and hence deep moral understanding, but that “psychopaths’ moral deficits are symptomatic of more general rational deficits.”¹⁵⁶ These compromise a broad array of self-evaluative capacities, all adding up to a marked deficiency of rational self-governance, to the extent that psychopaths’ behavior is often unintelligible. Pressing the argument for non-responsibility further than Elliott and Glannon, he concludes that psychopaths lack all responsibility.

Blair, the leading researcher on moral/conventional transgression differentiation,¹⁵⁷ adopts a similar position without quite such a clear ingredient of empathy deficit-driven failure of moral understanding, at least in its philosophical sense. He argues on the neurological and psychological evidence that psychopaths have impaired decision-making,¹⁵⁸ especially, but not only, with respect to reactive violence, and are thus less responsible than non-psychopaths. Blair uses his analysis of psychopaths’ weakness of moral/conventional transgression differentiation to argue for a weakness in a putative Violence Inhibition Mechanism, in which empathy is central,¹⁵⁹ and his finding that psychopaths are much less likely than non-psychopaths to justify moral prohibitions on the ground of victim’s welfare is consistent with this. Blair later develops an Integrated Emotion Systems model,¹⁶⁰ a neuro-behavioral model in which

¹⁵⁵ Glannon, supra note 92, at 56-7 (2002).
¹⁵⁶ Paul Litton, Psychopathy and Responsibility Theory, 5 Phil. Compass 676, 683 (2010); supra note 5.
¹⁵⁷ Blair, supra note 55 (1995; 1996; 1997); Blair, supra note 53.
¹⁶⁰ Blair, supra note 35 (2011); and see supra note 30.
other-orientation operates through reinforcements provided by others’ emotional expressions and moral norms are reinforced through the acquisition of emotional valence, both processes diminished in psychopaths. In these ways, Blair addresses psychopaths’ empathy deficit and its relation to broader decision-making impairment, leading to the conclusion of non-responsibility.

Freedman and Verdun-Jones, forge the most direct medico-legal link between psychopaths’ neurologically-based empathy, fear and learning deficits and their antisocial behavior, and argue that psychopaths can be considered less than fully responsible on a plausible reading of the M’Naghten Rule.161

Alongside these ‘standard’ versions of Conduct Rationality Holism, a number of contributors adopt broadly similar lines. Duff acknowledges psychopaths’ inadequate moral grasp, imprudence, and the relationship between them,162 but strongly emphasizes their moral over their prudential deficiencies as counting toward their non-responsibility. Fields explicitly rejects Duff’s contention that psychopaths lack moral understanding,163 but instead emphasizes psychopaths’ inability to form other-regarding moral beliefs as excusing them morally, while claiming their imprudence negates the deterrent purpose of punishment, which excuses them criminally.164 Haji’s arguments for psychopaths’ partial

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161 Freedman, supra note 7. Hare, on the other hand, suggests that, in practice, the issues of deep moral understanding and the ability to control behavior are not, and should not be, relevant to legal responsibility; psychopaths are legally responsible because, in the straightforward sense required by the criminal law, they know what they are doing. Hare, supra note 92, at 143. Hare’s argument begs the questions raised in the challenge to M’Naghten-based responsibility reasoning seen in most of the arguments for psychopaths’ non-responsibility.
162 See especially Duff, supra note 89 (2010).
163 Fields, supra note 95, at 291; and see Duff, supra note 89 (2010).
164 Fields, supra note 1; and see above: 29.
non-responsibility incorporate their lack of moral understanding and imprudence,\textsuperscript{165} despite his contentions that deep moral understanding and commitment are not part of most people’s moral compliance,\textsuperscript{166} and that psychopaths are responsible for the actions they know are legally wrong. In an argument ambiguous as to whether psychopaths should be held morally or criminally responsible, Gillett uses Conduct Rationality Holist arguments to show that psychopaths, narcissitic to the point of imprudence, cannot act responsibly.\textsuperscript{167} Fine and Kennett (2004) suggest that psychopaths are not morally responsible because they lack moral understanding and agency, in part as a consequence of empathic limitations,\textsuperscript{168} but, writing separately, Kennett (2002) argues that psychopaths’ bad behavior is a product of their impulsiveness and disorganization, rather than their empathic limitations (“reason has only a tenuous grip on him”\textsuperscript{169}), an argument she suggests provides a defense for Kantian moral rationalism because it shifts the ground of psychopaths’ amoralism away from sentimental and towards rational deficits.\textsuperscript{170} In this argument, the issues of empathic failure and moral understanding are marginalized within an approach that emphasizes executive rationality, but it would be unfair to say they are decisively rejected, and in a subsequent piece she focuses almost entirely on psychopaths’ moral irrationality.\textsuperscript{171} In these ways, Kennett’s arguments for a weak Moral

\textsuperscript{165} Haji, supra note 1; supra note 95.
\textsuperscript{166} Haji, supra note 1, at 122-5.
\textsuperscript{167} Gillett, supra note 93.
\textsuperscript{168} Fine, supra note 1.
\textsuperscript{169} Kennett, supra note 92, at 355.
\textsuperscript{170} See her critique of Nichols, supra note 9 in Kennett, supra note 129.
\textsuperscript{171} Kennett, supra note 9.
Rationalism, her having conceded the significance of affect for the development of moral rationality,\textsuperscript{172} come close to ‘adding up’ to Conduct Rationality Holism.\textsuperscript{173}

The excusing components of a Conduct Rationality Holist finding of non-responsibility in psychopaths have been challenged. We have already seen how Maibom and Zaviliy, the strictest Rationalist Motivational Internalists, reject both the argument that empathic failure is necessary for moral understanding and the claim that psychopaths are sufficiently irrational in a purely cognitive sense to negate moral and legal responsibility.\textsuperscript{174} In so far as the arguments for Sentimentalist Motivational Internalism have been shown to be resistant to the critiques of Maibom and Zahiliy,\textsuperscript{175} that element of Conduct Rationality Holism is equally immune. A number of commentators argue that psychopaths’ impulsivity or imprudence by themselves make them non-responsible for at least some of their crimes.\textsuperscript{176} Their inability to learn from aversive experience, in particular, directly undermines the capacities for rational self-governance necessary for moral responsibility, while their propensity for impulsive reactive violence suggests wholesale lack of self-control in these situations. That Maibom and Zahiliy find them sufficiently rational for responsibility derives, not just from their exclusion of empathy.

\begin{itemize}
\item \textsuperscript{172} See above: 34-5.
\item \textsuperscript{173} See especially Kennett, supra note 129 at 75-79.
\item \textsuperscript{174} Maibom, supra note 95 (2005; 2008); Zaviliy, supra note 95. In addition, some who argue for psychopaths’ non-responsibility on the ground of their specifically moral irrationality reject the claims that psychopaths have a significant deficit in executive rationality; see Fox, supra note 1.
\item \textsuperscript{175} See above: 33-6.
\item \textsuperscript{176} Blair, supra note 62; Fields, supra note 1; Finlay, supra note 55, at 130-132; Fischette, supra note 9; Litton, supra note 5; and see Luca Malatesti & John McMillan, Conclusions: Psychopathy and Responsibility, a Rejoinder, in Responsibility and Psychopathy: Interfacing Law, Psychiatry, and Philosophy 319, 321 (Luca Malatesti & John McMillan eds., 2010).
\end{itemize}
from moral rationality, but from their very narrow reading of the rationality requirements for responsibility, a reflection of the their all but exclusive focus on Kantian moral understanding. Maibom, in particular, concedes emotions are involved in practical reasoning,\(^{177}\) that psychopaths have numerous defects of rationality outside the moral sphere,\(^{178}\) and even that these defects do somewhat impair moral rationality.\(^{179}\)

Nichols, on the other hand, making the argument that psychopaths undermine Moral Rationalism because their moral deficits are sentimental, thereby denies that psychopaths have a global rationality deficit that might be related to moral judgment.\(^{180}\) Nichols and Vargas’s argument that excusing psychopaths would wholly undermine blame and punishment relies on a reading of moral and prudential rationality requirements at least as narrow as those of Maibom and Zahiliy,\(^{181}\) and close to Shipley and Arrigo’s bald assertion that, despite his or her impulsivity, “a psychopathic person is in touch with reality.”\(^{182}\) To make their point, Nichols and Vargas argue that a crime-causing tumor would only excuse criminal conduct if it “bypasses reasons entirely.”\(^{183}\) This argument restricts the deficits relevant to non-responsibility so fiercely that the position approaches Incompatibilist voluntarism. That psychopaths’ diverse offending behavior is a product of their distinct and demonstrable deficiencies in moral and prudential reasoning is increasingly well established. Given that such reasoning -

\(^{177}\) Maibom, supra note 95, at 229-30 (2010).
\(^{179}\) Maibom, supra note 95, at 235-6 (2010).
\(^{180}\) Nichols, supra note 9; and see Vargas, supra note 94.
\(^{181}\) Nichols, supra note 94.
\(^{183}\) Nichols, supra note 94, at 154.
rational or rational-sentimental, strictly moral or moral and prudential - is thereby
deficient, even if not entirely bypassed, moral and legal responsibility can be diminished.
Recognizing the responsibility-argumentative potency of this nexus does not violate
Compatibilism, given the demonstration that these moral and prudential processing
abnormalities are deficiencies.

Perhaps the most straightforward challenge to the argument for psychopaths
demonstrating broad, responsibility-negating irrationality is Schopp and Slain’s point that
while psychopaths are caught and punished a great deal, they also get away with a great
deal of crime, this demonstrating their unimpaired practical reasoning. While
psychopaths’ fearlessness may allow them to get away with many crimes, this simply
does not negate the irrational self-destructiveness of their criminality; it is grossly

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184 Schopp, supra note 8, at 251. This argument suggesting that all or most psychopaths
are successful, despite appearance radicalizes the claim that there are ‘successful
psychopaths;’ callous, remorseless and always calculating individuals who avoid
criminality or being caught for their crimes, and who are irrelevant to the argument for
Conduct Rationality Holism because they simply do not exhibit the requisite range of
symptoms to be considered psychopathic for these purposes. Poythress and Hall make an
argument with respect to ‘successful psychopaths’ that there might be callous and
remorseless individuals who lack impulsivity and who are consequently less criminal and
more successful than their callous/impulsive counterparts, but this leaves unresolved the
conceptual and neurological question of whether such ‘successful psychopaths’ are
profitably described as psychopaths at all, and the nature of the affective/moral and
prudential challenges of conventionally understood and identified psychopaths
unilluminated. Norman G. Poythress & Jason R. Hall, Psychopathy and Impulsivity
Reconsidered, 16 Aggress. Viol. Behav. 120, 129-31 (2011). (See Fox, supra note 1 on
successful criminal psychopaths whose success is determined by family connections).
Peters’ similar attempt to show that impulsivity is not implied in psychopathy is based on
the possible existence of remorseless but unimpulsive, as well as remorseful but
impulsive, individuals, and the likely neurological correlates of such conditions. David C.
Peters, Personality Disorders and Biosocial Trait Theories: The Argument for Radical
Legal Reform, 28 Behav. Sci. L. 289, 297 (2010). Again, this does not undermine
Conduct Rationality Holist claims about psychopaths, as conventionally understood and
identified.
imprudent - the most manifest product of their failure to learn from aversive experience -
to attempt crimes with the frequency and recklessness characteristic of psychopaths. 185
While such a defect of rationality must be shown to negate responsibility, that it is a
defect of rationality is straightforward.

Conduct Rationality Holism, as worked through and applied to the example of
psychopaths’ moral and legal responsibility, offers a consistently rationality-based
approach to responsibility tied to a broad but logically coherent, as well as
psychologically and neurologically defensible, empathy-inflected construal of rationality.
The approach is helpful in handling the range of psychopaths’ antisocial behavioral
repertoire, for instance, their propensity to both reactive and instrumental violence. 186 It
illuminates the correctional challenge posed by psychopaths, explaining their inability
both to be deterred by the threat of punishment and to develop empathy through
participation in rehabilitative programming.

Conduct Rationality Holist arguments can be used piecemeal, to pick off different
arguments for psychopaths’ responsibility, showing that psychopaths do lack moral
understanding or executive rationality. More important, however, is the integrated
Conduct Rationality Holist argument for the global irrationality and non-responsibility of
diagnosed psychopaths, albeit that, even here, the ultimately unitary deficit applies

185 This irrationality is at the heart of the argument that psychopathy is not evolutionarily
adaptive; see above: 20 n. 61. Arnhart, defending Darwinian ethical naturalism against
the charge that psychopaths prove its falsity, and concluding that most psychopaths are
not responsible, argues that psychopaths lack deep social desires and that their actions are
therefore self-destructively capricious: “They cannot think clearly about practical
decisions because they cannot feel strongly about the consequences of their decisions.”
Arnhart, supra note 61, at 225. Emphases in original.
186 Blair, supra note 62.
differently to different kinds of transgressions. The links between moral and prudential reasoning can be modeled intuitively, with empathic other-orientation checking impulsivity and giving crucial clues to likely action outcomes, so that psychopaths’ narcissism underlies both their amorality and imprudence.\textsuperscript{187} This is consistent with the broader claim that emotional capacities are required for effective executive rationality, especially through the organization of salience.\textsuperscript{188} As we have seen, these connections can also be drawn experimentally and neurologically, with key neural, and especially limbic, structures involved in these multiple functions showing abnormalities in PCL-R diagnosed psychopaths.\textsuperscript{189} If psychopaths’ range of symptoms and criminal versatility derive from a tightly integrated neuro-psychological pathology, the argument for their global moral and legal non-responsibility, or at least for their non-responsibility for all but non-impulsive conventional violations, is enhanced, and in a manner consistent with Compatibilism.\textsuperscript{190} Less ambitiously, Conduct Rationality Holism shows that to regard psychopaths as people who merely lack moral grasp is to misunderstand their disorder, and the potential responsibility-diminishing elements of the disorder.

\textit{D. Motivational Externalism}

\textsuperscript{187} Gillett, supra note 93; Glannon, supra note 92 (1997; 2008).

\textsuperscript{188} António Damasio, Descartes’ Error: Emotion, Rationality and the Human Brain (1994); Fischette, supra note 9.

\textsuperscript{189} See especially above: 14-15.

\textsuperscript{190} Like lupus erythematosus, where an underlying pathology causes a wide range of symptoms, and also a diversity of symptom profiles among sufferers, psychopathic traits are manifest in different configurations and concentrations in different people, but, unlike lupus, there are many subjects who manifest the broad range of deficits associated with psychopathy; indeed, this is the basis of their PCL-R diagnosis.
A final approach, Motivational Externalism, challenges Conduct Rationality Holism, as well as both forms of Motivational Internalism. According to Motivational Externalism, the motivation to follow moral precepts is not entailed by moral understanding. Rather, moral action involves, in addition to moral reasoning, some kind of desire which is not reducible to the moral reasons. Moral motivation is usually modeled as sentimental, so that empathy gives the motivation to follow moral precepts while understanding of moral precepts is strictly cognitive. In line with this view, it can be argued that psychopaths understand moral precepts and frameworks perfectly well - indeed, bright psychopaths’ facile mobilization of moral justifications and induction of others’ guilt suggest they understand them very well indeed - but lack the requisite sentimental motivation to be moral actors. From this position, it is sometimes argued that psychopaths are morally and legally responsible because they are morally rational, and sometimes that they are not responsible because of their motivational deficiency.

Given that Motivational Externalism seems most nicely and straightforwardly to capture psychopaths’ glib facility for moral suasion and manipulation, and avoids awkward demonstrations that psychopaths do not ‘really’ understand moral precepts, it might be an attractive approach to the moral psychology of psychopaths. Consistent Motivational Externalist positions regarding psychopaths are, however, rare, although some commentators use formulations which incorporate ‘external’ motivational elements with other kinds of moral psychological arguments or simply cover both bases.191 The difficulty in always discerning precisely what is being argued in this regard is partly a

191 E.g. Benn, supra note 93; Fox, supra note 1; Glannon, supra note 92 (2002); Greenspan, supra note 95; McMillan, supra note 9.
product of the complexity of motivational issues relevant to psychopaths and their moral and criminal responsibility or non-responsibility. In order to clarify Motivational Externalism with respect to psychopaths, I will distinguish three different meanings of ‘motivation’ relevant to the topic.

Motivation\textsubscript{1}, the core meaning in Motivational Externalism, refers to the motivation to follow moral precepts. At it most narrow, it refers only to the motivation to follow whatever moral precept is under consideration in the analysis, typically deriving from empathic attunement to affected subjects, but it can carry the broader meaning of a general motivation to ‘do the right thing’, where the relevant sentiment might only be a ‘Kantian’ distaste for wrongdoing itself. In relation to psychopaths, motivation\textsubscript{1} is just the way of framing the claim that psychopaths understand moral precepts and frameworks, but are simply disinclined to follow them. This is not itself a psychological claim about psychopaths, contrasted to non-psychopaths - it concerns the nature of moral precepts, frameworks, and their understanding and adherence - but it can be linked with psychological claims, to the effect that, while psychopaths’ empathy deficit does not prevent moral understanding, it does preclude moral motivation. Motivation\textsubscript{1} is not, however, an element of a broader motivational psychology.

Motivation\textsubscript{2} refers to whether, and to what degree, actions are purposeful. Motivation in this sense is an aspect of the rationality of conduct, and its variation can be caused by neurological and otherwise psychological conditions. Psychopaths, with their tendency to impulsive, imprudent actions, often in pursuit of trivial goals - what Cleckley describes as their “inadequately motivated antisocial behavior,”\textsuperscript{192} can be said to have a

\textsuperscript{192} Cleckley, supra note 25, at 343.
propensity for under-motivated actions, a claim consistent with Conduct Rationality Holism.

Motivation refers to levels of action-impetus. These levels are subject to neurological and otherwise psychological disruption, especially in affective disorders. In this vein, we talk about people suffering from major depressions, or depressive phases of bipolar disorder, as having low motivation because they are able to accomplish very little, even when they are aware of plausible reasons for action. Such states can figure as exceptions within a Motivational Internalist framework because the plausible reasons to which a depressed person might fail to respond can be moral reasons. By antimony, we could talk about people experiencing the manic phases of bipolar disorder as having high motivation, although this is not the idiomatic construction. These manic phases are characterized by euphoria, grandiosity, agitation, irritability, and consequent chaotic activity in which implausible goals and strategies are forcefully pursued, at least temporarily. By extension, we could frame psychopaths’ grandiosity and especially their boredom proneness (neurologically, their cortical under-arousal) which leads directly to highly active, shameless, thrill-seeking behavior, often without tangible goals or effective follow through, as a form of motivational dysregulation, giving psychopaths high motivation, another claim consistent with Conduct Rationality Holism.

Motivation, embodying Motivational Externalism, is a construction opposed to the Sentimentalist Motivational Internalism incorporated in Conduct Rationality Holism. In the lead up to the current debate, there are striking examples of moral motivation expressed in this way. Murphy identified psychopaths as lacking a Kantian sense of duty,

193 Fisher, supra note 9, at 129.
framing this as a specifically motivational, rather than rational, deficit; a not entirely Kantian formulation. 194 Fingarette, while acknowledging psychopaths have a wide range of deficits, including lack of sincere love emotions or remorse, and capricious, self-destructive wrongdoing, argued that psychopaths lack moral responsibility merely because they do not care about it. 195

In the current debate, Motivational Externalism has largely been abandoned, but motivation is sometimes invoked in positions that are broadly or somewhat in tune with Sentimentalist Motivational Internalism or Conduct Rationality Holism. Thus, Glannon rejects Rationalist Motivational Internalism in favor of a position in which “moral knowledge and the associated notion of normative competence consist of interacting cognitive, affective and volitional capacities,” 196 and in which psychopaths are receptive to moral reasons in a shallow way, but unable to respond to them. This, along with psychopaths’ executive irrationalities, 197 leads him to conclude psychopaths are partially responsible. Haji’s arguments for psychopaths’ partial responsibility similarly turn on both lack of moral understanding and imprudence, 198 but he frames part of this in terms of ‘motivational’ aspects of rationality. 199 Fox et al. argue for psychopaths’ partial moral and criminal responsibility on the basis of their lack of moral understanding, but also acknowledge in passing their failure to be motivated by reasoned judgments they have the capacity to form. 200 Benn, who identifies psychopaths’ imprudence and empathy deficit-

194 Murphy, supra note 80; and see above: 25.
195 Fingarette, supra note 67.
196 Glannon, supra note 92, at 58 (2002).
197 See above: 43-4.
198 Haji, supra note 1; supra note 95; and see above: 45-6.
199 Haji, supra, note 96, at 268-9.
200 Fox, supra note 1.
driven lack of moral understanding as underpinning their non-responsibility, also states that “they appear unable to be gripped by moral concerns; such considerations, to which they can sometimes pay competent lip service, do not motivate them or engage them emotionally.”

Greenspan similarly links the view that psychopaths, despite their linguistic facility with moral precepts, “lack emotions based on empathy with their victims, and hence an important source of moral motivation” with a recognition that they “exhibit a cluster of impairments undermining rationality.” These impairments include an inability to sustain recognition of their interests over time, and an inability to learn from experience. Benn deploys Strawson to argue that psychopaths lack moral responsibility because we should not form reactive participant attitudes to those incapable of properly forming them themselves, while Greenspan argues on Strawsonian grounds for psychopaths’ at least partial responsibility.

Can motivation be separated from moral understanding in a way that enhances the appraisal of the moral responsibility of psychopaths, and do the hybrid formulations contribute to meta-ethical analysis beyond their Sentimentalist Motivational Internalist or Conduct Rationality Holist elements? We saw how Levy argues that empirical evidence regarding psychopaths cannot resolve the Motivational Internalist/Externalist controversy, but since psychopaths do lack moral understanding, the issue of a separate motivational deficit working despite moral understanding becomes redundant. A similar point is made meta-ethically by Nichols, who argues for Sentimentalist

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201 Benn, supra note 93, at 35.
202 Greenspan, supra note 95, at 417.
203 Id., at 419.
204 See above: 40-1.
Motivational Internalism against Motivational Externalism, concluding that “psychopaths are commonly regarded as rational individuals who really make moral judgments but are not motivated by them. Recent evidence provides good reason to think that the common conception of psychopaths is wrong, for the capacity for moral judgment is apparently seriously disturbed in psychopaths.”

Kennett, in support of her modified Rationalist Motivational Internalism, also makes a similar point; psychopaths “do not make genuine moral judgments. Therefore, the absence of moral motivation in the psychopath cannot count against internalist claims about the nature of moral judgment.”

Underpinning Levy’s, Nichols’ and Kennett’s arguments is the closeness of fit of the experimental evidence regarding psychopaths’ deficiencies of moral understanding and their sometimes facile moral manipulations, which indicate they are not entirely devoid of moral understanding but specifically fail to grasp the distinctively moral content of moral reasoning. This evidence trumps the strongest card of Motivational Externalism with respect to psychopaths.

Alone the redundancy and evidence fit problems, Motivational Externalism can be vacuous. Where motivation refers only to the motivation to follow a particular precept under consideration, there is no desire corresponding to moral motivation missing

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205 Nichols, supra note 9, at 301.
206 Kennett, supra note 9, at 249.
207 Were psychopaths’ moral reasoning faculties intact, it is difficult to see how a defect in motivation could excuse psychopaths. Schopp and Slain expose the central conceptual weakness of such an argument for psychopaths’ non-responsibility; given that motivation is not here a psychological concept, but is just the way of framing the claim that psychopaths understand moral precepts but are disinclined to follow them, then surely all criminals are in the same boat because they were unmotivated to obey the law in this sense during their crimes; indeed, according to Schopp and Slain, deterrence is precisely aimed at “those who lack inhibitory interests or principles of their own.” Schopp, supra note 8, at 265.
in the transgressor. Thus, where we say of a murderer that she understood murder is wrong but failed to be motivated by this understanding, the absent desire - not to murder - is entirely bound up with understanding murder is wrong. If, on the other hand, we avoid this problem by giving motivation a looser sense of a general desire to act morally, so that she desires to murder, and fails to check this with a countervailing generalized desire to ‘do the right thing’, we create an implausible moral psychology for the vast majority of examples of moral rectitude; moral actors mostly follow moral precepts because they take them to indicate the appropriate things to do - indeed, use them as prime indicators of the appropriate things to do - and only concern themselves with ‘doing the right thing’ when confronted by a clash of moral imperatives that must be carefully resolved or by amoral desires that threaten exceptionally to overwhelm moral directives, such as in potential cases of ‘crime of passion’ murder or where an easy opportunity for undetectable theft presents itself. Psychopaths certainly show no compunction in taking such opportunities, and are likely unconcerned by clashes of moral imperatives - both situations explicable by lack of moral understanding - but the vast majority of their transgressions involve situations where non-psychopaths would follow the relevant moral precept with neither recourse to a sense of themselves as moral actors nor reflection on what is the right thing to do in the circumstance.

Motivational Externalism is not without its felicities and Motivational Internalism not without its problems. Internalism does not seem to capture the common experience

\[208\] Finlay, analyzing Shoemaker’s critique of arguments predicated on psychopaths’ deficit in moral and conventional transgression discrimination, demonstrates the great difficulty of conceptually disentangling the cognitive and conative elements relevant here. Finlay, supra note 55; Shoemaker, supra note 1.
of understanding but criticizing or rejecting a moral precept or framework, in which one grasps in a way that might be unavailable to psychopaths that a precept or framework has moral content and thus makes moral demands, but remains morally unmoved and unmotivated by it. Motivational Internalism seems to model this experience as failure of moral grasp. On the other hand, Internalism captures very nicely the common experience of eventually ‘seeing’ or ‘getting’ a moral precept that obtains in a culturally alien community with which one has become more familiar, such as where a personal appraisal that would not be an insult in one’s own culture comes to feel insulting when directed at a member of an alien culture in which it is an insult. In this way, our expanding moral grasp parallels our broader inter-cultural experiences; it is not unlike learning to appreciate an initially disconcerting culturally alien music or cuisine. A distinctly moral experience of this kind does not necessarily lead one to endorse the moral precept - if such experiences always did, they would eventually force the experienced inference of an extreme moral relativism that would itself strip all moral precepts of their moral dimension - but it takes one beyond a dry cognitive recognition that the appraisal is insulting to another, and that abstract multiculturalism dictates a symmetrical avoidance of insults, and allows one to vicariously experience, and see and thus be motivated by, the ‘wrongness’ of the insult itself. By highlighting the role of socialization in a moral community, Duff’s (1977) Sentimentalist Motivational Internalism properly reflects these experiences of ‘re-socialization’, and highlights that precisely the kind of moral grasp thrown into relief by ‘getting’ an alien moral precept is unavailable to psychopaths.

\[209\] Duff, supra note 78; and see above: 41-2.
Motivation\textsuperscript{2} is invoked in a number of commentaries. Before the current debate, Glover, who advanced a form of Motivational Internalism and holds psychopaths not responsible on the ground of their actions’ causation beyond their control, quoted Craft identifying in psychopaths “‘a lack of drive or motivation,’” referring to their lack of overall plans and follow through, and their background purposelessness.\textsuperscript{210} He also quoted Neustatter stating “the essential characteristic of psychopaths is ‘an inability ever to resist the impulse or temptation of the moment.’”\textsuperscript{211} thereby introducing another kind of under-motivation\textsuperscript{2}. Glover did not, however, make use of motivation\textsuperscript{2} in his argument for psychopaths’ non-responsibility. A number of current contributors make similar points, but make them responsibility-relevant. Mei-Tal links elements of Sentimentalist Motivational Internalism with motivation\textsuperscript{2} to argue for psychopaths’ non-responsibility for moral transgressions and \textit{mala in se} crimes, claiming that: “The emotions that make human life coordinated and purposeful are absent or lack affect for the psychopath.”\textsuperscript{212} Fischette provides an account of rationality in which emotions orientate motivational dispositions, and psychopaths affective deficiencies leave them with diminished rationality and hence non-responsibility for some transgressions, especially impulsive ones.\textsuperscript{213} Haji constructs a theory in which moral responsibility can be undermined by motivational states which are not subject to normative control, including impulsivity, and


\textsuperscript{211} Glover, supra note 58, at 137. Walter L. Neustatter, Psychological Disorder and Crime (1957; cited by Glover as 1953).

\textsuperscript{212} Mei-Tal, supra note 1, at 106.

\textsuperscript{213} Fischette, supra note 9, at 1471-80.
argues that psychopaths exhibit such limitations, leading to their partial responsibility.\textsuperscript{214} In these contemporary theories, psychopaths’ motivation\textsubscript{2} deficiencies are a way of framing Conduct Rationality Holism, and executive rationality is compromised to a sufficient extent that moral and criminal responsibility are diminished. Despite the framing of these claims in terms of a separation of moral rationality and motivational components, these are not varieties of Motivational Externalism.

Psychopaths’ high motivation\textsuperscript{3} has played little part in the debates over psychopaths’ moral and legal responsibility, unsurprising given that neither non-delusional affective disorders nor the frequency and intensity with which individuals pursue stimulating activity have generally been regarded as relevant to moral and legal responsibility.\textsuperscript{215} Understood as an element of the broader moral and executive irrationality captured by Conduct Rationality Holism, however, the sheer kineticism of some psychopaths’ criminality might feature as an excusing element. Impulsivity, one of the most straightforwardly excusing elements of psychopaths’ cognitive-affective frailties in that immediate, primitive amoral desires overwhelm psychopaths’ superficial moral orientation and incoherent executive prioritization, is especially salient, reflecting both their high motivation\textsuperscript{3} and under-motivation\textsuperscript{2}.

Explaining psychopaths’ moral weaknesses in Motivational Internalist, rather than Externalist, terms better reflects the neurological and psychological evidence, including their incapacity to distinguish moral and conventional transgressions, and ties closely to

\begin{footnotesize}
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\item \textsuperscript{214} Haji, supra note 95, at 268-271.
\item \textsuperscript{215} Kennett does indicate in passing that “[d]epressed … people may be incapable of responding to the normative force of reasons without denying them.” Kennet, supra note 129, at 72.
\end{itemize}
\end{footnotesize}
their motivation$_2$ and motivation$_3$ deficits through the integrated cognitive-affective neuroscience of Conduct Rationality Holism to produce a coherent Compatibilist account of psychopaths’ defective moral psychology.

CONCLUSION

I have analyzed the broad outlines of moral psychological theorizing about psychopaths and made a case for an integrated theory of their responsibility-relevant disabilities in which their emotion and information processing deficits and motivational (but not moral motivational) dysregulation are shown to be entwined. The interaction of sentimental and cognitive functions, and of the dysfunctions evident in psychopaths, have been traced neurologically, psychologically and conceptually. This theory provides a compact explanation of psychopaths’ amorality, impulsivity and general imprudence, all of which contribute directly to their criminality, as well as their propensities for apprehension and conviction, capturing psychopaths’ neural and psychological complexity without conceptual incoherence.

This explication of psychopaths’ disabilities secures a Compatibilist demonstration of their moral non-responsibility across the full range of their transgressions; their inadequate moral grasp deprives them of the primary guidance which keeps non-psychopaths from serious moral violation while their related impulsivity and imprudence prevent their rational calculation of the costs and benefits of more conventional rule following and breaking. The breadth of their moral non-responsibility undermines the rationale for their criminal responsibility. Current criminal justice
practice, in which psychopathy diagnoses aggravate sentencing and release decisions, relies on their being held morally and criminally responsible, blameworthy and punishable, as well as socially dangerous, a proposition ironically endorsed, at least by default, by those concerned with the abrogation of human rights where incarceration is extended by civil commitment of the non-psychotic dangerous.\textsuperscript{216} With their blameworthiness compromised, the convenient alignment of retribution and public protection that holds for the sentencing of the majority of serious offenders breaks down. Correctional sentencing cannot be alternately justified by deterrence or psychological rehabilitation, to which psychopaths are unresponsive. This leaves public protection as a stand alone justification for the incarceration of psychopaths, a position already advanced by a number of commentators who consider them non- or only partially responsible.\textsuperscript{217} Murphy’s argument that psychopaths are less than human, reliant on an idiosyncratic rendering of Kant, should not be seen as providing any external support for our commitment to public protection in the incarceration of psychopaths.\textsuperscript{218} Crucially, we are yet to give due legal consideration to the implications of psychopaths’ diminished blameworthiness, and the degree to which the law and the criminal justice system can make peace with the developing understanding of psychopathy will be a measure of the coherence of the criminal law. What an alternate, strictly protective approach to non-


\textsuperscript{217} Arnhart, supra note 61; Elliott, supra note 24 (1992); Fine, supra note 1; Fox, supra note 1; Freedman, supra note 7; Haji, supra note 1; Levy, Responsibility, supra note 9; Litton, supra note 5; supra note 156; Morse, supra note 1.

\textsuperscript{218} Murphy, supra note 80.
blameworthy psychopathic offenders might look like is an interesting question, but given current political and public appetites, it is likely a strictly academic one, in the most derogatory sense. Turning it into a genuine academic question is an important moral and legal philosophical project.

The neuroscience of psychopathy demonstrates the relevance of neuro-biology for attributions of moral and criminal responsibility, clarifying our understanding of responsibility-relevant mental incapacities, and especially their non-volitional causation. Drawing out the significance of neuroscience and experimental psychology for broader meta-ethical issues of moral psychology is much trickier. That psychopaths are marked by an interconnected set of neurologically trackable affective and cognitive deficits which account for their offending and more broadly antisocial behavior is suggestive of a Conduct Rationality Holist theory of moral understanding, compliance and responsibility in normal subjects, but such a theory is far from fully articulated, let alone settled. Existing approaches such as Blair’s Violence Inhibition Mechanism and Integrated Emotions Systems models219 are starts in terms of normal psychology, but they are only starts, and need to be mapped onto the established issues in philosophical moral psychology.

The broad relationship between analytic moral psychological distinctions, hypothetical psychologies and Conduct Rationality Holist neuroscience requires consideration. We can coherently ask whether lack of moral understanding in the sense given in Sentimentalist Motivational Internalism, standing alone and absent deficiencies in executive rationality, should diminish or extinguish moral responsibility, but this

219 Blair, supra note 35; supra note 55.
analytic question might involve an hypothetical psychology that is wholly implausible. A moral psychology that runs counter to human psychological possibility can only have a narrow analytic potential for consideration of issues of moral and criminal responsibility, of the same kind as when we deploy robots or people subject to mind control in our thought experiments. It may turn out that to imagine someone without moral understanding but with no other deficit is to misunderstand the relationship between moral understanding and executive rationality.

Similarly, while psychopaths’ deficient moral understanding obviates resolution of the Motivational Internalism/Externalism issue in their case, this does not settle whether it can make sense to talk of non-psychopaths fully grasping moral precepts but failing to be motivated by them. Issues such as the critical rejection of moral precepts and frameworks, and coming to see the moral force of alien moral precepts and frameworks suggest there are many possible routes to conceptual and empirical consideration of this issue which could be tied to a Conduct Rationality Holist neuroscience.

In the end, we must always come back to scientifically plausible psychological types in our general moral psychological formulations and our considerations of moral and criminal responsibility and non-responsibility. This aim determines whether analytic distinctions and thought experiments are useful, and the uses to which they can be put. Whether we are talking about a narrow theory applied to psychopaths or a general theory of moral understanding and compliance or of moral responsibility and non-responsibility, any theory which creates the expectation of attitudinal, behavioral and neurological patterns that are not found must be wrong.