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# Expert Opinion

Editors: Matthew Huss & Eric Elbogen

## Questions About the Construct of Empathy in the Treatment of Adolescents in the Juvenile Justice System

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Embedded in many treatment programs for adolescent offenders are modules that help them take responsibility for their actions, take the perspective of victims, and abandon excessive self-focus in favor of a broader view of individuals and communities. Empathy training has become a primary objective for the great majority of offender treatment programs in the United States, both for adult and juvenile offenders, especially for sex offenders. For example McGrath, Cumming, Burchard, Zeoli, & Ellerby (2010) report that 92.7% of adult, 92.6% of adolescent, and 76% of child sex offender treatment programs in the U.S offer empathy and victim awareness training. Is the reliance on empathy/victim perspective taking justified? That is, can we demonstrate that such a treatment approach has an impact in reducing violent or sexual recidivism? Moreover, is the direct teaching of victim empathy likely to reduce recidivism in populations of adolescent offenders or are there more developmentally-appropriate approaches worth considering?

The inclusion of empathy enhancement in treatment protocols for offenders is almost universal among treatment providers (Knopp, Freeman-Longo, & Stevenson 1992; Nangle, Hecker, Grover, & Smith, 2003). The assumption that a lack of or reduced victim empathy plays a central role in the violent or sexual offenses against others appears self-evident. It is also assumed that an increase in the victim empathy of offenders thereby, decreases their self-serving cognitive distortions (McCrary, Kaufman, Vasey, Barriga, Devlin, & Gibbs, 2008) and thus they will be less likely to violently offend in the future. The first assumption appears to be supported by the literature. Studies have consistently demonstrated that many types of offenders, both adult and adolescent, display deficits in empathy toward victims as well as general empathy toward others (Jolliffe & Farrington, 2004). It has been demonstrated that a subset of more severe delinquent adolescents demonstrate deficits in measures of empathy. Studies have also demonstrated deficits in moral reasoning and the presence of self-serving cognitive distortions among delinquent youths (McCrary et al., 2008). The latter assumption, however, has not been supported by consistent empirical evidence. As noted by McGrath and his colleagues (2010), "Offense responsibility and victim empathy ... are targeted in almost all programs for adult and adolescent abusers. Yet little evidence that focusing of these issues in treatment results in reduced reoffending rates" (p. x).

### **Empathy deficits in delinquents with psychopathic traits**

Despite the intuitive belief that treatment can increase empathy and will lead to reduced levels of recidivism, there are equally persuasive arguments against this practice. It has been demonstrated that psychopathic offenders lack the capacity for empa-

thy, perhaps at the neurocognitive level (Dolan, 2004; Preston & de Waal, 2002). It has been posited that psychopaths "know the words, but not the music" of emotion; therefore, they might learn the nomenclature of empathy but do not emotionally experience it. Although it is inappropriate to label adolescent offenders as psychopaths, numerous studies have identified a significant subgroup of adolescent offenders that could be considered to be at risk for psychopathy in adulthood or who exhibit psychopathic traits, including deficits in empathy (Caldwell, Skeem, Salekin, and Van Rybroek, 2006; Cohen & Strayer, 1996). Such juvenile offenders may not benefit from many treatment programs that target empathy, in part because they are more likely to drop out of treatment (Caldwell, et al., 2006). There is evidence that these juvenile offenders present a higher risk of reoffense than other adolescent offenders even after engaging in treatment (Caldwell et. al., 2006; Dolan, 2004).

Deficits in empathy are seen in violent and sexually violent offenders. Particular attention has been paid to sexually violent adolescent offenders. Although our understanding of risk factors relevant to juvenile sex offenders is still emerging, it appears that the presence of deviant sexual arousal is an important variable (as it is in adult sex offenders). There is some evidence that juvenile sex offenders have deficits in empathy (Curwen, 2003), but these empathy deficits may be specific to their victims or their particular situations. Moreover, the majority of juvenile sex offenders desist from future sex offending, although they may reoffend non-sexually (DiCataldo, 2009), and the small subgroup of juvenile sex offenders who do reoffend appear to be driven to reoffend by their arousal to deviant stimuli (McCann & Lussier, 2008). Treatment designed to increase victim empathy, therefore, will not affect the mechanisms that drive the deviant sexual behavior. Neither will it, necessarily, address the developmental, social, and familial issues of those juvenile sex offenders who do not reoffend sexually.

### **Developmental factors**

Often missing from analyses of adolescents responses to relevant treatment are developmental expectations and norms relevant to particular forms of treatment. Developmental issues influence both the capacity for empathy as well as the effect of treatment on the development of empathy. Although there is ample evidence that many children develop the capacity for perspective taking and empathic response fairly early in life (Preston & de Wall, 2002), empathy responses may be specific to their limited domains of experience. Egocentrism may sometimes override empathic responsiveness. Even non-delinquent adolescents are not free of egocentric thought. It is developmentally appropriate for adolescents



to be preoccupied with their own thoughts and experiences and they often believe these are as important to others as they are to themselves. Adolescent egocentrism emerges via the *personal fable* and the *imaginary audience*. According to Vartanian (2000)

The imaginary audience refers to adolescents' tendency to believe that others are always watching and evaluating them; the personal fable refers to the belief that the self is unique, invulnerable, and omnipotent. The patterns of thinking reflected by both constructs seem to capture and explain feelings and behaviors typically associated with early adolescence, such as self-consciousness, conformity to peer group norms, and risk-taking. (pp. 639-640)

An argument can be made that even in non-delinquent youth, concerns about others and the community may be secondary to concerns about the self.

In light of inconsistent empirical support and developmental theoretical suppositions relevant to the capacities of adolescents and adolescent offenders to develop and act prosocially upon empathy, what might be the reasons that an overwhelming majority of treatment programs for juvenile offenders focus so heavily on empathy? Certainly there are historical origins of this focus that include religious, philosophical and psychodynamic understandings of morality, criminality, justice, and antisocial/prosocial behaviors (Condie, 2010). A discussion of these factors is clearly beyond the scope of this paper, but these historical factors provide a basis for the belief that a) choices, urges, and needs to behave immorally or unlawfully reside within the individual; (b) individuals can go through a course of treatment (or philosophical/moral enlightenment) that modifies his or her capacity for empathy; (c) a change in the capacity for empathy corresponds to a change in character; and (d) those changes lead to behavior change in the form of reducing offending behavior. The logical extension of these arguments is that in order to make positive changes regarding social and behavioral adjustments, the individual must make basic character changes to alter the way she or he acts in the social world, the community, and in his or her private life.

Although profound empathy failure may be a relatively enduring dispositional characteristic of a small subgroup of chronic, serious, violent youthful offenders, most juvenile offenders may be prone, as any one of us is, to situation-specific empathy failures, which are typically the product of peer group and other situationally-based forces. Social psychology may have more to contribute to our understanding of this phenomenon than clinical psychology. Osofsky, Bandura and Zimbardo's (2005) notion of moral disengagement, a situationally-bounded suspension of empathic contact with others, may help explain a large share of juvenile violence, particularly youth gang violence. Maybe it's long past time we searched for empathy not within the individual, as part of some enduring aspect of their moral sensibility, but as a part of the social landscape where they perform, where empathy is temporarily suspended by the group norms, cognitive frameworks and social forces in which the juvenile offender finds himself embedded, clearing a space for his violent actions. Instead of moral monsters without empathy, maybe it is the social forces and con-

ditions under which they operate that brings about the absence of empathy that we find so shocking and difficult to understand. As with all theoretical models, it may be that there are interactional forces that feed a diminution of empathy; and, there may be some individuals for whom the capacity for empathy is compromised for both individual and social reasons. Thus, theories that encapsulate individual variables, small-group dynamics, gang culture and belongingness, community features, and societal variables must take both the individual and a social framework into account.

A reliance on the *wish* that building empathy will reduce juvenile criminality is not enough. Researchers and clinicians must fight the strong pull of a long and relatively unyielding historical tradition (within both the social sciences and the law) of reliance upon a unitary theory within which offenders are taught or expected to seek individual insight, feel regret and remorse, apologize or seek reconciliation, and demonstrate newfound empathy. The field of risk assessment has made great strides in moving away from intuitive clinical judgments toward evidence-based methods. Similarly, the treatment for many psychological disorders has become gradually more evidence-based. Clinicians, consumers, and courts are increasingly demanding empirical evidence that treatment and assessment approaches are based on reliable and valid assumption and techniques. The same expectations should be applied to the treatment of juvenile offenders. It might be that empathy training is an appropriate intervention for some juvenile offenders. It is just as likely, however, that this approach is counterproductive for others. No treatment approach is "one size fits all" and the empirical evidence is certainly lacking that empathy training works for all types of juvenile offenders. There is ample evidence that juvenile offenders are a heterogeneous group, made up of youths with disparate strengths, needs, motivations and criminal trajectories. More research is required on the efficacy of empathy training before we can accept its primacy in the treatment of juvenile offenders.

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### Legal Update Column, Continued from p. 4

recusal or disqualification scenarios both in first- and third-person contexts, examining whether any self-oriented biases lead to differences in judgments of when recusal would be appropriate.

A variation might ask participants to take the perspective of an appellate court reviewing a decision not to recuse, though this too could be developed in interesting ways. A trial judge's decision not to recuse is reviewed under an abuse of discretion standard, one which is quite deferential to the lower court's ruling. Comparing the appellate perspective and the trial judge's decision might give some insight into the circumstances under which judges are seen to abuse their discretion. Perhaps more interesting, though, might be a study that varied the standard of review: a number of commentators call for less deferential review, especially when a judge makes her own disqualification decision (e.g., Friedland, 2004; Stempel, 1987). Comparing outcomes under a de novo standard—i.e., with the appellate court looking at the facts

and law anew, with no explicit deference paid to the lower court's decision—could lend support (or not) to such calls for reform.

This is also an important reason to conduct studies using non-judges as participants (much easier, of course, than recruiting sitting judges). Again, the more flexible statute (s.455(a)), as well as the Model Code, use as their standard the situation where a judge's "impartiality might reasonably be questioned." Lay perceptions could give a sense of what circumstances a "reasonable observer" might perceive as warranting judicial disqualification. This is one of the instances in legal psychological research where differences between lay and legal or judicial perceptions can have important legal consequences.

These few examples focus on identifying when it would be proper for a judge to recuse. Obviously, though, other studies might usefully be conducted—for instance, might judges overcorrect for perceived lack of impartiality when informed of various self-serving or other judgmental biases?

Debates over the circumstances under which it is appropriate for a judge to recuse herself, and proposals for reform as to the means for determining those situations, continue (a recent panel at the American Association of Law Schools annual conference was devoted to such debate and proposals). As with most—if not all—areas in which the legal system makes assumptions about human behavior, judicial disqualification statutes and case law could benefit from empirical research by psycholegal scholars.

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