

Psychopathic Disorders and Judges Sentencing: Can Neurosciences Change this Aggravating Factor in a Mitigating Factor?

Authors : Kevin Moustapha

Abstract : Psychopathy is perceived today as being «the most important concept in the criminal justice system» and as «the most important legal notion of the early 21th century». The explosion of research related to psychopathy seems to perfectly illustrate this trend. Traditionally, many studies tend to focus on links between insanity defense and psychopathy. That is why our purpose in this article is to analyze psychopathic disorders in the scope of judges sentencing in Canada. Indeed, in every Canadian case related to dangerous offenders, judges must balance between fairness and protection of the individuals rights of the accused and protection of society from dangerous predators who may commit future acts of physical or sexual violence. Increasingly, psychopathic disorders are taking an important part in judge sentencing, especially in Canada. This phenomenon can be illustrated by the high proportion of psychopath offenders incarcerated in North American prisons. Many decisions in Canadian courts seem to point out that psychopathy is often used as a strong argument by the judges to preserve public safety. The fact that psychopathy is often associated with violence, recklessness and recidivism, it could explain why many judges consider psychopathic disorders as an aggravating factor. Generally, the judge reasoning is based on article 753 of Canadian Criminal Code related to dangerous offenders, which is used for individuals who show a pattern of repetitive and persistent aggressive behaviour. However, with cognitive neurosciences, the psychopath's situation in courtrooms would probably change. Cerebral imaging and news data provided by the neurosciences show that emotional and volitional functions in psychopath's brains are impaired. Understanding these new issues could enable some judges to recognize psychopathic disorders as a mitigating factor. Two important questions ought to be raised in this article: can exploring psychopaths' brains really change the judge sentencing in Canadian courtrooms? If yes, can judges consider psychopathy more as a mitigating factor than an aggravating factor?

Keywords : criminal law, judges sentencing, neurosciences, psychopathy

Conference Title : ICCLCPS 2015 : International Conference on Criminal Law, Criminology and Police Science

Conference Location : Paris, France

Conference Dates : June 25-26, 2015