

Blame in Criminal Misconduct

2015 FMHAC Conference
Brian Benjamin, M.S. IV
David Naimark, M.D.

Definitions

- How do we define blame?
- Is it the opposite of praise?
- Is it dependent on context?

Why?

- Why is blame important?
- What is the relationship of blame to punishment?
- Do we punish based on the enormity of the act?
- Who determines blame?

How?

- How is blame determined/reduced/removed?
- The People determine the criteria, and Forensic Experts apply the criteria
- Justification vs. Excuse
- Legal vs. Intuitive

Justification for Removing/Reducing Blame

- Legal justifications (Self Defense)
- Intuitive justifications (Degrees of Freedom)

Excuse for Removing/Reducing Blame

- **Legal Excuses:**
 - Cognitive
 - Volitional
 - Causal

Cognitive Tests

- McNaughton
- Know vs. Understand vs. Appreciate
- Nature of act
- Quality of act
- Wrongfulness of act

Volitional Tests

- Lack of self control
- DSM impulse control disorders
- What is self control?
 - Is it an action that is involuntary or unintentional?
 - Difference between voluntary/involuntary/non-voluntary
- Examples of involuntary acts?
- Difference between intentional and unintentional
- How to analyze:
 - "I could not control myself"
 - "I did not intend the action"

Causal Tests

- New Hampshire "Product Test"
- Is the misconduct "the product" of a mental illness?

Excuse for removing/reducing blame

- **Intuitive Excuses:** Lack of SOCIAL understanding
- Tarasoff Case:
 - Cultural differences
 - Cultural deficits and the effect they have on actions
- What is a psychopath?
 - Compare/contrast Tarasoff crime to a psychopath committing same ACT (equally blameworthy?)

Theory of Mind

- Definition
- Tests
- Examples of deficits (age/development, autistic spectrum, psychosis)
- Research/Studies (fMRI)
- Much like cultural deficit, T.O.M deficit also leads to lack of social understanding
- T.O.M related crime (social deficit leading to crime)
- -Compare this ACT with the same action committed by a psychopath
- Are they equally blameworthy? Should this be an intuitive excuse?

Judging Deficits

- Isn't psychopathy a deficit of empathy?
 - Why is this deficit more blameworthy than other deficits (brain tumor, psychosis, T.O.M, etc)?
 - Example: Should blame be reduced in a sentencing hearing when a person shows contrition (i.e. has empathy)?
- What then, makes a psychopath more blameworthy than someone with a T.O.M deficit?
 - Lack of empathy vs. lack of volition (following societal constructs regardless of empathy)

Morality

- Cultural Construct
- Are there any aspects of morality that are innate?
- Thanksgiving...a bunch of psychopaths?
- Can one be blamed for not sharing one cultures morality?
- Agreeing with morality vs. choosing to follow the moral code

Review

- Lack of volitional control, not lack of empathy, is what makes a psychopath more blameworthy for an act compared to a person with a T.O.M. deficit who commits same act. We cannot judge deficits in empathy anymore than we can judge deficits in cognition or social understanding. We CAN judge someone who has awareness of social norms/constructs and chooses to violate social norms/constructs (and understands what they are doing) more than we judge someone who is ignorant to such violations (psychosis, autism, tumors, etc).

References

- Weiner, Bernard. Judgments of Responsibility: A foundation for a theory of social conduct
- Coates, D. Justin, Tognazzini, Neal. Blame: Its nature and norms
- Slovenro. Psychopathy and criminal culpability
- West, Donald. Walk, Alexander. Daniel McNaughton: His trial and the aftermath
- Sher, George. In Praise of Blame
- Kennett, Jeanette. Agency and responsibility: A common-sense moral psychology
- Feigenson, Neal. Legal Blame: How jurors think and talk about accidents
- Honderich, Ted. Punishment: The supposed justifications revisited
