

Personality Disorder, Criminal Behavior and Criminal Responsibility

Keywords

Personality Disorders ; Criminal Responsibility ; Imputability ; Forensic Psychiatry ; Forensic Expertise ; Security Measure

Abstract

This article addresses the interface between personality disorders and criminal responsibility in the context of forensic psychiatry. It explains the legal foundations of criminal responsibility in the Brazilian Penal Code, with emphasis on the biopsychological criterion for the evaluation of criminal responsibility. It discusses the specific relationship between different types of personality disorders and criminal behavior, highlighting antisocial and borderline disorders, which are of greatest relevance in criminal forensic psychiatry.

Introduction

Personality can be defined as an individual pattern of behavior, thoughts, and feelings that characterize the way of being of an individual in the world. Two constituent elements are didactically useful in the examination of abnormal (pathological) personality traits: character and temperament. The former can be understood as a unique configuration of habits and dispositions, acquired through experience, which individualizes each person by their way of being and acting. The latter corresponds to an innate disposition of the individual, which provides the affective tone of the individual in response to stimuli and the environment [1].

Personality, in psychopathological terms, is structured through the psychic development of the individual. This can be defined as the increase (evolution) of psychopathological achievements (objective and subjective), which occurs through personal inclinations (e.g., character and temperament), biographical experiences, and cultural and traditional (family and historical) aspects. These elements together shape the way of being and determine the individual's specific characteristics, thus configuring their persona, or personality, whose full development takes place at the end of adolescence or the beginning of adulthood [2].

Personality disorders are patterns of inflexible and maladaptive personality traits that cause significant impairment in social or occupational functioning, subjective anxiety, or both. By definition, these disorders are not time-limited symptoms, which may have a defined beginning and end during adult life. Rather, they are chronic patterns of behavior that have an early and insidious onset, and become evident in late adolescence or early adulthood. Personality disorders are not circumscribed syndromes affecting only one area of functioning; instead, they are diffuse disorders that affect all areas of personality, including cognition, affect, behavior, and interpersonal style [3].

The diagnosis of personality disorders requires the determination



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of the individual's long-term functioning patterns, and the particular characteristics of personality must be evident at the beginning of adult life. According to Hunter [4], personality disorders are difficult to diagnose. Researchers and clinicians often turn to structured interviews or psychological tests to assist them in diagnosing these disorders. Although reliability improves with these procedures, it is important that the diagnosis be made primarily based on psychiatric interview and clinical impression.

In the DSM-5-TR [5], personality disorders are divided into 3 clusters: Cluster A, characterized by odd or eccentric traits (schizotypal, schizoid, and paranoid); Cluster B, characterized by dramatic, impulsive, or erratic traits (histrionic, narcissistic, antisocial, and borderline); and Cluster C, characterized by anxious and fearful traits (avoidant, dependent, obsessive-compulsive).

The Concept of Criminal Responsibility

In Criminal Law, for someone to be criminally responsible for a given offense, three basic conditions are necessary: to have committed the offense; at the time of the offense to have understood the criminal nature of the action; and to have been free to choose between committing and not committing it [6].

The Brazilian Penal Code [7], in its Title III (On Criminal Responsibility), deals with cases of non-imputability, that is, those who, although having committed a crime, cannot be held responsible for it or are only partially responsible, having therefore their criminal responsibility abolished in the first case, or diminished in the second.

In addition to minors, who are treated under special legislation, the law declares exempt from punishment, under certain conditions, those who commit an act or omission and present mental disorders. It also provides, under special conditions, for a reduction of the respective penalty in some forms of mental disorder.

The Mental Insanity Incident is substantiated by the Forensic Psychiatric Examination, carried out by an official state-appointed expert. It is important to emphasize that this forensic evaluation is retrospective in nature, seeking to identify the mental functioning of the offender at the time the crime occurred.

From a legal perspective, responsibility presupposes in the agent, contemporaneous with the act or omission, the ability to understand the criminal nature of the fact and the ability to act in accordance with this understanding. Responsibility may thus be defined as the capacity of the individual to be treated according to the criminal law for the crime committed.

In this respect, two important concepts are responsibility and imputability, the latter meaning the psychological condition for punishability, while the former refers to the obligation to respond criminally, or to suffer the penalty for a specific act, provided imputability exists. The basic concept of imputability would be the condition of having the capacity to perform an act with full discernment. It represents a causal psychological link between the act and its author [8].

When committing a crime, a responsible individual will be subjected to a penalty. The non-imputable, on the other hand, will be subjected to a security measure. It is up to the expert to inform whether the individual is mentally developed and mentally sane. The judge, however, has the authority to rule on capacity and responsibility (application of penalty or security measure). Regarding the application of the security measure, the law presumes the dangerousness of the non-imputable, determining the imposition of a security measure on the one who committed the offense and is in the conditions described in article 26 of the Penal Code [7], in its main provision and sole paragraph :

The agent is exempt from punishment if, due to mental illness or incomplete or delayed mental development, at the time of the act or omission, he was entirely incapable of understanding the criminal nature of the act or of acting in accordance with such understanding. **Sole paragraph:** The penalty may be reduced by one to two-thirds if the agent, due to mental disturbance or incomplete or delayed development, was not entirely capable of understanding the illicit nature of the act or of acting in accordance with such understanding (eventually, individuals with personality disorder may fall under this paragraph, being partially responsible).

The current Penal Code [7] has adopted the biopsychological criterion for the evaluation of criminal responsibility. This criterion requires verification of the effective existence of a causal nexus between the abnormal mental state and the crime committed, that is, that this state, contemporaneous with the conduct, deprived the agent partially or completely of any of the mentioned psychological capacities (either intellectual or volitional).

In Brazil, a forensic psychiatric examination is indispensable

whenever there are doubts about the defendant's mental health. However, the final decision to apply a penalty or a security measure rests with the judge. A positive conclusion of the forensic report does not substitute the judicial sentence, which is sovereign. After serving the security measure, the individual will undergo a new forensic evaluation : the examination of cessation of dangerousness. In this evaluation, the remission of psychotic symptoms, signs of remorse, and the existence of social and family support will be assessed. If these aspects are favorable, release may be granted.

Personality Disorder and Criminal Behavior

Individuals with paranoid PD may commit offenses believing they are defending themselves from provocations or aggressions. They may also resort to lawsuits seeking redress for moral and material damages they believe they have suffered [9].

Those with histrionic PD may engage in less serious offenses, such as slander and threats, due to their behavioral characteristics. They may also attempt unsuccessful suicides [9].

It is rare for individuals with anankastic PD to commit crimes. When this occurs, it is usually due to omission. Preoccupied with doubts and bound by details and rules, they may be unable to make decisions (omissive offenses). Similarly, in avoidant PD, offenses of omission are more common, due to hypersensitivity to criticism and fear of taking risks [9]. Otherwise, obsessions of aggression, compulsivity of (intimate partner) violence and child abuse have been reported [10-13]. The offender can trustworthily display sense of guilt and remorse, maintaining that he or she was unable to control him/herself. However, at conflicts with some other persons, the obsessive-compulsive offender would control himself, which indicates imputability, responsibility and neurotic nature of the violent attacks [13].

In forensic psychiatric evaluations, the most frequent personality disorders are antisocial personality disorder (ASPD) and borderline. In ASPD, latent aggressiveness and impulsivity are present. These individuals often engage in transgressive activities and have legal problems. The high prevalence of this disorder in prison systems is well known. During psychiatric evaluation, careful observation of behavior is crucial, as they may manipulate during the examination. Simulation and dissimulation are common, since they have full control over their responses and reactions [14].

Individuals with borderline personality disorder may present violent behavior, due to the multifaceted psychopathological manifestations and maladaptive behaviors: marked difficulty in controlling impulses, with emphasis on aggressive and self-destructive behaviors (alcohol and substance abuse, self-mutilation, theft, promiscuity, excessive spending, pathological gambling); chaotic, poorly differentiated, manipulative, and aggressive interpersonal relationships, with heightened sensitivity to separation and feelings of rejection; affective instability, with oscillations between idealization and devaluation of partners and close individuals. All these aspects contribute to the frequent involvement of borderline PD in civil and criminal forensic cases [15].

The essential feature of ASPD is chronic disregard and violation of the rights of others. Egocentric, they value others for what they can

gain. Their behavior manifests in illegal actions such as destruction of property, theft, fraud, and physical intimidation. They may commit acts of cruelty, sadism, and violence without consideration for their impact on others. Their infidelity and failure to meet obligations are inconsistent with the capacity to function as a spouse or parent [16].

Impulsivity is a central feature of the disorder (reckless driving, speeding or driving under the influence, promiscuous sexual activity, etc.). They are highly manipulative and capable of convincing others to engage in schemes for easy money, leading them to financial ruin. Promiscuity, child abuse, spousal abuse, and drunk driving are common events in the lives of these individuals. A noteworthy finding is the absence of remorse or guilt for such actions—they seem devoid of moral conscience [16].

These individuals often have a history of conduct disorder in adolescence, and persistently irresponsible and socially threatening behavior in adulthood. Diagnosis of ASPD requires gathering personal history, verifying patterns of relationships, and obtaining information from other sources, such as family, spouse, or neighbors. Typically, such individuals will have betrayed the trust of everyone around them.

Cleckley's [17] work helped to map psychopathic personality traits frequently found in antisocial individuals. He listed common attributes in this group under the concept of the "mask of sanity": manipulation, superficial charm, narcissism, chronic lying, in the absence of psychosis. Hare [18] later revised this list, creating the Psychopathy Checklist-Revised (PCL-R), now consisting of 20 items, of which 15 are personality traits such as superficial charm, grandiose sense of self-worth, pathological lying, manipulation, impulsivity, and irresponsibility. Scores above 25–30 on this scale are considered a good marker of criminal recidivism risk.

It is important to note that ASPD and psychopathy should not be used as synonyms, as they do not refer to the same construct. Many individuals with ASPD do not engage in criminal behavior. The term *psychopathy* is generally used for individuals with a marked tendency toward criminal behavior, with a high rate of recidivism, profound affective indifference, and violent, antisocial conduct. While ASPD individuals often develop into fraudsters, swindlers, and corrupt individuals, psychopaths tend to engage in predatory violence typical of murderers, serial killers, rapists, and kidnappers [19].

A criticism of the DSM-5-TR [5] criteria, despite their reliability, is the overemphasis on criminal behavior. There is no adequate distinction between social deviance and psychopathological personality disorder.

Discussion

In forensic psychiatry, personality disorders are considered a mental health disturbance, a condition clinically less severe than mental illness. Such individuals generally retain the capacity to understand their actions. Exceptions may occur, for example, when a comorbid psychotic disorder is present.

The most complex issue involves assessing the capacity for self-determination—the volitional dimension of action. Mild cases do not show a causal nexus with the offense committed, but in severe cases there may be impairment when PD is directly related to the criminal

act. Legally, such individuals may therefore be classified as imputable or semi-imputable, depending on whether their capacity for self-determination is impaired [9].

Other complex issue involves determining the criminal responsibility of individuals with ASPD or psychopathy. When classified under the sole paragraph of Article 26 of the Penal Code [7] (diminished responsibility), these individuals may have their sentence reduced by one to two-thirds, or the penalty replaced by a security measure (compulsory treatment), in the form of hospital internment or outpatient treatment.

Faced with all these aspects, it is evident that the following question remains unresolved: should these individuals be considered responsible for their actions or should they receive treatment?

There can be no doubt about the complexity of these issues. Sentence reduction means releasing, in a shorter period, an individual with a high probability of criminal recidivism. On the other hand, the effectiveness of psychiatric treatment in such cases is still not well established in the literature.

Perhaps the ideal approach would be to create, within prison services, specific care by an interdisciplinary team and specialized psycho-pedagogical measures. Group psychotherapy in combination with educational rehabilitation and resocialization programs may eventually bring positive results.

Conclusion

It is therefore concluded that, although personality disorders reveal disturbing and difficult-to-control behavioral profiles, Brazilian law regards such individuals as criminally responsible, except in extraordinary circumstances. In fact, psychopathy, far from being a cause for exemption from punishment, may in practice operate as an aggravating factor, considering the seriousness of the acts committed and the ongoing risk they pose to society. Forensic psychiatric evaluation in these cases is certainly essential for the establishment of appropriate penal and correctional sanctions for each case.

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