

**PSYCHOPATHY AND THE INSANITY DEFENSE:
A GROUNDED THEORY EXPLORATION OF PUBLIC PERCEPTION**

BY

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Dedication

This thesis is dedicated to Mitchell, the love of my life. Thank you for all the love and support throughout this writing process, all the pep talks, and helping me fight procrastination! You are my best friend, my favorite study buddy, and my best accountability partner! Without your positive attitude and encouragement, I may not have gotten through my numerous late night writing sessions.

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Abstract of the Thesis

Psychopathy and the Insanity Defense:

A Grounded Theory Exploration of Public Perception

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Modern advances in neuropsychology have demonstrated the significance of a psychopathic individual's impairment and the moral deficit present in psychopathy. These findings have brought increasing support towards allowing psychopathic individuals to rightly utilize the insanity defense, however public opinion has not seemed to change alongside the research. This study examined the public's perception of psychopathy and the insanity defense, as well as the perceived merit of allowing psychopathic individuals to utilize the insanity defense. Semi-structured interviews were conducted using grounded theory methodology to develop a theory regarding the modern perception of psychopathy and the insanity defense, as well as the perception of whether psychopathic individuals qualify for the insanity defense. Perceptions of a psychopathic individual ranged from a charming serial killer, such as Ted Bundy, to a reclusive individual with psychotic tendencies. The insanity defense was most commonly perceived as overused and a cop-out, albeit necessary in some situations. Support was found both for and

against psychopathic individuals utilizing the insanity defense, respectively based on either perceived impairment or a need for them to be punished for their offenses.

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Chapter 1

The Problem Statement

With the many neuropsychological advances in the field of psychopathy, the understanding of criminal responsibility for psychopathic offenders has changed. The major moral and neurological impairments to psychopathic individuals may lead to a new understanding of psychopathy qualifying under the insanity defense. However, as the public perception of psychopathy has not seemed to evolve alongside these discoveries, neither has the perception of the criminal responsibility of psychopathic individuals. Without an understanding of the current perception and eventually a shift in public perception, a change in the public policy to allow psychopathic offenders to utilize the insanity defense is unlikely to occur.

Problem Statement

Despite the level of knowledge regarding the impairment of psychopathic individuals in regards to moral reasoning, public perception seems to treat psychopathic individuals as morally competent individuals, completely capable of being held criminally responsible, although this perception has not been directly studied.

Purpose of the Study

The purpose of the current study is to evaluate the public's perception of both psychopathy in general and whether psychopathic individuals should qualify for the insanity defense. Modern advances in neuropsychology have demonstrated the significance of the psychopathic impairment and the moral deficit present in psychopathy. These findings should have brought increasing support towards allowing psychopathic individuals to rightly utilize the

insanity defense, however public opinion has not been evaluated regarding psychopathy. This study will attempt to determine public opinion in light of the modern research.

Research Questions/Objectives

Within this research, the perception of both psychopathy and the merits of allowing it as a disorder will be examined. Three research questions form the basis of this study: what is the public's overall perception of psychopathy, what is the public perception of the insanity defense, and how do individuals perceive the possibility of allowing psychopathic individuals to qualify for the insanity defense. The results in this study should provide a new theory and understanding of each of the topics in question.

Delimitations

Due to limited time and resources and well as a desire to not retain full anonymity, no identifying participant data was collected and participants were only interviewed once each.

Assumptions

This study assumes that psychopathic individuals do indeed satisfy the requirements for the ALI's insanity defense standard and, therefore, determining the public perception is important to synthesizing public opinion and policy with the psychological research.

Definition of Key Terms

Aversive Arousal. Aversive arousal is the body's ability to anticipate negative stimuli and adjust accordingly (Blair et al., 2005).

Considered Recognition. Considered recognition is the mental process by which an individual is able to be aware of his or her neurological deficits.

Durham (Product) Rule. The Durham Rule, or Product Rule, is an insanity standard that considers any criminal behavior that is a product of a mental illness to qualify one for insanity (Durham v. United States, 1954).

Empathy. Empathy is the process through which an individual is able to perceive and feel the pain or emotions of others and internalize them, in such a way as to direct future behavior (Hoffman, 2001).

Executive Functioning. Executive functioning processes include memory, attention, decision-making, planning capabilities, and considered recognition (Sifferd & Hirstein, 2013). These processes take place in the frontal lobe and can be hindered by damage to that area or a grey matter deficiency (Blair, 2005).

Insanity Defense. The insanity defense standard utilized, unless another is specifically mentioned, is the American Legal Institute's Model Penal Code Standard, stating, "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law (American Legal Institute, 1985, § 4.01)."

Instrumental Aggression. Instrumental aggression is unprovoked aggression used for the purpose of personal gain or to achieve some end (Anderson et al., 2003).

Irresistible Impulse Test. The Irresistible Impulse Test was created as an addition to the M'Naghten standard of insanity, to allow for instances where an individual may not be able to control their behavior and conform it to the constraints of the law.

M'Naghten Standard. The M'Naghten Standard is an insanity standard requiring an individual to be laboring under a defect or reason or mental illness that is sufficient to lead to an

inability to understand the nature and quality of an act, or be unable to determine right from wrong (*Queen v. M'Naghten*, 1843).

Moral Transgressions. While there are many activities that may violate social norms, moral transgressions are those behaviors or activities that are inherently wrong, whether or not an authority has explicitly outlawed them (Blair, 1996). For instance, murder is considered universally wrong and is a moral transgression.

Paralimbic System. The paralimbic system is a group of interconnected brain structures dealing with emotion and behavior (Kiehl, 2006). These structures include the amygdala, frontal lobe, and the orbital frontal cortex (Kiehl, 2006).

Psychopathy. Psychopathy is a disorder that affects the moral, emotional, and interpersonal abilities of an individual, in such a way as to lead to socially deviant conduct, and measured by Robert Hare's Psychopathy Checklist-Revised (Erickson & Vitacco, 2012; Hare, 1998).

Reactive Aggression. Reactive aggression is aggression that is provoked and in response to the circumstances of the situation (Anderson et al., 2003).

Social Convention Violations. Social convention violations are those actions and behaviors that are only wrong because an authority, either an individual or a law, is stating that it is wrong (Blair, 1996). While some behaviors, like murder, may be inherently wrong, a behavior such as speeding is a social convention violation.

Wild Beast Test. The wild beast test is an insanity standard that requires an individual to be as unaware of right as wrong as a wild beast or infant would be (*Rex v. Arnold*, 1724)

Chapter 2

Introduction to Psychopathy

Psychopathy is a disorder that affects the moral, emotional, and interpersonal abilities of an individual, in such a way as to lead to socially deviant conduct (Erickson & Vitacco, 2012). It is estimated that slightly less than one percent of the male population are psychopaths, although approximately 93% of them, however, are in prison, jail, on parole, or on probation (Kiehl & Hoffman, 2011). Psychopaths are also 20-25% more likely to be imprisoned than their non-psychopathic counterparts are and 78% of imprisoned psychopaths are there due to a violent offense (Kiehl & Hoffman, 2011).

It is estimated that 1% of the general population meets the current diagnostic criteria for psychopathy, making it similar in prevalence to common as schizophrenia, anorexia, bipolar disorder, and paranoia (Kiehl & Hoffman, 2011; Neumann & Hare, 2008). Approximately 93% of them, however, are in prison or jail or on parole or probation. Given that psychopaths are 20 to 25 times more likely than non-psychopaths to be in prison and four to eight times more likely to violently recidivate than non-psychopathic individuals, studying psychopathy is important in both the fields of psychology and the legal system. No other factor greater contributes to recidivism than psychopathy. Because of this, what to do with psychopathic individuals has become a major issue.

Psychopathy has been characterized by a high level of charm and manipulative skills that combine with the lack of empathy, guilt, and remorse in such a way to create a moral deficit that contributes all too well to behavioral traits such as impulsivity, a parasitic lifestyle, and juvenile delinquency (Horley, 2014). These personality and behavioral traits tend to make psychopathic individuals more capable of and prone to criminal activity (Hare, 1999; Horley, 2014).

History of Psychopathy

The essence of the current concept of psychopathy has existed for over a hundred years (Huss, 2009), though people appear to have always known there were some individuals who seemed more criminal than others. As psychiatrist Adolf Guggenbühl-Craig stated, some people were “empty souls” (1999), individuals who lacked a conscience. Before the word psychopath came into use in the early 1900s, moral insanity was the most popular term in the United States and England (Kiehl & Hoffman, 2011). The field of psychopathy has continuously evolved, however, it was the Canadian psychologist, Robert D. Hare, in the 1970s, who developed the current assessment for psychopathy, the Psychopathy Checklist Revised (PCL-R), based on the work of American psychiatrist, Hervey M. Cleckley. Cleckley’s work, *The Mask of Sanity* (1941), a leader in a major shift in the field of psychopathy. Instead of viewing psychopaths as anyone who was abnormal, he proposed a view of psychopathic individuals as appearing normal and rational to cover their abnormal and chaotic behaviors. Previously, the psychopathic individuals were considered “psycho”, or evil disorganized criminals with mental disorders. After Cleckley’s work, the modern view of psychopaths as cunning, criminal masterminds began to form.

Robert Hare and the Psychopathy Checklist-Revised (PCL-R)

Robert Hare built his work on the basis of Hervey Cleckley’s to develop a measure of both the affective and socially deviant aspects of psychopathy. The PCL-R was created by Hare specifically for this purpose of assessing psychopathy and tested with multiple forensic populations before becoming the gold standard it is today (Hare, 1991; Hare, 1999; Hare & Neumann, 2009; Horley, 2014; Viding 2004). The PCL-R contains two factors that each measure a different aspect of psychopathy: personality and social deviancy (Hare & Neumann, 2009;

Nichols & Petrila, 2005; Salekin, Rogers, & Sewell, 1997; Salekin et al. 1998). Factor one on the scale assesses intrapersonal issues, such as lack of empathy, and the deviant characteristics like superficial charm, pathological lying, and manipulation. Factor two items include juvenile delinquency, poor behavioral controls, and impulsivity (Hare, 1991).

These two factors relate to differing aspects of psychopathy. Together, these factors are considered one of the most accurate measures of psychopathy. Individuals who score higher than ten points on the forty-point scale are said to demonstrate psychopathy. The severity increasing with the rising score. A score of ten to twenty indicates mild psychopathy; twenty to thirty indicates moderate psychopathy; and thirty to forty indicates the most severe level of psychopathy (Hare & Neumann, 2009, Huss, 2009). The PCL-R has been assessed for validity and reliability many times, due to its prominent use and has been consistently found valid and reliable, with an average Cronbach's alpha of 0.87, a test-retest coefficient of 0.89, and high construct validity (Hare & Neumann, 2009, Horley 2014; Viding, 2004).

Neuropsychological Basis of Psychopathy

Much of the research regarding the neurological bases of psychopathy involves the amygdala and paralimbic system or the frontal lobe and executive functioning abilities. Using functional magnetic resonance imaging (fMRIs) and measures of gray matter, specific deficiencies have been associated with specific locations in the brains of psychopathic individuals (Kiehl & Hoffman, 2011). These deficiencies have paved the way toward psychopathy being considered a disorder with neurological bases, instead of simply a person who has an "empty soul" (Guggenbühl-Craig, 1999).

Amygdala and paralimbic system. With the development of the fMRI in the early 1990s, studying brain function beyond the simple structures of the brain became possible (Kiehl & Hoffman, 2011). Although psychopaths can often recognize moral content behaviorally during tests, the ability to use the fMRI to study neurological processes while these tests are happening greatly expanded the current body of knowledge regarding psychopathic functioning. In one study involving rating moral violations and remembering emotional words, psychopaths exhibited decreased activation in the amygdala and paralimbic regions with increased activity in the lateral frontal cortex (Kiehl & Hoffman, 2011). These findings demonstrated an increase in logical reasoning and a decrease in emotional reasoning, as emotional and moral reasoning has been shown to be located in those same areas of the brain in non-psychopathic individuals (Greene, Sommerville, Nystrom, Darley, & Cohen, 2001). In addition, these deficits in the amygdala lead to a lack of ability to process emotion-laden responses (Blair, Mitchell, & Blair, 2005).

Amygdala function deficits have been linked to instrumental aggression, while deficits in the orbitofrontal cortex (OFC) can be linked to reactive aggression (Anderson et al., 2003; Blair, 2004; Blair, 2005). Instrumental aggression is unprovoked aggression, generally done for personal gain, while reactive aggression is provoked and circumstantial. Psychopathic individuals show deficits in both areas (Anderson et al., 2003; Blair, 2004; Blair, 2005). The deficit in the OFC can similarly be linked to the learning and decision-making impairment that characterizes psychopathic behavior, within both the violent tendencies and the strategic disregard for others (Anderson et al., 2003). In addition, the amygdala and paralimbic systems, where a psychopath displays a deficit, have also been found to be utilized in inhibition by non-psychopathic individuals (Kiehl & Hoffman, 2011). This is another factor contributing to the

aggressive tendencies of psychopathic individuals. Without inhibition, there is no mental process stopping an individual from giving into the desire to act aggressively. They won't have that internal check of whether they should or shouldn't behave antisocially or aggressively. These findings further establish the neurological deficits in psychopathic individuals, as it provides neurologically based explanations for the poor decision making, behavioral controls and inhibitions, violent tendencies, and strategic disregard for others. With neurological basis, these antisocial behaviors become a result of not antisocial tendencies, but a neurological disorder.

Through the research surrounding psychopathy and the paralimbic system, it has become clear that the psychopathic brain is deficient in the areas needed for moral reasoning, including the ability to recognize moral issues, the ability to inhibit a response until the moral reasoning is complete, and the ability to reach a decision regarding a decision about the moral issue (Kiehl & Hoffman, 2011). Greene et al. (2001) found that when non-psychopathic participants completed tasks involving moral reasoning, their fMRI's showed activation in the amygdala and posterior cingulate cortex, two areas in which psychopathic individuals demonstrate major deficits.

Frontal cortex and executive functioning. Researchers have previously shown that trauma to the frontal regions of the brain lead to aggression. Because of this, most of the research prior to the fMRI studies involved studies of the frontal lobe structures (Kiehl & Hoffman, 2011). One important study was completed with a structural MRI to demonstrate that unsuccessful psychopaths, those who commit crimes and do not live as successful members of society, were found to have reduced grey matter, fewer neurons, and increased white matter in the frontal lobes (Raine, Lencz, Bihrl, LaCasse, & Colletti, 2000). The reduced grey matter and increase of white matter is significant, because the grey matter contains the cell bodies involved in storing and processing information, while white matter is simply connections. Individuals who

have this matter imbalance will be unable to learn and store information, but will simply operate on connections and previously learned pairings. Instead of being able to weigh decisions and inhibit actions, the brain is simply operating instantly and without consideration. In addition, the ability to learn from mistakes is hindered by the number of connections, but lack of ability to consider or change them (Raine et al., 2000).

This reduction in grey matter is characteristic of a frontal lobe defect (Raine et al., 2000). Other studies involving reduced gray matter in psychopathy have been conducted to reiterate these findings. These studies found reduced gray matter in the frontal lobe, prefrontal cortex, amygdala, and paralimbic system (Contreras-Rodríguez et al., 2015; Ishikawa et al., 2001; Kiehl & Hoffman, 2011; Yang et al., 2005) This shrinking of the amygdala is what creates the emotional and affective deficits, as with fewer processing and storing cell bodies, the ability to process emotional and affective is hindered. Instead, individuals are forced to operate on existing connections. The decrease in frontal lobe gray matter has been linked to executive functioning deficiencies and an autonomic activity deficiency, specifically a deficit in fear responses and learning (Blair, 2005; Raine et al., 2000).

Several neuropsychological studies have established the psychopath's diminished executive functioning skills (Barnes, 2014; Raine et al., 2000; Sifferd & Hirstein, 2013). Executive functioning involves the memory, attention, decision-making, planning capabilities, and the inhibition of actions (Sifferd & Hirstein, 2013). In addition, executive functioning controls the process of considered recognition, the process by which an individual is able to be aware of his or her neurological deficits. The effects of impairment to this functioning manifest through an inability to apply their past experiences to future similar situations, plan effectively, learn from past mistakes, and control inhibition. The impulsivity seen in psychopathy can be

attributed to the lack of inhibitors and the poor planning skills due to the overall impairment (Kiehl & Hoffman, 2011).

Moral Deficit of Psychopathy

Many have argued that instead of a mental disorder, something that would affect criminal responsibility, psychopathy is primarily a moral disorder (Erickson & Vitacco, 2012; Finlay, 2011; Maibom, 2008). To some degree, this assumption holds true; psychopathy significantly affected the morality of the individual. In many cases it serves to essentially wipe away the moral ability of the individual entirely (Erickson & Vitacco, 2012; Fine & Kennett, 2004; Fox, Kvaran, & Fontaine, 2013; Maibom, 2008; Schopp & Slain, 2000). Psychopathy is a disorder that affects the moral, emotional, and interpersonal abilities of an individual, in such a way as to lead to socially deviant conduct (Erickson & Vitacco, 2012). Because of this seeming causation of antisocial behavior, it was previously difficult to establish whether the disorder causes the behavior, or if the disorder is simply the expression of antisocial behaviors (Maibom, 2008). However, with an established neurological basis for these behaviors, the disorder can be seen to stem from a neurological deficit, instead of an antisocial disregard for the law.

With the recent advances in neuropsychology and cognitive testing, it has become clearer how deeply these moral deficits affect psychopathic individuals (Fox et al., 2013; Fine & Kennett, 2004; Sifferd & Hirstein, 2013). Decreased functioning in the amygdala has been linked to reduced moral reasoning and a lack of ability to recognize affect-laden responses, those responses in which the interpretation of the response relies on the interpretation of emotions or facial expressions. This is due to the lack of processing cell bodies and the inability to store or process this emotional information. (Greene et al., 2001; Blair et al., 2005). Because psychopathic individuals cannot recognize the visible emotions of others, they are unable to use

that information to make moral decisions (Greene et al., 2001; Blair et al., 2005). In addition, when studies were completed regarding moral reasoning of non-psychopathic individuals, it was determined they utilized the posterior cingulate cortex and the amygdala to process moral decisions (Blair et al., 2004). Those same areas are two areas where psychopathic individuals demonstrate significant impairment (Green et al., 2001; Blair et al., 2005). This further supports their inability to process decisions using emotional reasoning or empathy.

Learning Deficit of Psychopathy

The study of psychopathic individuals presents evidence of a severe learning deficit. This learning deficit is likely a result of the neurological impairments that characterize psychopathy, including the decrease in executive functioning, amygdala, and paralimbic system deficits, stemming from the reduction in the grey matter cell bodies (Raine et al., 2000). Without the ability to process and make decisions, the ability to learn from mistakes and re-route any previous connections is essentially non-existent. This manifests in multiple ways, including an inability to distinguish between moral and conventional transgressions, a lack of aversive arousal, a deficit in passive-avoidant learning, and the lack of extinction of previously conditioned responses delineated below (Blair, 1996; Blair, 2004; Blair, 2005; Blair et al., 2005; Kiehl & Hoffman, 2011; Lykken, 1957).

Studies regarding the identification of the differences between moral transgressions and social convention violations have been completed on many different populations, including adults, children of many ages, children with learning disabilities, and psychopathic individuals. These studies have led to the discovery that typical children, even younger than four, and older children with learning disabilities or autism can recognize the differences between moral and conventional transgressions (Blair, 1996). These studies involved asking participants to identify

which transgressions would be wrong whether or not an authority is present. Moral transgressions, such as murder or rape, are violations that are wrong whether or not an authority is present, while convention violations, such as speeding or wearing pajamas to school, are not. While speeding requires a set speed limit to be a crime, murder is always wrong. Although even young children were sensitive to the differences between conventional and moral transgressions, psychopathic individuals were unable to distinguish between the two and judged them all similarly wrong (Blair, 1996). Because psychopathic individuals are unable to judge the differences between conventional or moral transgressions to the level of even a very young child, they cannot be held to a rational adult's standard of behavior or moral ability.

Psychopathic individuals have a deficit in aversive arousal, the body's ability to anticipate negative stimuli and adjust accordingly (Blair et al., 2005; Lykken, 1957). This stems from the lack of processing ability present with the grey matter deficits and the inability to reroute those previously formed connections (Kiehl, 2006). As illustrated in Lykken's study regarding anticipation of shocks, the psychopathic individuals were unable to adapt from past experiences and specifically reduce the conductivity of their skin in anticipation of a shock (1957). This is reflective of an overall deficit in passive-avoidance learning. Many studies have been completed to establish the psychopathic individual's inability to learn to avoid making mistakes and punishment (Blair, 2005; Blair & Cipolotti, 2000). The individuals learn to complete the task, but will do so without avoiding mistakes or attempting to avoid punishment (Blair, 2005). In addition, any behavior learned through conditioning with a reward would not become extinct, even after the reward was switched with a punishment for a significant amount of time (Blair, 2005).

Empathy Deficit of Psychopathy

According to research done by Hoffman (2001), children learn empathy through the development of scripts linking moral transgressions to guilt. Every time a child commits a moral transgression, the effects of causing pain to others and seeing it for themselves connect to the action in their minds, until they have a script linking this guilt with the transgression. It is this formation that enables children to develop a conscious and an ingrained association between transgressions with guilt, to the point where even considering violating a moral code causes great distress (Blair, 1995; Hoffman, 2001). Unfortunately, psychopathic individuals are unable to identify and empathize with the distress of others, due to their amygdala processing emotional, and neurological deficits. (Blair, 1995). With an amygdala lacking in the processing abilities and storage of information, psychopathic individuals are simply unable to develop empathy.

In addition, although non-psychopathic individuals experience aversive arousal when exposed to the distress of others, the same is not true of psychopathic individuals (Blair, 1999; Blair, Morris, Frith, Perrett, & Dolan, 1999). Psychopathic individuals, both criminals and children with psychopathic tendencies, demonstrated a reduction in skin conductance responses in response to distress cues, as opposed to neutral stimuli (Blair, 1999; Blair, Morris, Frith, Perrett, & Dolan, 1999). Blair also discovered this lack of physiological arousal is characteristic of a deficit in the violence inhibition model, which aligns well with research regarding psychopathy (Blair, 1995).

In addition to the lack of arousal occurring in response to distress, psychopathic individuals demonstrate a lack of ability to recognize affect-laden faces, whether positive or negative (Blair 1995; Blair, 2000; Blair et al., 2005; Greene et al, 2001). This deficit especially applies to facial distress cues. Psychopathic individuals are consistently unable to recognize

distress in the faces of others (Blair 1995; Blair, 2000; Blair et al., 2005; Greene et al, 2001). This deficit combines well with the lack of aversive arousal and learning deficits to explain the antisocial behaviors already understood to be a part of psychopathy. Without this innate aversion to and recognition of pain in others, there is no implicit reason to not cause that pain in those around you.

Introduction to Criminal Responsibility

Over the years, many standards have come and gone in an attempt to establish the best standard of insanity that would punish all those deserving and allow those who are not criminally responsible to be found not guilty by reason of insanity (Fischette, 2004; Litton, 2008; Maibom, 2008; Morse, 2008; Sifferd & Hirstein, 2013; Winter, 1983). Although individuals who are very obviously and noticeably impaired can often utilize the insanity defense, those whose disability manifests as chronic antisocial behavior have been specifically excluded from this defense (Kiehl & Hoffman, 2011). Instead, individuals who are persistent in criminal behavior are punished more than the ones who are occasionally bad. However, if the pattern of antisocial behavior is due to a moral and reasoning deficit truly out of their control, psychopathic individuals should arguably not be held to the same standard as a the average individual (Kiehl & Hoffman, 2011).

Naturally, it is implausible to believe that a perfect standard can ever truly be established, simply due to the complex nature of human morality and psychology as well as the inherent presence of human error. Nevertheless, standards ranging in strictness from the *Wild Beast Test* to the *Durham Rule* have all been used at different times as society attempted to determine what exactly should excuse an individual from criminal responsibility (Fischette, 2004; Litton, 2008; Maibom, 2008; Morse, 2008; Sifferd & Hirstein, 2013; Weiner, 1985; Winter, 1983).

Wild Beast Test

One of the earliest tests of criminal responsibility was the *Wild Beast Test* determined by *Rex v. Arnold* (1724). In the case, the judge ruled that the defendant, who suffered from delusions, should be acquitted because he did not know what he was doing any more than a wild beast or infant would know. The *Wild Beast Test* requires the individual to be as unaware of right and wrong as a child or animal would be. This verdict was the first instance in which juries could deliver a verdict of not guilty, instead of simply acquitting a man who suffered from insanity (Walker, 1985).

M'Naghten Test

Following the *Wild Beast test*, the next major test used was the *M'Naghten* standard. This standard was created to expand the standard of criminal responsibility to include more than simply the animalistic actions of the mentally ill. The *M'Naghten* standard is based on a court case in 1843 concerning Daniel M'Naghten who attempted to assassinate the Prime Minister Robert Peel because he believed he was being persecuted by Tories (*Queen v. M'Naghten*). The court held:

To establish as defense on the grounds of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know what he was doing was wrong. (*Queen v. M'Naghten*, 1843)

Despite this case being over 160 years old, it is the most widely used standard of insanity used today in the United States. Twenty-five states currently use either the *M'Naghten* standard

or a modified form of the standard. Four combine the *M'Naghten* standard with the Irresistible Impulse Test (Maibom, 2008). The *M'Naghten* standard emphasizes the cognitive aspect of insanity as it considers only whether the defendant knew what he was doing or if he understood that his actions were wrong. According to this standard, the only way to qualify for the insanity defense is to be an individual who is either completely unable to understand what he or she is doing or unable to understand that what he or she did was wrong. However, unless combined with the Irresistible Impulse test, this standard ignores the possibility that an individual could know that what they were doing was wrong, but due to a mental illness have become unable to prevent themselves from committing the act. Because of this, the *M'Naghten* test has been criticized as being too narrow and excusing too few people, as well as ignoring the discoveries of modern psychology (Weiner, 1985).

Irresistible Impulse Test

Although never used as a sole standard, the *Irresistible Impulse test* was created in response to the *M'Naghten* standard, as there are cases where an individual may know the nature and quality of his act and may be aware that it is wrong, yet commits the act due to a compulsion rooted in a mental disability (Weiner, 1985). As this test is used solely as an addition to the *M'Naghten* standard, there is no set definition for it, however, it is based on four assumptions:

First . . . there are mental diseases which impair volition or self control, even while cognition remains relatively unimpaired; second, . . . the use of *M'Naghten* alone results in findings that persons suffering from such diseases are not insane; third, . . . the law should make the insanity defense available to persons who are unable to control their actions, just as it does to those who fit *M'Naghten*; fourth, no matter how broadly

M’Naghten is construed there will remain areas of serious disorders which it will not reach. (Goldstein, 1967, p. 67)

Although the *Irresistible Impulse* test provided the important element of volition to the *M’Naghten* standard, many states use the *M’Naghten* standard without the *Irresistible Impulse* test and even those that do use the test often do not use comparable language or standards.

Durham (Product) Rule

The *Durham (Product) Rule* is based on the *Durham v. United States* (1954), ruling involving Monte Durham. The case involved a determination of the defendant’s criminal responsibility and led to a re-evaluation of the *M’Naghten* standard. It was determined by the court that the *M’Naghten* had several flaws, including the focus on only whether the individual knew right from wrong and whether they knew what they were doing (*Durham v. United States*, 1954). In an attempt to create a more scientific determination and a standard that was less stringent, the *Durham Rule* was created. It states, “An accused is not criminally responsible if his unlawful act was the product of mental disease” (*Durham v. United States*, 1954). Although the *Durham Rule* was created because the *M’Naghten* test and *Irresistible Impulse Test* were too limiting, it has been criticized for being too broad and encompassing (Weiner, 1985).

American Legal Institute’s Model Penal Code Standard

The *Model Penal Code*, as its name suggests, is often considered to be the ideal penal code (Maibom, 2008). It was created by the American Law Institute (ALI) who proposed the standard as the most complete standard for insanity (American Legal Institute, 1985). It is currently in use by 20 states as the official standard for insanity (Maibom, 2008). According to the *Model Penal Code*, an individual is not criminally responsible unless they have the

substantial capacity to appreciate the wrongfulness of their conduct and are able to act on the basis of this appreciation to conform their conduct to the law (American Legal Institute, 1985).

Specifically, it states:

A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law. (American Legal Institute, 1985, § 4.01)

This standard can be seen to have two parts: the ability to understand and appreciate the crime, cognition, and the ability to act on this understanding and adjust their conduct accordingly, volition. In order to be criminally responsible, the criminal must fulfill both requirements. This is the most comprehensive standard, as it incorporates both the volition and cognition aspects of criminal responsibility, without stepping too far into deeming any individual whose actions were affected by a mental illness to be lacking criminal responsibility.

Although containing both a cognitive and volitional aspect, similar to what the *M'Naghten* standard combined with the *Irresistible Impulse Test* attempted to achieve, the *ALI standard* differs in three major ways from the *M'Naghten* standard: the *ALI standard* specifies appreciation instead of cognitive understanding, lacking substantial capacity to appreciate instead of a total lack of appreciation for one's conduct, and adds the aspect of volition directly into the standard (Weiner, 1985). This specific requirement for appreciation instead of cognitive understanding hits right at the heart of psychopathy. While they can often understand right from wrong on a cognitive, objective level, the emotional reasoning aspect, by which an individual is able to truly appreciate their actions is missing from psychopathic individuals.

Psychopathy and ALI Standard

For as long as the concept of psychopathy has been around, people have disagreed about whether it had any legal significance. As psychopathic individuals tend to maintain a high level of cognitive functioning and are not characteristically seen as being insane, they have been unable to utilize many of the variations of the insanity defense throughout the years (Fox et al., 2013). Individuals who have classically qualified for the insanity defense were those who seemed as crazy and unstable as a wild beast, or someone who looked in need of being institutionalized. Psychopathic individuals can clearly demonstrate more will-power and cognitive ability than a wild beast; often do know the difference between right and wrong at face value; and as, until recently, psychopathy had no neurological basis to be considered a disorder, psychopathic individuals were unable to utilize the irresistible impulse test or even the *ALI standard*. However, as psychopathy becomes more readily considered a disorder, due to its neurological basis, the *ALI standard* is increasingly more applicable. Psychopathy can be seen to fulfill both the cognition and volition aspects of psychopathy (Weiner, 1985)

Cognition

The cognitive aspect of the *ALI standard* is based on several previous standards. One standard in particular, the *M'Naghten* rule, required an individual to be able to understand the nature and quality of his or her act (*Queen v. M'Naghten*, 1843). This phrasing is especially helpful in understanding the connotations of the word *appreciation* used in the *ALI standard*. To be held responsible for a crime, an individual must be able to do more than simply understand what they did. They have to be able to fully appreciate the ramifications and implications of their actions. They must understand the nature of what they did, as well as the fact that it was wrong and why it was wrong (Berryessa, 2016; Fischette, 2004; Fox et al., 2013; Maibom, 2008).

Without this deep level of understanding, an individual fails to fulfill the cognition aspect of the *ALI standard*.

Psychopathic individuals fulfill the *ALI* cognition aspect due to their inability to utilize emotional and moral reasoning to make decisions, as this leaves them unable to fully appreciate their crimes (Greene et al., 2001; Blair et al., 2005). In addition, the lack of aversive arousal present in psychopathic individuals is a major contributing factor to the lack of appreciation (Blair, 1999; Blair et al., 1999). Without the ability to feel guilt and associate it with the moral transgression, an individual is unable to truly appreciate his or her actions (Fox., et al., 2013).

Empathy. Most children learn morality through empathy (Fine & Kennett, 2004; Hoffman, 2001). They learn early through the development of scripts that certain behaviors cause distress to others and that causing others distress is wrong, because they themselves would not want that distress. The concept of doing to others only what one would want them to do to him or herself is typically inherently ingrained in individuals. However, studies have shown that psychopaths lack the natural fear of aversive situations and the ability to create a paired connection between the situation and any negative biological or stress responses (Blair, 1999; Blair et al., 1999; Fox et al., 2013; Schopp & Slain, 2000). Unlike the average person, if a psychopath commits a crime and is punished, his or her brain does not make the connection between the crime and the negative punishment in such a way as to cause him or her to be against reoffending. While the average person is prone to classical conditioning, in which a negative stimulus leads to aversion, psychopaths demonstrate inability to make that connection and learn from their experiences. This aversive arousal is critical to an individual's ability to associate the distress of others with the behavior producing it and therefore the entire

development of a conscience ((Blair., 1999; Blair et al., 1999; Fox et al., 2013; Schopp & Slain, 2000).

Moral reasoning. In order to be legally and criminally responsible, an individual must be morally responsible (Litton, 2008; Maibom, 2008). This is due to the largely to the issue of appreciation. If an individual lacks moral reasoning, they are necessarily unable to appreciate the reasoning behind a crime and therefore cannot fully appreciate the nature and quality of their conduct. In addition, several studies have been conducted to compare the brain regions responsible for emotional reasoning in non-psychopathic individuals to the regions psychopathic individuals use to process the same decisions (Greene et al., 2001; Blair et al., 2005). Both have found the areas non-psychopathic individuals use to make emotional decisions to be the same ones that psychopathic individuals have major deficits (Greene et al., 2001; Blair et al., 2005). Due to this decrease in amygdala functioning and posterior cingulate cortex, psychopathic individuals are incapable of moral reasoning based on emotional stimulus.

Laws, especially those addressing *malum in se*, are primarily created based on the morality of the culture (Erickson & Vitacco, 2012). They are designed to prohibit the punishment of those who do not understand moral nature. It is therefore because of this that the concept of *imago dei* exists and that ignorance of the law is no excuse (Fox et al., 2013). Both concepts, however, rely on the central belief that every individual is fundamentally able to understand the morality of the culture. The concept of *malum et se* deals with the issue of crimes that are inherently moral violations, such as rape, murder, and assault (Erickson & Vitacco, 2012; Maibom, 2008). These crimes are seemingly obvious, as according to *imago dei*, everyone has a conscience that tells them that murder is wrong. This is why no one has to be told not to murder others. It is morally wrong. However, things like traffic violations must be taught and many

people consider them to be only binding when an authority is present to enforce them. These crimes are *malum prohibitum* and they are wrong only because there are laws prohibiting them. Any individual capable of moral reasoning can distinguish between the two, based on the inherent wrongfulness of the crimes (Fine & Kennett, 2004; Fox et al., 2013)

Several studies have been conducted to demonstrate the crucial deficit in the moral reasoning and legal appreciation of psychopaths (Blair, 1996; Blair, 1997). As mentioned previously, they involved asking psychopathic individuals to distinguish between moral crimes, *malum in se*, and conventional crimes, *malum prohibitum*. They found that although children as young as four-years-old were capable of distinguishing the two and could understand how moral crimes are always wrong, conventional crimes were dependent on the presence of authority, psychopathic offenders were able to categorize the two, but were incapable of understanding or distinguishing the reasoning between the categorization (Blair, 1996). In this way, the psychopathic individuals demonstrated less moral reasoning capability than a typical four-year-old child did. This is a significant level of cognitive impairment. If their moral reasoning is so significantly impaired as to render them less capable of understanding why certain crimes are prohibited only by law and which crimes are inherently evil, what kind of justice would hold them to a standard that would not apply to the four-year-old who has better moral reasoning? This young child will certainly not be found to be criminally responsible, primarily due to their lack of sufficient capacity. Similarly, a psychopath should not be considered to have the sufficient capabilities necessary to be criminally responsible.

Volition

Besides being able to fully comprehend the law, their actions, and the interaction of the two, an individual must also be capable of conforming his or her conduct to the requirements of

the law (Fischette, 2004; Litton, 2008; Maibom, 2008). Many states use an irresistible impulse standard for their insanity defense which basically states that if an individual was not able to resist the action, whether through mental deficit, coercion, or some other provable reason, they cannot be held criminally responsible for the crime (Fischette, 2004; Litton, 2008; Maibom, 2008). This standard of volition can also be used in cases where, as a result of a delusion or defect of reason, the individual felt that he or she had no choice but to commit the crime (Fischette, 2004; Litton, 2008; Maibom, 2008). It is difficult, however, to prove whether an impulse was truly irresistible, or if the individual simply did not choose to resist it (Winter, 1983). Volition is important to determine, as even an individual who is capable of appreciating the law and their actions may not be able to act in such a way as to follow the law. Because psychopathic individuals are unable to learn from their actions and mistakes and are lacking in aversive arousal, they do not develop the necessary aversion to committing moral or conventional transgressions (Blair, 1996; Blair, 1999; Blair et al., 1999). In addition, an individual who is incapable of making a decision based on moral reasoning is similarly unable to conform his or her actions to said patterns of morality (Fischette, 2004; Maibom, 2008; Litton, 2008).

Executive functioning deficit. It is interesting to note the specific impairment of considered recognition, the process by which an individual is able to be aware of their neurological deficits. While it is easy for an outside observer to notice the flaws in the moral and overall reasoning of a psychopathy, the lack of considered recognition results in them being completely unaware of their inabilities (Schopp & Slain, 2000; Sifford & Hirstein, 2013). Whereas an individual who is, for instance, colorblind and limited in the ability to naturally understand color related concepts, like traffic lights, he is, however, able to understand that

others operate their lives in ways affected by color and can seek to make do the best he can (Sifferd & Hirstein, 2013). His disability would not excuse him. Psychopaths, on the other hand, are not only unable to apply moral reasoning to their lives, but in fact completely lack the ability to comprehend how others operate their lives based on morality. As a result, they are unable to adjust their behavior to make up for their deficit. They are truly lacking of the substantial capacity to utilize moral reasoning (Erikson & Vitacco, 2012; Fox et al., 2013; Litton, 2008; Schopp & Slain, 2000) and with that lacking, cannot be considered criminally responsible.

Learning deficit. What both cognition and volition have in common is a degree of rationality. There is a difference, however, between moral reasoning capabilities and reasoning in general (Erikson & Vitacco, 2012; Fox et al., 2013; Litton, 2008; Schopp & Slain, 2000). There is a phrase often uttered in discussions of psychopathy that often confuses people, as they can immediately find flaws in it, namely that psychopaths are unable to learn from their experiences (Fox et al., 2013; Schopp & Slain, 2000). It is very easy to find exceptions to this, as psychopaths obviously learn to walk as children, go to school, and develop in many ways as normal children (Schopp & Slain, 2000). The truth of the statement lies in their inability to learn from their experiences the typical moral concepts and desire to avoid consequences that the normal child learns (Schopp & Slain, 2000).

One interesting discovery in the field of psychopathy (Fine & Kennett, 2004; Fox et al., 2013) dealt with the fact that psychopaths and non-psychopathic individuals can be given the same instructions and have the same experiences, yet end up with completely different conclusions and guidelines for future behaviors. For instance, two children, one with psychopathic traits and one without, can both get in trouble for hitting another child. The child without psychopathic traits can leave with the experiential knowledge that he caused another

child harm and he would not want someone to hurt him like that, and understand that the teacher gave him detention because it is wrong to hit people, and in future would begin to abstain from that behavior. The psychopathically inclined child, having had the same experience, however, could leave with the mental rule that one should never repeat that behavior when an authority figure is present. They had the same experience, yet the psychopathically inclined child did not learn the aversion.

Morality deficit. The ability to understand morality does not lead directly to moral application (Fischette, 2004; Maibom, 2008; Litton, 2008). It is therefore not surprising that individuals who lack the ability to understand moral reasoning are incapable of conforming their actions to moral standards. Not only can they not understand moral reasoning, but they are also utterly incapable of comprehending that others make decisions based on moral concepts. The application of morality, even when they know that morality is a theoretical concept, is completely out of their grasp and mental framework (Fischette, 2004; Maibom, 2008; Litton, 2008).

Public Perception of the Insanity Defense

Although very few researchers have studied the public perception of the insanity defense, those that have discovered the public tends to overestimate the use and success of the insanity defense and tend to be concerned that the insanity defense is only a loophole through which the would-be criminals can escape the punishment for their illegal acts (Hans, 1986; Silver, Cirincione, & Steadman, 1994). Hans (1986) surveyed participants as to their opinions on the insanity defense and found almost half (48.9%) of the participants believed the insanity defense should be abolished and almost all (94.7%) believed it needed significant reform. However, while approximately three quarters (76.5%) maintained that the insanity defense is sometimes

justified and 63.6 % acknowledged the insanity defense as being a necessary part of the legal system, almost all (89.2%) believed the insanity defense was a loophole allowing the guilty to go free. Individuals also significantly overestimated the frequency of use and success of the insanity defense (Hans, 1986).

Similar results were found by Silver et al. (1994), who directly compared public perception of the frequency of use and success of the insanity defense to the actual statistics. He discovered the perception of the frequency that defendants utilized the insanity plea was 41 times higher than the actual usage. In addition, the perception of success utilizing the insanity plea was of a 44% success rate, as opposed to the actual statistic of 26% (Silver et al., 1994).

Public Perception of Psychopathy

Even less frequently studied than the public perception of the insanity defense is the public perception of psychopathy. No researchers have directly studied public perception of psychopathy, yet many researchers in many studies assume it is a given. The leading assumption is psychopathic individuals are perceived by the general public as being extremely dangerous and evil, however no studies have substantiated this assumption.

Public Perception of Psychopathy and Insanity Defense

Hare (1998) acknowledged that in most jurisdictions, psychopathy is an aggravating factor instead of a mitigating one and he, himself supported this approach. Naturally, in every controversial topic, there are two sides to the debate. Those who disagree with the lack of criminal responsibility for psychopathic offenders do so for many reasons. Some argue on the basis of social upheaval. They claim that to allow psychopathy into the insanity defense would lead to an ultimate erosion of the merits of the defense, as the defense primarily succeeds

because society pities those who are insane, but does not pity psychopaths (Erickson & Vitacco, 2012; Felthous, 2010). Psychopaths who successfully utilize the insanity defense are seen as “getting away with it” and juries instead typically utilize knowledge of psychopathy to suggest a worse sentence (Erickson & Vitacco, 2012; Fine & Kennett, 2004). Some also argue that allowing psychopaths to utilize the insanity defense would prove too much of a monetary burden to society, as without the possibility of rehabilitation, the offenders would simply be locked in institutions indefinitely and might as well be in prison and therefore costing society less (Erickson & Vitacco, 2012; Litton, 2008).

Still others disagree from a moral standpoint. Some, despite the significant neurological evidence of psychopathy being a reasoning defect affecting criminal responsibility, still see psychopathy as a moral disorder that is more evidence for their inherent “badness” than an actual disorder (Maibom, 2008). They would argue that surely one cannot let someone get away with a crime simply because they are “bad” (Maibom, 2008). The system would rather punish the 1% of the population who cannot help but commit crimes, rather than consider the potential effect on the other 99% that a psychopathy defense would have (Kiehl & Hoffman, 2011). The Model Penal Code has a clause specifically regarding this, stating, “The terms ‘mental disease or defect’ do not include an abnormality manifested only by repeated criminal or antisocial conduct” (American Law Institute, 1985). However, to see psychopathy only as an abnormality that causes crime is to miss the aspect of moral ability. Just as society would not hold a child who cannot yet understand and appreciate their crimes to the same standard as an adult, a psychopathic individual cannot be required to behave like a typical adult while lacking the ability to use emotion and morality in his or her reasoning.

To many, for an individual to know the content of the law is a sufficient level of knowledge to convict (Fox et al, 2013) and therefore simply understanding the laws at any base level is enough. However, one could argue that even a child knows what is lawful or not, yet a child is not criminally responsible. To them, even a lack of understanding does not make disregard for the laws okay (Erickson & Vitacco, 2012; Fox et al, 2013; Maibom, 2008; Schopp & Slain, 2000). This, however, overlooks the difference between moral and conventional social-norm violations (Blair 1995). Moral norms are those behaviors which are always wrong, regardless of circumstances or authority, while conventional norms, like a parking violation, are circumstantial and rely on an enforcing agent to be wrong. As previously stated, while even a child less than four years old or an older child with autism or learning disabilities can successfully distinguish between violations of norms that are only violations when there is an authority prohibiting them and violations that are moral and therefore always wrong, psychopathic individuals showed a deficit in the ability to differentiate between the two (Blair, 1995; Blair, 1996). While psychopathic individuals can be taught what acts are prohibited by society, they are unable to judge an act to be morally wrong.

Chapter 3

Method

Participants

A stratified convenience sample of participants in this study included 14 individuals recruited from public locations in a major metropolitan area in Southern California. Of those surveyed, 50% ($n = 7$) were males and 50% ($n = 7$) were females. Participant age ranged from 18 to 39 with a mean age of 26.64 ($SD = 6.65$). The ethnic distribution of the sample was as follows: 50% were Caucasian ($n = 7$), 21.4% were Hispanic/Latino ($n = 3$), 7.1% were Black/African American ($n = 1$), 7.1% were Asian/Pacific Islander ($n = 1$), and 14.3% were Other/Multiple Ethnicities ($n = 2$). Also collected in the demographic information was education level: 7.1% had completed their High School Diploma/GED ($n = 1$), 14.3% had completed Some College ($n = 2$), 14.3% had completed an Associate's Degree ($n = 2$), 42.9% had completed a Bachelor's Degree ($n = 6$), and 21.4% had completed a Post-Graduate Degree ($n = 3$).

Materials

Semi-structured interviews lasting from ten to fifteen minutes were conducted with the participants, using a list of seven questions as the basis of the interview (See Appendix A). These questions were created to form an encompassing foundation for answers to the research questions. After the set questions were asked, the researcher would ask them to expand upon their answers and ask similar questions to gather as much detail as possible. Participants were asked about their perception of psychopaths through three initial questions, including "What is a psychopath like?" Next, participants were asked about their perception of the insanity defense and then whether psychopathic individuals should qualify. Questions for these two categories

included questions discussing the merit and use of the insanity defense, as well as whether psychopathic individuals should qualify for insanity and why, respectively. The interviews were recorded using an encryptable recording device and notes were taken by the researcher during the interview.

A consent form was distributed to each participant and was required to be signed before completion of the interview so as to establish written consent for their completed interview's data to be used in the study. As participation was voluntary, participants were allowed to withdraw at any point during the completion of the interview, although no participants chose to withdraw.

Design

This study employed a grounded theory methodology. Grounded theory research involves creating a theory based on the answers and experiences of participants, instead of testing an existing theory. Participants are interviewed regarding the topic and the interview recording is then transcribed. This transcription is coded phrase by phrase to determine the topics mentioned by each individual. These original open codes are then compiled into axial codes, which combine to create a comprehensive theory of perception of the topic (Charmaz, 2014).

Procedure

Permission to collect data from human participants was first obtained from the Institutional Review Board. Participants were then recruited at multiple locations to obtain a diverse representation of public opinion. The locations included public parks, bus stops, and corners outside of business establishments in the city. Any individual in the recruitment locations at the time of recruitment who agreed to participate in the study fulfilled inclusion criteria. They fulfilled this regardless of gender or any other demographic factor, with the exception of age, as

the only criteria for inclusion was presence at a location of recruitment, agreeing to participate in the study, and being over the age of 18. Each participant was approached and their participation requested through the specific verbiage specified on the recruitment script (See Appendix B). After signing the consent form, the semi-structured interview began. After each of the questions were asked and participants were asked to share any additional thoughts they might have on the topic, the interview concluded.

The participant's privacy and confidentiality was assured through the usage of identifying numbers instead of names on the transcripts of the interview and the digital copies of recordings. The consent forms, once the interviews were completed, were left unlabeled so as to not link to the interviews. No identifying information was asked of the participants. Additionally, the data was kept in a secure location, with the recording device and notes from the interview kept in a locked box.

Data Analysis

According to grounded theory methodology, open codes were assigned for each thought, either a word or phrase, in each interview. The transcribed interviews and notes were entered into Microsoft EXCEL for the data analysis process and the development of initial or open codes. EXCEL has been found to be very useful for data coding in qualitative studies (Meyer & Avery, 2009). These open codes were then compared until theoretical saturation occurred and no new codes were being created. These open codes were analyzed for overlap to create axial codes, which resulted in the creation of themes. The themes were analyzed for reliability through peer review in which 20% of the data was analyzed through open and axial coding of results.

Chapter 4

Results

Nine themes were identified from the fourteen interviews. The perception of psychopathic individuals included five themes. In order from most frequently mentioned to least, they included: a lack of emotion and empathy, a charming and selfish narcissist, a creepy and socially-awkward predator, antisocial and violent tendencies, and mental illness. The perception of the insanity defense varied between invalid and overused, and valid and used only when needed. The final area of perception analyzed, perception of whether psychopathic individuals should qualify for insanity, included a belief that they should not qualify and a belief that they should qualify.

Perception of Psychopathic Individuals

Theme 1 - A Lack of Empathy and Emotion

The most common theme regarding perception of psychopathic individuals was that of a lack of empathy and emotional. Specifically, this theme included both cold, emotionless, and unempathetic tendencies, as well as a lack of moral ability. This lack of a moral ability was often based on these characteristics, and as such, composes an inclusive theme.

Cold, Emotionless, Unempathetic Tendencies. Nearly all participants ($n = 11$) mentioned cold, emotionless, and unempathetic personality traits as characteristics of psychopathy. A lack of remorse was also included with the lack of empathy in many participant's comments.

Participant 1. "A psychopath has no empathy or remorse for mankind."

Participant 1. "A psychopath has no empathy or remorse for mankind."

Participant 2. “Non-Empathetic.”

Participant 3. “I feel like they have no feelings towards anything, so I don't think they have any [Moral Ability].”

Participant 5. “They have no empathy. They’re completely emotionless.”

Participant 6. “They don't have or show emotions or empathy.”

Participant 7. “They have no empathy or sympathy.”

Participant 8 “They are hard to connect with emotionally. They’re lacking some necessary emotional processing.”

Participant 9. “Someone who lacks emotion in their brain. They have no empathy. They aren’t emotionally mature and are hard to connect with emotionally. They probably don't feel remorse for things society would see as wrong.”

Participant 10. “They’re cold. They have a detachment of emotions.”

Participant 13. “Too blunt.”

Participant 14. “Not very emotional. They’re cold and unfeeling.”

No Moral Ability. Many participants ($n = 9$) mentioned a lack of empathy as a characteristic of psychopathy. This characteristic was often rooted in the lack of empathy.

Participant answers included:

Participant 1. “They have no moral ability.”

Participant 2. “[Their moral ability] is non-existent.”

Participant 3. “I feel like they have no feelings towards anything, so I don't think they have any [moral ability].”

Participant 4. “They have a hard time knowing right from wrong, so they have no morals.”

Participant 6. “I think it's relative to each individual. Without empathy, the basis of ethics and morality, [I'm] not sure what kind of moral code you could have”.

Participant 7. “They have very little moral decision making and instinctively don't care about right from wrong.”

Participant 11. “If they "go off", they lose moral ability.”

Participant 13. “They have a very twisted and confused sense of right and wrong. They can't justify reasons why things aren't right and wrong.”

Participant 14. “[They have] no morals. They can pretend, but don't have them.”

Theme 2 - Charming, Selfish, Narcissist

The second most frequently mentioned theme was the characteristics describing a type of individual who was a charming, selfish, narcissistic psychopath. As one participant described this, “I'm thinking like Ted Bundy, usually smart and charming.” Additionally, individuals mentioned them blending in well, an indifference to morality, selfishness, and manipulation.

Blends in Well. One half of participants ($n = 7$) mentioned a psychopath being an individual who blends in well and might not appear to be any different from a non-psychopathic individual.

Participant 6. “[Psychopathic individuals] are good at blending in, like a chameleon. You wouldn't know they were psychopathic.”

Participant 7. “They are normal and you wouldn't be able to tell every day. They are likeable people until they are triggered or you see deeper.”

Participant 8. “With some [psychopathic individuals], you wouldn't know.”

Participant 10. “I wouldn't know when I saw one, they're kind of a chameleon.”

Participant 11. “They operate okay, but something might trigger them.”

Participant 12. “You wouldn't even notice unless they're acting out.”

Participant 13. “Some have those [psychopathic] tendencies, but act normal.”

Indifference to Morality. Another personality trait identified by several participants ($n = 4$) regarding this theme was an indifference to morality.

Participant 7. “[Psychopathic individuals] will keep up appearances, but disregard [morality] for their own gain.”

Participant 9. “They aren't very concerned with moral issues.”

Participant 10. “I assume they're aware of morality and probably do have some moral ability. They are aware of societal norms, but choose not to follow them.”

Participant 12. “They are very moral, except for one or two rules they don't ascribe to.”

Selfish. Of the participants, four mentioned selfishness as a characteristic of psychopathy. They described selfishness using terms such as “Self-interested” once and “Selfish” twice. This selfishness was mentioned as one in a collection of personality traits held by psychopathic individuals. “Impatient” was also included in selfishness, as psychopathic individuals would be perceived as valuing their time above other's time.

Charming and Superficial. Several individuals ($n = 3$) described psychopathic individuals as charming and superficial.

Participant 12. “They are charming and very likable.”

Participant 12. “They are charming.”

Participant 14. “Psychopaths are glib, very fake, and superficial.”

Intelligent. Another aspect of this theme was intelligence. A couple participants, (n=2) described psychopathic individuals as “intelligent” and “usually smart”. This intelligence would benefit individuals in attempts to be charming and blend in.

Manipulative. A final aspect of this theme was manipulation. Two participants described manipulation as a characteristic of psychopathic individuals. One participant directly stated psychopathic individuals were “manipulative”. A second participant described them as “people who lie easily”.

Theme 3 - Creepy, Socially-Awkward Predator

The third theme established by the participants regarding the perception of psychopathic individuals was the caricature of a creepy, socially-awkward predator. Themes included that of a person who was creepy and withdrawn, as well as predatory and calculating.

Creepy and Withdrawn. Many of the participants ($n = 6$), stated that one characteristic of psychopathic individuals was creepy or withdrawn behavior. Participant perceptions included the following.

Participant 1. “Withdrawn”

Participant 7. “Really creepy”

Participant 8. “Socially awkward or impaired”

Participant 9. “Withdrawn from social groups and society in general”

Participant 12. “Easily agitated”

Participant 13. “Keeping to themselves. When they do interact with others, they are distant. They do odd things. They act really different from normal people and are in their own

world. They are very awkward, not socially, but they won't look you in the eye. They aren't geeky, but don't like human interaction. They make other people feel uncomfortable."

Predatory and Calculating. A second trait mentioned in this theme was predatory or calculating behavior. This trait was described by five of the participants.

Participant 2. "[A psychopathic individual is] someone that reacts to their own intuitions and is very careful."

Participant 3. "Their brains are always running."

Participant 5. "They are totally rational and logical. They're completely emotionless."

Participant 9. "They are predatory and good at identifying victims."

Participant 12. "They're someone who overreads seemingly little things."

Theme 4 - Antisocial and Violent

The fourth most frequently mentioned theme in the perception of psychopathic individuals was antisocial and violent behavior. One participant mentioned, "When I think of psychopathic individuals, I tend to think of serial killers." It may be because of this that many of the individuals described violent fits of rage and aggression as two traits of psychopathy.

Antisocial personality disorder. Several of the participants ($n = 5$) described antisocial behavior and aggression as traits of psychopathic individuals.

Participant 1. "Psychopaths are geared towards violence. They tend to hurt animals."

Participant 4. "[A psychopath is] an antisocial mental disorder person."

Participant 8. "[A psychopath is] someone with some antisocial traits."

Participant 12. "[A psychopath] tends to get aggressive."

Participant 13. "[A psychopath] is antisocial."

Violent Fits of Rage. Many participants ($n = 4$) described psychopathic individuals as being prone to violent fits of rage.

Participant 4. “They have violent tendencies. They can seem normal until they kill someone or people.”

Participant 7. “They are very likeable people until triggered.”

Participant 11. “They are prone to violent fits of rage. They operate okay maybe, but something might trigger them.”

Participant 12. “[A psychopath is a] fairly moral individual, they just go crazy.”

Theme 5 - Mentally Ill

The final theme for the perception of psychopathic individuals was that of mental illness. While psychopathic individuals do not typically have traditional mental illness, several of the participants described psychopathic individuals as either being crazy, mentally ill, or having psychotic tendencies.

Mental Illness. A majority of the individuals ($n = 8$) described psychopathic individuals as being mentally ill.

Participant 1. “[A psychopathic individual is] someone who has a mental illness.”

Participant 2. “[A psychopathic individual is] someone that isn't in tune with reality.”

Participant 3. “[A psychopathic individual is] a crazy person who can't control their thoughts or actions.”

Participant 8. “[Psychopathic individuals are] people who do not possess the same emotional and social cognitive functions that others do. You can't treat psychopaths. They are lacking some necessary emotional processing.”

Participant 9. “[A psychopathic individual is] somebody who lacks emotion in their brain”

Participant 11. “[A psychopathic individual is] mentally unstable.”

Participant 12. “[A psychopathic individual is] pathological.”

Participant 13. “[A psychopathic individual is] a crazy person.”

Psychotic Tendencies. A few participants ($n = 3$), described psychopathic individuals as having psychotic tendencies.

Participant 7. “They have a psychotic disorder”

Participant 12. “They have psychotic tendencies and are pathological.”

Participant 13. “[A psychopathic individual is] someone who has psychotic tendencies.”

Perception of the Insanity Defense

Theme 1 - Insanity Defense is Invalid and Overused

In response to questions regarding participant’s perception of the insanity defense, two themes arose. The most frequently mentioned of the two was that the insanity defense is invalid and overused. In addition, participants mentioned that the insanity defense should be harder to prove and that individuals who get the insanity defense actually can control their behavior. Because of these reasons, participants believed the insanity defense should not continue to be used.

Invalid. Seven of the participants described the insanity defense as invalid. Some described issues with how it’s used, and others simply described it with a mild expletive, encompassing their dislike for its use and validity.

Participant 1. “It’s a cop out.”

Participant 2. “I think [the insanity defense] is unreliable due to the nature of today's society. It's used as an escape, not a defense.”

Participant 3. “I think it's B.S.”

Participant 9. “I don't think it's legitimate. It's for lawyers to get their clients out of charges.”

Participant 10. “It's all crap.”

Participant 12. “If somebody intentionally hurts someone, they should be locked up. The death penalty should apply to murders and they should be tried as normal people. They shouldn't get away with it.”

Participant 14. “It shouldn't be used. You can medicate them, so it shouldn't be used.”

Overused. Half of the individuals ($n = 7$) also mentioned the insanity defense was overused. While five individuals used the exact same phraseology, “It's overused”, one individual stated that it is “way overused. For it to be in regular nomenclature, it must be way overused.” A final participant stated, “the news would say overused.”

Should be harder to prove. Six participants also believed that the insanity defense needs to be harder to prove. Each of them believed it was overused, invalid, or gave suggestions as to what it should require if it was to be valid.

Participant 1. “I feel it's too liberal. People will use it even when they are not insane. People will use it even when it's not legit. People need to look more into it. It's not believable. When their actions take over, it's almost like they can't control it, but they kind of can.”

Participant 2. “Neurological testing should be the only legit form of testing.”

Participant 3. “[All it takes is to be] someone who has been disturbed and hurtful to others since they were a child.”

Participant 10. “It’s tough to qualify, but still overused. You should literally have to not be aware of your surroundings. It’s overused for a fit of rage. If you are able to make that decision [to commit the crime], you should be sane.”

Participant 13. “They should have to have a history of documented mental illness. Not just meds or therapy, but public instances displaying abnormal behavior. The previous history isn't necessary if [demonstrating] psychotic behavior.”

Participant 14. “People can fake it. You should have a lot of issues: not being able to sit still, hearing voices, having actions and things happening to you that you can’t explain. Like you don't know you did them.”

Theme 2 - Insanity Defense is Valid and Used Only When Needed

While many of the participants viewed the insanity defense as invalid, many other participants believed the insanity defense is valid and only used when needed. In addition, individuals who qualify for the insanity defense genuinely cannot control their behavior and therefore should qualify for insanity.

Valid. One half of the participants ($n = 7$) believed the insanity defense was valid.

Participant 4. “If it's legit, it's legit.”

Participant 5. “Yeah, we should have [an insanity defense].”

Participant 6. “Yes, they aren't capable and should get insanity.”

Participant 7. “Yes, [you should get insanity] if you can be proven to be insane.”

Participant 8. “It’s legitimate for some.”

Participant 11. “It's valid in some cases.”

Participant 13. “It can be an excuse, like ‘Oh I killed this girl because I didn't know what I was doing’, but some cases are valid”

Used only when needed. Seven of the participants described the insanity defense as being not overused, but instead only used when needed. Several of them based this belief on the perception of the insanity defense being hard enough to prove that it could not be overused and thereby described the requirements.

Participant 4. “They would need to be evaluated by at least three therapists.”

Participant 5. “They have a brain or chemical issue and are not right in the head.”

Participant 7. “Evaluation is required, so the insanity defense is not overused. It doesn’t work that easily. Psychologists determine insanity.”

Participant 8. “It’s not as overused as people think. It only works in very few cases.”

Participant 11 “You have to have psychologists label you as such based on mental capacity, history, and what you did at the moment.”

Participant 12. “[The insanity defense] requires a full mental evaluation by a psychologist or psychiatrist”

Participant 14. “It’s hard to prove, so isn't successful.”

Cannot control behavior. Two participants explained the validity of insanity as stemming from a lack of the individual’s control over their own behavior. One individual stated that those who qualify for insanity have, “no control over what they do. They have a brain or chemical issue and are not right in the head.” Another participant mentioned they “lack common morals instilled in people” and therefore cannot be held accountable for their actions.

Perception of Psychopathic Individuals Qualifying for Insanity

Theme 1 - Psychopathic Individuals *Should Not Qualify*

Regarding the perception of psychopathic individuals qualifying for insanity, two themes arose. Each was equally supported, with the fourteen participants split between the two views. The most frequently described theme was the perception that psychopathic individuals should not qualify for insanity. The reasons given for this was that psychopathic individuals demonstrated a sufficient ability to choose, it would be a cop-out, and that they could be faking. Another aspect of the perception that psychopathic individuals shouldn't qualify for insanity deals with the retributivist perspective that psychopathic individuals should be locked away or killed for their crimes.

Would be a cop-out. The primary reason why participants believed psychopaths should not qualify for insanity was that it would be a “cop out” or that they would be getting away with it. Three participants held this view.

Participant 1. “It’s a cop-out. It’s overdone.”

Participant 6. “No, it would be hard to prove. Maybe for one murder, but not multiple.”

Participant 14. “[Psychopaths qualifying for the insanity defense] shouldn’t even be a question.”

Able to Choose. Three other participants believed that psychopaths should not qualify for insanity because, by committing a crime, they had proved that they had enough insanity to choose to commit the crime.

Participant 13. “If you're aware and cognizant, you shouldn't qualify. Psychopaths are more hyper-aware.”

Participant 14. “If it's premeditated, they should be sane.”

Participant 15. “They shouldn't get insanity, because regardless of the circumstances, you made the choice. It's different than being actually psychotic if you choose.”

Could be faking. One individual stated that psychopathic individuals should not qualify for insanity because they could be faking. “First you have to determine whether they are insane or not, then decide if they're faking it or not. With glibness and false affect, they could fake it.”

Should be incarcerated or killed. Several of the individuals (n=4) stated that psychopathic individuals should not qualify for insanity, but instead should be either incarcerated indefinitely or killed.

Participant 4. “Their a***es still need to go to jail, they still need to be locked away.”

Participant 8. “Psychopaths lack the emotional ability to understand what they've done and shouldn't be allowed in society because they lack remorse. They should be taken out of society. Those with severe enough psychopathy should be killed. Society does not need people with no remorse and a history of criminal behavior and murder.”

Participant 12. “If you can't treat or rehabilitate psychopaths, they should get life in jail or maybe a mental institution. If we don't have room for them, they should be killed, just like a horse with a broken leg or a dog who bites people.”

Participant 14. “They should be in prison if the crime fits. They should be treated like others.”

Theme 2 - Psychopathic Individuals *Should* Qualify

Equally as supported ($n = 7$) was the belief that psychopathic individuals should qualify for insanity. This belief was based on either a mental disorder or an inability to control their

behavior. Participants also believed that psychopathic individuals should be institutionalized or treated.

Mental disorder. Four participants reasoned that psychopaths should qualify for the insanity defense due to a mental illness.

Participant 2. “I think it's logical [for psychopathic individuals to qualify for insanity], I think it, their traits, deem in the realm of insanity.”

Participant 3. “Yes [psychopathic individuals should qualify for insanity], because their brains aren't fully functional. There is something wrong with them.”

Participant 4. “[Psychopathy] is a social and mental disorder, so it’s a mental trait.”

Participant 13. “Yes, [their mental disorder isn’t] documented, but they still show signs of insanity. They need documented signs of "insane behavior".”

Cannot control behavior. A second reason why psychopaths should qualify for insanity was explained by four of the participants. This reason was due to their perceived inability to control their behavior.

Participant 5. “[Psychopaths should qualify for insanity] because it's not under their control. They’re born that way. They’re rational, but it’s like being on drugs.”

Participant 6. “They should ideally [qualify for insanity], based on moral ability.”

Participant 7. “It would be okay in many cases [for psychopathic individuals to qualify for insanity], because they can't control what they do.”

Participant 8. “Psychopaths lack the emotional ability to understand what they've done.”

Should be treated. Three participants mentioned that psychopathic individuals should be treated or institutionalized after qualifying for insanity.

Participant 5. “Psychopaths should be put in a mental hospital indefinitely.”

Participant 7. “Psychopaths need psychiatric help, not prison time. If they’re violent they shouldn’t be let out. They should be kept in psychiatric wards or hospitals and should be treated. They should be contained somewhere other than prison and need rehabilitation. If there’s no cure, then they should just be there long term.”

Participant 9. “They may qualify [for insanity], but shouldn't be set free. It's not that they're bad, but they should be helped and in prison or mental institutions til they recover, if ever.”

Chapter 5

Discussion

The purpose of this study was to determine the public perception of psychopathic individuals, the insanity defense, and whether psychopathic individuals should qualify for insanity. Perception of psychopathic individuals included five themes: a lack of emotion and empathy, a charming and selfish narcissist, a creepy and socially-awkward predator, antisocial and violent tendencies, and mental illness. The perception of the insanity defense was split evenly between a positive and negative perception. Perception of whether psychopathic individuals should qualify for insanity was also split evenly, between the perceptions that they should or should not qualify.

Within the five themes of the perceptions of psychopathic individuals, many characteristics mentioned are actual diagnostic criteria from the Psychopathy Checklist – Revised (PCL-R). Glibness/Superficial charm, lying, manipulation, a lack of remorse, a lack of emotion, poor behavioral controls (antisocial behavior), early behavioral problems, and impulsivity are each criteria from the PCL-R (Hare, 1991) and were each mentioned by at least one participant during the interviews. These eight criteria constitute almost half of the twenty diagnostic criteria.

The creepy and socially-awkward predator theme, however, consisted of primarily characteristics that are not related to actual psychopathy. While some psychopaths may be creepy and calculating in appearance and demeanor, those are not traits that directly align with psychopathy. Mental illness also, in its traditional form, alongside psychotic tendencies also does not align with psychopathy. Psychopaths tend to be high-functioning individuals, instead of the

traditional crazy killer (Fox et al., 2001). Several participants mentioned a neurological deficit, however it was not necessarily the actual neurological deficit present in psychopathy.

The perception of the insanity defense was split between a perception of the insanity defense being invalid and overused, and being valid and used correctly. These results were more moderate than those found by Hans in 1986, whose results indicated 63.6 % acknowledged the insanity defense as being a necessary part of the legal system, but 89.2% believed the insanity defense was a loophole allowing the guilty to go free. However, individuals who believed the insanity defense was invalid based this on an overly high perception of both the frequency of use and success of the insanity defense. These results were similar to those found by Silver et al. (1994) and Hans (1986).

Those who believed psychopaths should get the insanity defense recognized the presence of an uncontrollable deficit held by psychopathic individuals. The individuals who did not believe psychopaths should be found not guilty by reason of insanity held this belief on either the basis of their choice to commit the offense and that they could be faking it, or a negative attitude to the insanity defense itself. Those who believed psychopathic individuals should get the insanity defense often felt they should be institutionalized or treated, while those who believed psychopathic individuals should not qualify for the insanity defense tended to recommend incarceration or death.

Implications

Because the perception of psychopathy tended to be correct in many of the personality traits present in psychopathy, it may be that individuals have obtained a relatively accurate perception of psychopathy from the media and other sources present in the participant's lives. However, the main areas where the perception of psychopathy differed from reality were in the

areas of mental illness and antisocial behavior. As one participant mentioned, the terms *psychopath* and *serial killer* are so often used in conjunction to one another that an overly negatively biased opinion of psychopathy may exist in many individuals. Perhaps more education regarding the accurate definition and diagnosis of psychopathy should be given to the general population, in order for future movements in the legal system towards allowing psychopathic individuals insanity can be fully supported. If not supporting the insanity defense for psychopathic individuals, the public would at least have fully accurate reasons why they disagree.

In regards to insanity, though, the misinformation present in participant's perception is indicative of a larger lack of education regarding our legal system. Without education of our general population and eventual jury pools, we cannot expect fair court rulings in regards to insanity. The general public also needs to be more thoroughly educated as to their own legal system, so that they can be more informed and enable changes to the legal process to pass.

Recommendations

Without an understanding of what public perception is regarding a topic, any attempts to change policies or those perceptions may be futile. As the basis of public perception of psychopathic individuals, the insanity defense, and whether psychopathic individuals should qualify for insanity has been developed, this perception should be used to guide attempts to correct the misinformation present. Because so many aspects of the legal system involve members of the public, without correcting misinformation, the legal system cannot function as justly as possible.

Psychologists. For psychologists, the results in this study would indicate a need to examine public perception of other mental disorders, so that any stigmas can be broken down

and the correct information spread to the public. Psychopathy was directly linked by many individuals to disorders such as antisocial personality disorder, psychotic disorders, and dissociative identity disorder. If individuals believe that antisocial behavior is a direct result of psychosis or disassociation, more work will need to be done to combat the apparent stigmas present regarding those disorders. In addition, the negative perception towards the insanity defense could have negative implications on the likelihood of forensic psychologist's testimony assisting individuals in fulfilling the requirements of the insanity defense.

Legislation and legal system. To those in the legal system, this study's findings regarding perception of the insanity defense and what it takes to qualify for insanity may have major implications on the use of the insanity defense in jury trials in the future. If half of the participants in this grounded theory study believed the insanity defense was invalid and overused, the number of cases where an individual successfully utilizes an insanity defense may be greatly influenced by this. This level of bias may require more public information regarding its validity and a change in public perception if the insanity defense is to be utilized to its full extents.

Limitations

One major limitation of this study was the small and geographically limited sample. Although the sample was appropriate for the study conducted, any studies attempting true generalizability would need to be conducted with a larger, geographically diverse sample. In addition, due to the format of the semi-structured interview, every participant experienced the interview in a more personalized format, thereby creating the possibility that valuable information may have been lost in answer to a delving question that simply was not asked.

Future Research

Opportunities for future research based on this study would include a quantitative study analyzing the themes raised in this study, as well as another qualitative phenomenological study digging deeper into the themes raised in this study. In addition, there appeared to be a link between perception of insanity and perception of whether psychopathic individuals should qualify for insanity. Although causation could not be inferred in this grounded theory study, future research could attempt to determine whether there is a statistical predictive ability in the perception of the insanity defense on perception of whether psychopathy should be a qualifying disorder for the insanity defense.

In addition, because the perception of the insanity defense was split between very negative opinions and those who hesitantly acknowledged its usefulness, it may be important to study which specific mental illnesses are perceived to qualify for insanity defense and how one might go about combatting misinformation. As this study was exploratory in nature, it may prove to be an excellent basis for many future studies in both the topics mentioned and future public perception studies.

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APPENDICES

APPENDIX A

Semi-Structured Interview Questions:

1. Do you know what a psychopath is?
2. How would you define a psychopath?
3. What is a psychopath like?
4. What do you think about a psychopath's moral ability?
5. What do you think about the insanity defense?
6. What do you think it takes to qualify for insanity?
7. What do you think about psychopaths qualifying for insanity?

APPENDIX B

The script used for recruitment is as follows:

“Hello, my name is Elisabeth Knopp and I am a graduate student at California Baptist University. I am conducting a study to examine public perception of both psychopathy and the insanity defense. The study will require you to answer several questions in a semi-structured interview. I will record the entire interview. Participation is completely voluntary and no identifying information will be associated with your responses. Would you be willing to participate in the study?”