

Rethinking the Culpable Agent: Emotions, Antisocial Brains, and the Legally Relevant Mind

My paper aims at revisiting the orthodox paradigm of the culpable agent, which implicitly lies behind culpability doctrines, with the aid of neuroscientific theories about decision-making processes in moral judgements. The paper begins by illustrating the fundamental features of the normative model of the culpable agent assumed by criminal law. Through the analysis of normative texts, judicial decisions, and legal scholarship - with special focus on the Italian and the US systems - the paper highlights that criminal law embraces a fully rationalist view of the mental capacities necessary for criminal responsibility. Indeed, the traditional model of the legally relevant mind only considers the agent's intellectual/cognitive powers, ruling out other mental spheres, in particular the emotional sphere. The paper next turns to the neuroscientific explanation of decision-making processes, especially in moral judgments, according to which - roughly - human decisions are the product of emotional and cognitive processes that together inform our choices. In particular, studies on the brain show that emotions play a crucial role in giving substance to our moral decisions, in the sense that emotions help us appreciate the moral significance and content of the actions we are about to perform before cognition comes into play. The paper then explores the findings of neurocriminology, a new branch of neuroscience that investigates the neurobiological dynamics underlying antisocial and criminal behavior. The illustration of the neurobiological variables that are associated with antisocial conducts is meant to demonstrate that the most common cerebral denominator within antisocial or criminal population lies precisely in the imbalance between cognitive and emotional systems that are involved in moral reasoning. This imbalance is thought to predispose to antisocial attitudes, and hence to increase the risk of engaging in criminal behavior. In light of this, the paper emphasizes the huge mismatch between the law's rationalist view of the legally relevant mind and the understanding of moral decision-making processes offered by neuroscience. The paper concludes with an argument for revisiting the criminal law's ideal of the culpable agent with the neuroscientific knowledge about decision-making processes. In particular, it reconsiders the components of the legally relevant mind by including the emotional factor in its substance. The criminal law's acknowledgment of the neuroscientific teachings about other spheres of the mind involved in decision-making might have significant implications for the preexisting doctrinal categories that compose culpability. In particular, the acceptance of a neuroscientifically informed understanding of the legally relevant mind might well lead to rethinking the substance of current standards of insanity, to re-conceptualizing mens rea, and ultimately to challenging the function of punishment.