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# Morality and Psychopathic Criminals. Ethicentrism, Mental Incapacity, Free Will, and the Fear of Decriminalization

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**Riassunto** *Moralità e criminali psicopatici. Eticentrismo, infermità mentale, libero arbitrio e la paura della decriminalizzazione* - Le sentenze che oggi vengono pronunciate contro i criminali psicopatici evitano accuratamente di far leva su considerazioni "moralì". Solitamente l'attribuzione di responsabilità morale ai criminali si basa spesso sul concetto cognitivo di *infermità mentale*, in maniera tale che il *giudizio morale* sulla *condotta morale* dei "criminali psicopatici" in questi casi venga tendenzialmente sterilizzato. La posizione che qui vorrei proporre individua oscurità e limiti epistemici nelle teorie e nei metodi correntemente impiegati nelle società occidentali per alleggerire le responsabilità morali, le quali, pertanto, risultano in parte inaffidabili. Per supportare questa conclusione intendo far leva sui miei più recenti studi di carattere cognitivo, vertenti sulla dimensione plurale dei contesti morali, sulla co-evoluzione geni/nicchia cognitiva e sul concetto di libero arbitrio.

PAROLE CHIAVE: Psicopatici; Moralità; Decriminalizzazione; Eticentrismo; Violenza.

**Abstract** Present-day legal judgments of psychopathic criminals strongly avoid the exploitation of "moral" considerations. Currently, the attribution of responsibility to criminals often takes advantage of the cognitive concept of *mental incapacity* so that, in these cases, the *moral judgment about moral conducts* of "psychopathological" criminals is potentially extinguished. I contend that the theories and methods that are currently used in western societies to discharge moral and legal responsibility are not clear in their epistemic structure and so partially unreliable. To support this conclusion I take advantage of my recent cognitive studies concerning the multiplicity of moral frameworks, the gene/cognitive niche co-evolution, and the concept of free will.

KEYWORDS: Psychopaths; Morality; Decriminalization; Ethicentrism; Violence.



## Criminal psychopaths' morality and ethicentrism

HUMAN BEINGS LIVE WITH VARIOUS  
KINDS of moralities, and possess and adopt

different moral frameworks (e.g. religious, civil, personal, emotional, etc., not to mention their intersections and intertwining) which they engage and disengage both intentionally and unintentionally, in a strict interplay be-

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tween morality and violence.

There are also private moralities and habits – perceived as fully moral by the agents themselves, which we can call *pseudo-moralities* if we compare them to the translucency of the modern moral frameworks (that is, the way they are described in books about moral philosophy: Kantian, utilitarian, religious, ethics of virtues, feminist ethics, and so on). These personal moralities can be very easily observed not only as the fruit of the emergence of archaic moral templates of behavior in mentally healthy human beings – that is, templates of possible moral behavior trapped in a kind of hidden moral unconscious – but also in the case of violent psychopaths, who suffer from a personality disorder involving a profound lack of empathy and remorse, shallow affect and poor behavioral controls: psychiatrists and criminologists commonly describe how extremely personal – often disguised, fragmented, and depraved – concerns and convictions, which are envisaged as “moral” in the subjective estimation of criminal psychopaths, are capable of triggering atrocious violence.

Kent Kiehl, a psychologist who focuses his research on the clinical neuroscience of major mental illnesses (with special attention to criminal psychopathy, substance abuse, and psychotic disorders such as schizophrenia), usefully observes that psychopathy immediately affects morality:

psychopathy is a personality disorder characterized by a profound lack of empathy and guilt or remorse, shallow affect, irresponsibility, and poor behavioral controls. The psychopaths’ behavioral repertoire has long led clinicians to suggest that they are “without conscience”.<sup>1</sup> [...] Thus, the psychopath presents clinically as a “walking oxymoron”. On the one hand, the psychopath is capable of articulating socially constructive, even morally appropriate, responses to real-life situations. It is as if the moment they leave the clinician’s office, their moral compass goes awry and they fail seriously in most life situations.<sup>2</sup>

I must immediately stress that when Kiehl says that criminal psychopaths present a “lack of morality”, I prefer to suggest that they display a lack of *our* morality: the *ethicocentric* morality of a civil, cultivated observer. It seems that the criminal psychopaths’ acts are inconsistent with their verbal reports, as in the following case, still illustrated by Kiehl:

I was working with a psychopath who had been convicted of killing his long-term girlfriend. During his narrative of the crime he indicated that the trigger that set him off was that she called him “fat, bald, and broke”. After her insult registered, he went into the bathroom where she was drawing a bath and pushed her hard into the tile wall. She fell dazed into the half-full bathtub. He then held her under the water until she stopped moving. He wrapped her up in a blanket, put her in the car, drove to a deserted bridge, and threw her off. Her body was recovered under the bridge several days later by some railroad workers. When asked if what he had done was wrong, he said that he knew it was a bad idea to throw her off the bridge. When I probed further, he said that he realized that it was bad to actually kill her. This inmate was subsequently released from prison and then convicted of killing his next girlfriend. When I met up with him in the prison some years later, he indicated that his second girlfriend had “found new buttons to push”. He was able to admit that he knew it was wrong to kill them.<sup>3</sup>

In the case I just reported, it seems that a “morality” of killing is activated: the victim is sacrificed because she *deserved* that punishment in the light of the psychopath’s rigid morality. Being questioned, a morality of decency is advanced and verbally reported before the moral imperative not to take another person’s life (the *wrong* deed consists in throwing the body in the river) and finally, the morality of not-killing is verbally proposed (the *wrong* deed consists in the killing itself).

In the perspective of disengagement and reengagement of morality, the first moral fragment (killing to punish) does not only trigger but also justifies violence, and plays a dominant role. However, it coexists with other moral fragments, that are reengaged and that sometimes disengage the dominant one. Many criminal psychopaths share multiple moralities with mentally “sane” human beings, moralities which play the role of more or less freely chosen “reasons”, and they are involved in processes of disengagement and reengagement; these various shifts seem anomalous insofar as they display a strange sudden intermittence of changes or long delays, a lack of stability within the various stages or an excess of stability, and in some cases the – so to say – special “individuality” of the adopted structured morality is predominantly at play.

In the perspective of disengagement and reengagement of morality I have described in my *Understanding Violence*,<sup>4</sup> the first moral fragment (killing to punish) does not only trigger but also justifies violence, and plays a dominant role. However, it coexists with other moral fragments, that are reengaged and that sometimes disengage the dominant one. Many criminal psychopaths share multiple moralities with mentally “sane” human beings, moralities which play the role of more or less freely chosen “reasons”, and they are involved in processes of disengagement and reengagement; these various shifts seem anomalous insofar as they display a strange sudden intermittence of changes or long delays, a lack of stability within the various stages or an excess of stability, and in some cases the – so to say – special “individuality” of the adopted structured morality is heavily at play.

Kiehl contends that many other psychiatric conditions (also some underlying criminal behaviors) are related to the aforementioned impairments in understanding moral behavior: still, some are “unencumbered by moral imperatives”, as in the case of a schizophrenic who had killed someone he thought had implanted a monitoring device in his head.

The usual interpretation of this supposed

lack of morality is the following: in the case above, through our twenty-first-century academic or forensic ethnocentric screen, the criminal schizophrenic could not be convinced that sacrificing his victim was a *bad* thing to do because he was unable to articulate that it was wrong to kill this person.

I rather think that cases like this are better illustrated as characterized by the stability of a central and unique totally “subjective” moral framework, not sharable in a collective dimension, but still lived as “moral” by the human agent (i.e., if the schizophrenic could not be persuaded into acknowledging that his deeds were wrong, he probably kept thinking they were right, which is a moral stance). We are dealing with a kind of *personal morality*, as I have noted above, envisaged as a fully acceptable dominant morality in a subjective estimation, concurring with an anomalous absence of those multiple moralities which in my opinion characterize mentally healthy human beings.

Relatively well-known research about criminal psychopaths stresses the fact that they do not discriminate between moral and conventional rules (for example, mere etiquette and various social rules, such as which side of the road to drive on, or how to move the pieces in a game of chess), unlike non-psychopathic criminal and “normal” individuals. That is to say, the criminal psychopaths rate the wrongness and seriousness of the respective violations in a similar way and as authority-independent. Moreover, in a second experimental result, criminal psychopaths tended to treat all rules as “inviolable” in an effort to convince the experimenter that they were mentally healthy.

This interpretation resorts to postulating that the combined deficits of moral motivation and moral competence result directly from an emotional deficit.

I consider this interpretation of results to be puzzling. I do not agree with it: first of all, *conventional* rules almost always also carry the *moral* values of a group (for example, etiquette is not simply comprised of morally-neutral rules), and so the experiment is biased by this

aprioristic assumption of the experimental psychologist; second, the antisocial violent outcome is not necessarily due to impaired violence inhibition and to a general lack of emotional concern for others. In the perspective I have outlined above, the data obtained can also be interpreted in terms of rigidity in the adoption of a given moral perspective and perseverance in applying the related violent (criminal) punishment, in lieu of a more open mechanism of moral disengagement and reengagement with other moralities, possibly less inclined to perform violent punishment.

On the contrary, the supposed lack of moral emotion<sup>5</sup> seems to us intertwined – at first sight paradoxically – with the production of a lack of moral flexibility: in this sense criminal psychopaths do *not* have problems with morality because they are practically “amoral” and lack moral (emotional) commitment, but instead because they are engaged in a kind of rigid *hyper-morality*, which is not open to quick and appropriate revisions.

One should wonder whether the emotion, in front of inflicted harm, is lacking because subjects are engaged in a rigid morality whose punishments are seen as just and deserved, or whether it is the lack of emotion that promotes rigidity in the adopted moral perspective. It is not that criminal psychopaths do not master moral emotions and show reduced activation of areas involved in attention and emotional processing, but it seems instead they just master their moral emotions that way: in sum, they are emotionally *retarded* just in the light of our moral judgment of “normal” individuals or non-psychopathic criminals!

It is a real pity that psychiatric and psychoanalytic traditions, still obsessed by an excess of positivistic commitment, mostly refuse to consider the moral aspects of mental illnesses. In this sense psychiatrists often correctly complain about the tenacious persistence of a “moralistic” perspective in cases of childhood sexual victimization: there has been a tendency in psychiatric professionals to *vilify* those very patients who display abnormal sexual behaviors as a result of various kinds of sexual trauma.<sup>6</sup>

I argue that respect for the purported objectivity and freedom from moral bias in scientific evaluation, diagnosis, and therapy on the part of the psychiatrist is one thing, but a lack of consideration of the moral life of criminal psychopaths and their victims is a totally different thing. After all, morality is no longer the “other” of scientific rationality, like it has almost always been considered in the last two centuries (science deals with what is the case, whereas ethics deals with what ought to be), but a legitimate object of rational analysis. Prinz too seems perplexed: «These deviations suggest that they do not possess moral concepts; or at least that their moral concepts are fundamentally different from ours».<sup>7</sup>

Here we may draw an interesting parallel with confabulating. Confabulation results from the inability to discard beliefs or ideas that are patently false. This is due to the fact that confabulators may lack the mechanisms enabling them to inhibit information that is irrelevant or out of date. The main effect is that the process of belief monitoring and revision cannot take place, and the confabulator is simply trapped within his bubble.

I argue that something similar may happen to criminal psychopaths. That is, they would be trapped in a sort of moral confabulation resulting from the inability to discard a certain morality as unacceptable. In turn, such an inability would block the normal moral flexibility and so the process of moral reengagement.

In sum, usually perpetrators of evil – those of sound mind and more particularly those who are mentally ill – do not regard themselves, like Kant had already stressed<sup>8</sup> – as wrongdoers. Paradoxically, they often see themselves as victims, for example treated unjustly or aggressively, so that they think – *perversely* – they should deserve sympathy, support, and tolerance (if not praise).

### ■ Mental incapacity, gene/cognitive niche co-evolution, and the fear of decriminalization

Present-day legal judgments of psychopathological criminals strongly avoid the ex-

exploitation of “moral” considerations and also tend to disregard the possible “moral” aspects of criminal conduct. Currently, the attribution of responsibility to criminals often takes advantage of the concept of *mental incapacity*, so that, in these cases, the *moral judgment about moral conducts* of “psycho-pathological” criminals is potentially eliminated insofar as they are merely seen as affected by an overall mental incapacity and this incapacity becomes the exclusive object of psychiatric and legal technicalities.

One must note that the attribution of responsibility changes over time, as Lacey observes.<sup>9</sup> Nowadays, the state’s function in proving not only conduct but also individual responsibility (i.e., psychological and internal, capacity-based, requirements of *mens rea*, the *guilty mind* presupposed by criminal liability) is crucial for the legitimation of criminal law, not as a system of brutal, retaliating force but as a system of actual justice.

What is at stake is that «the treatment of what we would today call mental incapacity defences, in which what would become the psychiatric profession was emerging as an authoritative witness to the “facts of the mental matter”» is related to the fact that «in principle, the field of mental incapacity should reflect the most fully developed aspect of the “inner” or “psychological” model of criminal responsibility».<sup>10</sup>

In brief, it is evident that, in this perspective, the jury’s commonsense *moral* assumptions about madness, which characterized the evaluative/character based practice of the past, decline: currently, incapacity defenses which lead to judgments of non-responsibility focus on *cognitive* incapacities (for example “lesions of the will”, found in the factual conditions of mental, inner or neural states of individuals, where knowledge and consciousness are central), as opposed to *volitional* incapacities, that were considered as forms of *moral* insanity. Nevertheless, it is worth mentioning that Lacey concludes by acknowledging a kind of *resurgence* of character-based patterns of attribution of criminal responsibility:

emerging from their subterranean (though clearly important) position in the exercise of discretion at prosecution and sentencing stages, character-based principles are enjoying a revival not only in “three strikes and you’re out” sentencing laws and pedophile registers but also in the substantive law, particularly that dealing with terrorism, and in the operation of evidential presumptions, detention rules and the renewed admissibility of evidence of bad character. Why, we might ask, has character suddenly become an acceptable explicit principle of criminalisation once again? And does this imply that its decline was more formal than real?<sup>11</sup>

The reason for this resurgence seems to be clear: further attention to capacity-based practices of responsibility-attribution better relates to the habit of considering individuals and their engaged capacities *per se* rather than their social status or appearance, that is to say, an attitude towards the whole practice of justice which derives from certain standards of legitimation following the democratic acknowledgement of individual freedoms.

Unfortunately, such a disposition would prosper in a world endowed with [...] some confidence in its institutional capacity to deliver such individualised judgments while maintaining adequate levels of social control. Such a world has arguably never existed. But that individualising impulse has most certainly had a significant impact on the form of (some parts of) criminal law over the course of its “modernisation”. We might speculate that, at times when the sentiments underpinning norms towards equal liberties are fragile, perhaps because of fears about crime, or terrorism, or order more generally, explicitly character-based patterns of attribution tend to enjoy a revival.<sup>12</sup>

In sum, the revival of “moral character” in criminal law seems related to the renewed emergence of a *culture of control* in our anx-

ious, fragile, and insecure world, which results in a potential greater criminalization, a recognizable “overcriminalization”. Furthermore, one could notice how both the hypertrophic diffusion of psycho-pathological insights in the appraisal of criminal responsibility and the revival of character-based criminalization are easy ways of escaping a more burdensome, yet richer, practice of criminal justice: as I contend, stressing the criminals’ moral character leads to the inescapable excess of *overcriminalization*, but similarly, a psychopathology of criminals yields the perverted fruit of utter *decriminalization* (at least from the point of view of social ideologies and everyday people’s mentality), resulting in the impossibility of any guilt ever being attested.

It could be argued that many dangerous outcomes of the anomalous engagement and disengagement of moralities are caused by the “anomalous” engagement of more or less rigid personal, individual moralities – that only the agent himself recognizes as such – and by their abnormal consecutive replacement: the reader could ask, how can a morality that is private still be a morality?

She should note that morality can be fragmented and private – in the sense that it is not shared with some specific groups – because it is a vestigial remaining of more ancient moral concerns and axiological frameworks, which can be illustrated in terms of the speculative psychoanalytic concept of a collective unconscious.

For example, mobbing and bullying behaviors are surely not explicitly labeled as “moral” in our civil western countries, but still mentally “work” in people and are perceived as good motivations for supposed-to-be “moral” behaviors, exactly as they worked fairly well in ancient times, for example when the scapegoat mechanism was a perfectly approved, efficient, and justified conduct. Of course these behaviors were not necessarily labeled “moral” in the respective human groups, by the same meaning we now sophisticatedly and intellectually attribute to it, but they played a decisive role in that cooperative sense which works in

the case of coalition enforcement.

In order to shed light on this issue involving an evolutionary dimension of human nature, I take advantage of a different perspective on the hotly debated relationship between culture and nature. That is, I claim that the various archaic moral and non-moral aspects of the collective unconscious are more likely to emerge in connection with the impoverishment of the cognitive niches one lives in.<sup>13</sup>

That is, some moral templates relying on archaic modes of moral behavior are somehow re-activated or *re-enacted* as the result of a “moral sensory deprivation” caused by the pauperization of the cognitive niche. The evolutionary importance of the cognitive niche is given by the fact that it is responsible for providing and delivering additional resources for behavior control. Such additional resources are part of an ecological inheritance system, which co-evolves along with the genetic inheritance one<sup>14</sup> so that some plastic behaviors emerge augmenting the cognitive and moral repertoire furnished by evolution.

In order to clarify this point from an evolutionary perspective, and thus dealing briefly with the hotly debated issue related to the relationship between culture and nature, I have to indicate here the main points related to gene/cognitive niche co-evolution: general inheritance (natural selection among organisms influences which individuals will survive to pass their genes onto the next generation) is accompanied by another inheritance system which plays a fundamental role in biological evolution, where niche construction counts. It is the general inheritance system, also called *ecological inheritance* by Odling-Smee, Laland and Feldman. In this co-evolutionary process selection selects – so to say – for *purposive* organisms, that is, niche-constructing organisms.

Given the fact there is (1) a co-evolution between genes and cognitive niches during human evolution and, especially, (2) because of their specific coupling which occurs during the life of any individual, as for example illustrated by so-called “Neural Darwinism”.<sup>15</sup> The methods that are currently used in western so-

cieties to discharge moral and legal responsibility seem to us unclear in their epistemic structure and so partially unreliable.

Indeed, it is a fact that the brain is configured in a certain way, and there is evidence that genetic or anatomic dysfunction (such as epilepsy, delirium, dementia, thyroid dysfunction, cerebrovascular disease, encephalitis, diabetes, etc.) is present and may promote aggressiveness: the problem is that all this is often vaguely linked to a related lack or impairment of free will capacities, and nothing more, as I will better explain in the last section of this paper. Indeed, philosophers of free will frequently refer to mental and brain disorders as conditions that compromise free will and reduce moral responsibility, and so does forensic psychiatry.

For example, what if some neural clusters were shaped during the personal history of an individual immersed in the aggressive morality of an honor culture, so that he presents anomalous distribution of excitations in areas related to aggressiveness (even detectable thanks to fMRI methods) with respect to “normal” agents? Does this authorize us to state that the person who embodies those neural networks is not responsible for his violent illegal outbursts? Does the presence of certain genes, susceptible to exposure to unlucky cognitive niches (for instance an abusive family), authorize the philosopher or the forensic psychiatrist to subsequently hypothesize a lack or an impairment of free will in a criminal offender? Furthermore, on another account, does the fact that his brain did not have the chance to be exposed to the cognitive niche of civil morality embedded in modern law and civil morality itself make the criminal offender morally and/or legally condoned?

### ■ Can we freely decide to kill our free will?

It is important to note that various characteristics (not free from ambiguities) of free will can be proposed: (1) one must be able to act otherwise, i.e. one must have alternative possibilities; (2) one must be able to act or choose for a reason; (3) one has to be the orig-

inator (the causal source) of the action. Obviously, free will is always related to moral responsibility.

Various constraints, standard and psychiatric, are believed to create problems for free will: for example, diminished capacity, intoxication, unconscious drives, infancy, entrapment, duress or coercion, kleptomaniac impulses, obsessional neuroses, desires that are experienced as alien, post-hypnotic commands, threats, instances of *force majeure*, various psychopathological states, physical and genetic impairments. These “excuses” typically find application in cases involving the ignorant, the misled, the coerced, the mentally insane, the intoxicated, the biologically abnormal. In these cases the *actus reus* tends to be conceded but *mens rea* is denied.

Meynen concludes that philosophers of free will have paid scarce attention «to identifying the precise reasons why (certain) mental disorders would diminish free will; a detailed analysis of what it is that mental disorders do that has such an effect on free will is lacking»:<sup>16</sup> this happens in the case of defining criminal responsibility in real subjects (for example related to psychosis), which leads to the choice of non-moral medical treatment instead of the fully moral/legal punishment which would normally follow a misbehavior.

For example it is not clear when free will is *partially* compromised, and then when and to what extent responsibility can be actually discarded. The empirical fact that legal or psychiatric forensic technicalities can *de facto* solve ambiguities does not mean they are always based on serious scientific reasons. The typical “psycho” who killed his girlfriend acted for *reasons* as strong as moral imperatives, so in this respect his free will is preserved: his mental disorder does not affect this sense of free will. Similarly, can the capacity to choose *alternative possibilities* be jeopardized by mental disorder? It is not clear. Finally, what about the *source/cause* of criminal violent action, which depicts the third sense of free will I have indicated above? Should the guilt be attributed to the “proper person”, his mental

disorder, or his “biology”?

Professional psychologists and the so-called behavioral scientists argue for a broader and richer range of ways in which psychology might be applied to criminal justice and, thereby, to law.<sup>17</sup> They always contend that further “scientific” light can be shed not only on the problem of criminal responsibility, but also on eyewitness identification, investigative interviewing, credibility assessments and lie detection, fact finding, evidence, decision making and its discontents. They for instance stress that legal judgments, in particular, are influenced by short-cut, heuristic reasoning processes which have to be studied and clarified.

I would like to note that psychology and other behavioral sciences do not have a *privileged* disciplinary status, for instance over philosophy or logic, that criminal justice “must” take advantage of. It is well known that too many psychologists just aim at promoting and diffusing their discipline as everywhere necessary, especially in legal settings, even if scarce or counterproductive contributions result. Just to give an example, it is very sad that the study of abduction, so important in criminal investigation and in legal trials, is paradoxically disregarded by the psychologists themselves, even if studied in depth for example by philosophers, logicians, and AI scientists.<sup>18</sup> Even some psychologists acknowledge that

[u]nfortunately whilst work on abduction and defeasible arguments is exciting the interest of computational scientists interested in artificial intelligence it has provoked less interest amongst psychologists.<sup>19</sup>

A further interesting speculation may be advanced: what about a person who, in the presence of dysfunctional cognitive niches (poverty, abuse, and various other kinds of direct or structural violence), has in the beginning *freely* chosen and later on freely educated himself (and his brain’s neural networks) to perform violent physical aggressiveness, fearlessly and repeatedly. Indeed, after years, he might have developed a criminal psychopathic

personality and he can be described as such by a psychiatrist. In such cases everyday language clearly expresses the same conclusion as that of the psychiatrist: “he is dominated by his impulses”, so it is not him that performed the crime but his mental illness. Then, just go to the medical treatment, son!

A question arises: who (or what) transformed him into a person who lacks or has impaired free will? “He himself”, as the cognitive agent, his environment, his brain, his genes? I think we need more knowledge about puzzling situations like this.

From this perspective we can see that people can be considered as responsible for dismissing the ownership of their own destiny. But, what about the responsibility for violent actions committed after that initial moral “choice”, in the presence of the consequent impaired intentionality and free will? A similar problem is illustrated by Meynen himself:

for instance, with respect to the person being the “genuine source of the action”, I mentioned that the mental disorder—rather than the “person proper” — could be considered the cause of a crime. Yet, this raises the question, what is the person proper and how can one distinguish the person proper from a mental disorder? This line of questioning will, sooner or later, bring up the question, what exactly is a mental disorder? — a central topic in the philosophy of psychiatry. And if we focus on the “cause” of an event, then we must decide how to assess, among the manifold phenomena that contribute to the occurrence of a particular event (e.g., actions), which of these contributory phenomena count as an authentic “cause”. For instance, did an addict’s original decision to use heroin cause the heroin addiction and thus also cause the actions that subsequently resulted from the heroin addiction? In brief, a central issue will be, how do the person proper and the disorder relate and how can they be distinguished when it comes to the initiation of actions?<sup>20</sup>

Could it help my analysis to consider a person – for instance responsible for violent actions – who is supposed to be affected by a psychopathological lack or impairment of free will, yet who may have also freely brought himself to that condition?

Maybe he chose a specific reaction in his coupling with cognitive niches, a reaction that later on led “him” to weaken or annihilate his own free will. From this perspective we can see that people can be considered as responsible for dismissing the ownership of their own destiny. But, what about the responsibility for violent actions committed after that initial moral “choice”, in the presence of the consequent impaired intentionality and free will?

Is this attitude still reminiscent of the old-fashioned judgment based on *moral character*, that (it seems) we abandoned in the nineteenth century, or is it an actual problem we need to address when evaluating crimes? In which cases should we condone a criminal and the violence he perpetrated? If we condone his crime, but the criminal had performed the violent action in a state of free will, are we not in the presence of a kind of perverse disguised forgiveness, a dressed up excuse, which does further wrong to all the others criminals who could not make use of the same awkward forgiveness?

Even if we do not have to fear the psychiatric *legal* decriminalization, which is anyway justified by the need for “civilizing” the criminal law, it is worth stressing that psychiatric, psychological, and neurological knowledge is often rudimentary, obviously continually changing during the standard research process of the involved academics, and often applied in settings where incompetence, excessive economic drives, avidity, and other variables endowed with possible violent outcomes are at play.

What is really unfortunate, in my opinion, is that media and therefore public opinion became absolutely comfortable with insanity pleas, in spite of being conspicuously ignorant as far as the knowledge of forensic psychiatry is concerned. Still, this taught them the capacity to roughly classify almost any violent or

bloody actions as the fruit of criminal psychopathic individuals: this way, they are inclined to decriminalize such actions far too easily.

In sum, for common people the violent subject is no longer responsible because he was the real victim of a kind of mental infection due to a “parasitic” moral niche (i.e. poverty, a revengeful honor culture...), or because the real killer was “his biology” (an anomalous brain, for example). On one side the objective moral niche is responsible, on the other an unlucky biology: responsibility for violent behavior is externalized and *everyone* is happy to think that atrocious violence does not normally come from the core of an individual’s free will. As I further illustrated in a recent book,<sup>21</sup> such “deliverance” from violence reflects a tendency to sterilize and disregard it, considering violence as something exogenous to our decisions, instead of embedded in the fabric of our very nature.

## Conclusion

I have contended that the approach currently used in western societies to discharge moral and legal responsibility is not clear in its cognitive and epistemic structure, and should therefore be questioned. To support this conclusion I have taken advantage of my recent cognitive studies concerning the multiplicity and variability of moral frameworks and the gene/cognitive niche co-evolution, which can help by shedding new light on the concept of free will. Free will has in fact often been exploited to discharge legal responsibility in a debatable way. This leads us to propose a new analysis of the interplay between overcriminalization and decriminalization.

## Notes

<sup>1</sup> See R.D. HARE, *Without Conscience: The Disturbing World of the Psychopaths among Us*, Pocket Books, New York 1993.

<sup>2</sup> K.A. KIEHL, *Without Morals: The Cognitive Neuroscience of Criminal Psychopaths*, in: W. SINNOTT-ARMSTRONG (ed.), *Moral Psychology*, vol. III, The

MIT Press, Cambridge (MA) 2008, pp. 119-149, here p. 119.

<sup>3</sup> *Ibidem*.

<sup>4</sup> See L. MAGNANI, *Understanding Violence. Morality, Religion, and Violence Intertwined: A Philosophical Stance*, Springer, Heidelberg-Berlin 2011.

<sup>5</sup> J.J. PRINZ, *The Emotional Construction of Morals*, Oxford University Press, Oxford 2007, p. 45.

<sup>6</sup> See V. VAN SLYKE, *The Vilification of Victimized Children in Historical Perspective*, in: T. MASON (Ed.), *Forensic Psychiatry: Influences of Evil*, Humana Press, Totowa (NJ) 2006, pp. 231-248.

<sup>7</sup> J.J. PRINZ, *The Emotional Construction of Morals*, Oxford University Press, Oxford 2007, p. 43.

<sup>8</sup> I. KANT, *Religion Within the Boundaries of Mere Reason* [1793], translated by A. WOOD, G. DI GIOVANNI, introduction by M.A. ADAMS, Cambridge University Press, Cambridge 1998, p. 59.

<sup>9</sup> N. LACEY, *Psychologising Jekyll, Demonising Hyde: The Strange Case of Criminal Responsibility*, in: «Criminal Law and Philosophy», vol. IV, n. 2, 2010, pp. 109-133, here p. 116.

<sup>10</sup> *Ivi*, p. 119.

<sup>11</sup> *Ivi*, p. 129.

<sup>12</sup> *Ibidem*.

<sup>13</sup> See J. TOOBY, I. DE VORE, *The Reconstruction of Hominid Behavioral Evolution Through Strategic Modeling*, in: W. G. KINZEY (ed.), *Primate Models*

*of Hominid Behavior*, SUNY Press, Albany 1987, pp. 183-237, here pp. 14-16.

<sup>14</sup> See F.J. ODLING-SMEE, K.N. LALAND, M.W. FELDMAN, *Niche Construction. The Neglected Process in Evolution*, Princeton University Press, Princeton (NJ) 2003.

<sup>15</sup> See G.M. EDELMAN, *Neural Darwinism*, Basic Books, New York 1987.

<sup>16</sup> G. MEYNEN, *Free Will and Mental Disorder: Exploring the Relationship*, in: «Theoretical Medicine and Bioethics», vol. XXXI, n. 6, 2010, pp. 429-443, here p. 434.

<sup>17</sup> See D. CARSON, *A Psychology and Law of Fact Finding?*, in: D. CARSON, R. MILNE, F. PAKES, K. SHALEV, A. SHAWYER (eds.), *Applying Psychology to Criminal Justice*, Wiley & Sons, Chichester 2007, pp. 115-130.

<sup>18</sup> See L. MAGNANI, *Abductive Cognition. The Eco-Cognitive Dimensions of Hypothetical Reasoning*, Springer, Heidelberg-Berlin 2009.

<sup>19</sup> D. CARSON, *A Psychology and Law of Fact Finding?*, cit., p. 124.

<sup>20</sup> G. MEYNEN, *Free Will and Mental Disorder: Exploring the Relationship*, cit., p. 440.

<sup>21</sup> See L. MAGNANI, *Understanding Violence. Morality, Religion, and Violence Intertwined: A Philosophical Stance*, Springer, Heidelberg-Berlin 2011.