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STIGMA, LABELLING, AND “CORPORATE PSY- CHOPATHS”: A LEGAL PERSPECTIVE

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ABSTRACT. This paper presents a novel argument proposing greater recognition of the stigmatic nature of the ‘psychopath’ label in the corporate crime context, particularly in relation to its use within academic research and in criminal judgments. Labelling theory and a communicative account of criminal law and punishment are applied to the issue. The stigmatic nature of the label, as well as its potential to over-stigmatisate corporate offenders is assessed. Recommendations are forwarded, primarily in relation to the need for greater judicial engagement with the topic of psychopathy and corporate crime, and greater recognition of the stigmatic nature of the psychopathy label. Alternative labels are forwarded.

I INTRODUCTION

The potential for white collar crime to cause societal and economic harm, often far in excess of that which could be achieved by an individual thief or scam-artist, has long been recognised.¹ In more recent years, there has been a strong interest in determining the types of individuals who perpetrate, or are most likely to perpetrate, corporate crimes. One category which has emerged is that of the ‘corporate psychopath’.² Research has shown that these individuals are more prone to committing white collar crime, including fraud and insider trading, but also environmental crimes and ‘antipersonnel crimes’.³ While the term does not appear to have a universally ac-

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¹ E.H. Sutherland, ‘The White-Collar Criminal’ (1940) 5 *American Sociological Review* 1; E.H. Sutherland *White Collar Crime* (Dryden, 1949).

² For a broad thematic discussion of the phenomenon, see: K. Fritzon, N. Brooks, and S. Croom, *Corporate Psychopathy: Investigating Destructive Personalities in the Workplace* (Palgrave Macmillan 2020).

³ See, e.g.: V. Lingnau, F. Fuchs, T.E. Dehne-Niemann, ‘The Influence of Psychopathic Traits on the Acceptance of White-Collar Crime: Do Corporate Psychopaths Cook the Books and Misuse the News?’ (2017) 87 *Journal of Business Economics* 1193; A. Dawn Purdue, M.B. Robinson, and B.A. Arrigo, ‘Psychopathy

cepted definition, some authors conclude that they are simply ‘psychopaths who happen to work within organizations’,⁴ while others opt for looser definitions focused on ‘acting without conscience or concern for others’ well-being’ while occupying executive positions.⁵ The approach to labelling offenders discussed in this paper will centre on the language employed clinically and under the Alternative Model of Personality Disorder in DSM-V. It will be argued that, notwithstanding translational issues between forensic psychiatry and law, non-scientific discussions of these individuals should not stray too far from clinically accepted standards and language. This paper aims to bridge the gap between clinical and non-clinical language in order to provide an accurate label for these individuals which is neither unfairly stigmatic nor clinically inaccurate in nature. Labelling in this paper will refer solely to the labelling of offenders and not of offences and any potential need to redraft their specific labels. In other words, if a defendant commits fraud, and is diagnosed with psychopathy, this paper is concerned with how this diagnosis is incorporated fairly into their labelling as a person who has committed fraud.

As a category, these persons have drawn the attention of a number of fields of study: from psychiatry and psychology, to philosophy, criminology, and business ethics, to name but a few. Despite the sustained interest in this topic by these diverse areas of research, one key aspect has remained overlooked: the potentially stigmatic nature of the label ‘corporate psychopath’. While attention has been drawn to the ethics of labelling an individual based on their conviction in the field of forensic psychology,⁶ e.g. labelling a defendant as a ‘sex offender’, there has not been a comparable movement within the study of psychopathy and corporate crime. ‘Psychopath’ is a negatively

Footnote 3 continued

and Corporate Crime: A Preliminary Examination, Part 2’ (2013) 13(2) *Journal of Forensic Psychology Practice* 145; C. Mathieu, ‘Psychopathy and Corporate Crime’ in P. Barbosa Marques, M. Paulino, and L. Alho (eds), *Psychopathy and Criminal Behavior: Current Trends and Challenges* (Academic Press 2021), 403; S.F. Smith and S.O Lilienfeld, ‘Psychopathy in the Workplace: The Knowns and Unknowns’ (2013) 18(2) *Aggression and Violent Behavior* 204.

⁴ C.R. Boddy, C. Freeman, and E. Karpacheva-Hock, ‘Fraud and Corporate Psychopaths: The Proposition for Reintroducing Personality Traits of the Economic Crime Offender’ (2024) 5 *Journal of Economic Criminology* 100081.

⁵ B. Sheehy, C. Boddy, and B. Murphy, ‘Corporate Law and Corporate Psychopaths’ (2021) 28(4) *Psychiatry, Psychology, and Law* 479, p.507; M.N. Wexler, ‘Conjectures on Systemic Psychopathy: Reframing the Contemporary Corporation’ (2008) 3(3) *Society and Business Review* 224.

laden label and resultantly,⁷ it will be argued, must be carefully applied and with knowledge of the effects it may have on an offender, particularly emanating from its inherently stigmatic nature.

A multifaceted understanding of labelling will be endorsed in this paper, one which includes first, the labelling of an offender at the sentencing stage of a trial, and second, the impactful nature of labels on one’s ability to live a full life and reintegrate into society post-conviction. The “psychopath” label has been utilised in a multitude of other fora, namely media coverage,⁸ and popular publishing,⁹ with psychopaths being a particularly common theme in the movie industry.¹⁰ Furthermore, it is often colloquially invoked as a slur, with the ex-Prime Minister of Australia, for example, once being referred to as a ‘complete psycho’.¹¹ The focus of this paper, however, will primarily be on the formal use of this stigmatic label within scholarly research, and its potential for further use in criminal judgments.

The UK Sentencing Council Guidelines describe psychopathy as an ‘unscientific’ and ‘pejorative’ term which is to be avoided as it is not a ‘recognised’ diagnosis.¹² The US Model Penal Code likewise follows suit.¹³ Furthermore, psychopathy falls short of pathology

⁶ G.M. Willis, ‘Why Call Someone by What We Don’t Want Them to Be? The Ethics of Labeling in Forensic/Correctional Psychology’ (2018) 24 *Psychology, Crime & Law* 727.

⁷ R. Imhoff, ‘Punitive Attitudes against Paedophiles or Persons with Sexual Interest in Children: Does the Label Matter?’ (2015) 44 *Archives of Sexual Behavior* 35.

⁸ K. Viner (Editor), ‘More Women May be Psychopaths than Previously Thought, Says Expert’ *The Guardian* (26th February 2024), Available: <https://www.theguardian.com/society/2024/feb/26/more-women-may-be-psychopaths-than-previously-thought-says-expert> (Accessed 30 April 2025).

⁹ P. Babiak and R.D. Hare, *Snakes in Suits: Understanding and Surviving the Psychopaths in Your Office* (Harper Business 2016).

¹⁰ See, for example: *American Psycho* (2020); *No Country for Old Men* (2007); *Joker* (2019).

¹¹ For an insightful discussion of this incident and stigmatising mental health, see: S. Katterl, ‘Words that Hurt: Why Mental Health Stigma is Often Vilification, and Requires Legal Protection’ (2023) 48 *Alternative Law Journal* 47.

¹² UK Sentencing Council, *Sentencing Offenders with Mental Disorders, Developmental Disorders, or Neurological Impairments*, Annex A. Available at: <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-of-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/#Section%20one:%20General%20approach> (Accessed 30 April 2025). See also, US Model Penal Code, §4.01; C. Maxwell, ‘Criminal Responsibility and Human

under DSM-V and ICD-11. However, a diagnosis of antisocial personality disorder with a psychopathy specifier is available under the Alternative Model of Personality Disorder in DSM-V.¹⁴ Thus, and importantly for the present discussion, the alternative label of ‘antisocial personality disorder with psychopathic traits’ is available when discussing psychopaths, rather than the arguably more stigmatic label of psychopath *simpliciter*. Against this background, judicial disengagement with psychopathy outside of murder trials is hardly surprising.¹⁵ Substantively, greater judicial engagement in other areas of the criminal law would be context and offence specific in nature, but would likely follow closely with the existing approach taken in sentencing serious physical crimes, *i.e.* a diagnosis of psychopathy could impact on the nature or length of a corporate offender’s sentence, custodial or otherwise.¹⁶ As will be discussed below, where such considerations impact on sentencing, a judge’s transparency in relation to how it impacted on the delivered sentence, and their careful use of labels/language are highly important goals which warrant close attention, which has to date been limited in the literature.

This paper will argue that labelling in the criminal context should not follow the current trend of diagnosis-first labelling which is present within a notable amount of academic and scientific literature.

Footnote 12 continued

Capacity: Why Impaired Mental Functioning Affects Moral Culpability’ (2023) 30 *Psychiatry, Psychology and Law* 4.

¹³ US Model Penal Code, §4.01.

¹⁴ See: D.B. Wygant, M. Sellbom, C.E. Sleep, T.D. Wall, K.C. Applegate, R.F. Krueger, and C.J. Patrick, ‘Examining the DSM–5 Alternative Personality Disorder Model Operationalization of Antisocial Personality Disorder and Psychopathy in a Male Correctional Sample’ (2016) 7(3) *Personality Disorders: Theory, Research, and Treatment* 229.

¹⁵ Searches on Westlaw UK and HeinOnline for the terms, ‘corporate psychopath’ and ‘successful psychopath’ yielded only a single case law result, wherein a party was referring to his father as a corporate psychopath. *Howes Percival LLP v Page* [2013] EWHC 4104 (Ch), [34]. Whereas searches involving ‘psychopathy’ and ‘crime’ yielded over 100 results on Westlaw UK for example, but these cases generally involved murder and other serious offending, as well as appeals on life sentences and whole life orders. The cases would not fall within the ambit of corporate/white collar crime. Search conducted on 30th April 2025.

¹⁶ Other live issues in criminal appeals are less likely to be of concern in relation to corporate offenders, e.g. the categorisation of offenders, use of hospital orders or whole life orders, and risk management. By way of illustrative example, see: *AB v Her Majesty’s Advocate* [2021] HCJAC 43; *R v Kitchner* [2017] EWCA Crim 937, [2017] 4 WLR 159.

Much like the need for judges to engage with philosophical thinking and moral reasoning in many areas of the law,¹⁷ it is submitted that judges should not ignore the swathes of scientific literature and evidence as to an offender’s psychopathic mental state when it comes to sentencing and labelling offenders. While many of the arguments and issues discussed in this paper may be applicable to other non-legal/academic outlets, or even other forms of mental disorder, further analysis of them is not considered relevant to this paper.

The “corporate psychopath” label is a clear example of diagnosis-first labelling. When coupled with the emotive nature of the word ‘psychopath’, it can potentially have an unwarranted effect on a corporate offender’s level of punishment and accompanying stigmatisation. The psychopath label is not one to be applied lightly because, as discussed further below, myriad consequences for the offender can persist long after they have served their sentence. “Psychopath” may be a particularly sticky label, but this paper will argue that the judiciary should not shy away from its use, where clinically appropriate. This label speaks loudly as to the offender’s mental state and to any resulting mitigated blameworthiness at sentencing. A balance needs to be struck between clinically accurate labelling on the one hand, and not seeking to over-stigmatise an offender based on their mental disorder on the other. The following discussion will explore how this may be achieved in relation to corporate offenders diagnosed with psychopathy.

II PSYCHOPATHY- AN INTRODUCTION

This section will provide a working overview of psychopathy to facilitate a subsequent deeper discussion of psychopathy, labelling, and stigma. An important caveat however is that this is a relatively new scientific area where the pace of developments is high. As a result, many traditionally held views are being challenged, and convincingly so. While space constraints prevent a full discussion of all the live debates in the field, the below will highlight some of the key issues facing forensic psychiatry when it comes to understanding and diagnosing psychopathy.

Research in the form of MRI and fMRI studies has purported to show that psychopaths have abnormally developed brains, princi-

¹⁷ C. Maxwell, ‘Thinking Philosophically about Law: The Role of Moral and Political Reasoning in Shaping the Law’ (2023) 47 Melbourne University Law Review 229.

pally in the amygdala and the prefrontal cortex.¹⁸ The primary traits associated with psychopathy have been linked, by some researchers, with these malformations: impulsivity; callousness, unempathetic, unemotional, and antisocial behaviours.¹⁹ Furthermore, moral reasoning and emotional decision-making powers may be effectively diminished.²⁰ This understanding has been strongly challenged recently, however.²¹ Drawing causal links between apparent brain malformations and the symptoms of psychopathy may be tempting for some non-scientists, but it must be resisted as the biological basis for psychopathy is far from settled science.²² At a minimum, brain scans should not be presented as ‘strong’ or ‘objective evidence’ of the

¹⁸ See, for example: M. Koenigs, M. Kruepke and J.P. Newman, ‘Economic Decision-Making in Psychopathy: A Comparison with Ventromedial Prefrontal Lesion Patients’ (2010) 48 *Neuropsychologia* 2198; J.R. Blair, H. Meffert, S. Hwang, S.F. White, ‘Psychopathy and Brain Function: Insights from Neuroimaging Research’ in C.J. Patrick (ed), *Handbook of Psychopathy* (2nd ed., Guilford Press 2018), pp. 401-421. However, some researchers have challenged this and noted that the abnormalities are not exclusively linked with psychopathy. See, for example: M. Koenigs, M. Kruepke, J. Zeier and J.P. Newman, ‘Utilitarian Moral Judgment in Psychopathy’ (2012) 7 *Social Cognitive and Affective Neuroscience* 708; V.G. Hardcastle, ‘It Isn’t as Simple as It Seems: Understanding and Treating Psychopathy’ (2013) 4 *AJOB Neuroscience* 12.

¹⁹ See, for example: Y. Yang, A. Raine, K.L. Narr, P. Colletti, A.W. Toga, ‘Localization of Deformations within the Amygdala in Individuals with Psychopathy’ (2009) 66 *Archives of General Psychiatry* 986; F.S. Kyriazi, S. Bogaerts, J.J.A. Denissen, S. Yuan, M. Dufner, C. Garofalo, ‘A multi-Method Investigation of Motive Dispositions: Affiliative and Antagonistic Dispositions in Psychopathy’ (2023) 14 *Journal of Criminal Psychology* 99.

²⁰ W. Glannon, ‘Moral Responsibility and the Psychopath’ (2008) 1 *Neuroethics* 158; J. Decety, ‘The Neurodevelopment of Empathy in Humans’ (2010) 32 *Developmental Neuroscience* 257; H. Meffert, V. Gazzola, J.A. den Boer, A.A.J. Bartels, and C. Keyser, ‘Reduced Spontaneous but Relatively Normal Deliberate Vicarious Representations in Psychopathy’ (2013) 136(8) *Brain* 2550.

²¹ See, e.g.: P. Deming, M. Heilicher, and M. Koenings, ‘How Reliable are Amygdala Findings in Psychopathy? A Systematic Review of MRI Studies’ (2022) 142 *Neuroscience and Biobehavioral Reviews* 104875.

²² See further: Y-W. Chen and T. Canli, “‘Nothing to See Here’: No Structural Brain Differences as a Function of the Big Five Personality Traits from a Systematic Review and Meta-Analysis’ (2022) 5 *Personality Neuroscience* 1; V.G. Hardcastle, ‘It Isn’t As Simple as It Seems: Understanding and Treating Psychopathy’ (2013) 4(2) *AJOB Neuroscience* 12; P. Deming, S. Griffiths, J. Jalava, M Koenigs, R.R. Larsen, ‘Psychopathy and Medial Frontal Cortex: A Systematic Review Reveals Predominantly Null Relationships’ (2024) 167 *Neuroscience & Biobehavioral Reviews* 105904.

presence of a mental disorder,²³ regardless of the appearance of objectivity such scans bring to a criminal trial.

Psychopathy is best understood as a complex mental disorder which exists on a spectrum.²⁴ At one end exists the prototypical, cold-hearted killer, often referred to as a clinical psychopath. However, there naturally exists individuals who share some, but not all, of the diagnostic traits of so-called clinical psychopaths. These individuals have been referred to as sub-clinical,²⁵ or successful psychopaths.²⁶ They may not display the recklessness and criminal history of their clinical psychopath counterparts, but they may nonetheless present as individuals with many or all of the following traits: pathological lying, conniving, remorselessness, amorality, and emotionlessness. Some researchers have argued that there are categorical differences between clinical and sub-clinical psychopaths when it comes to their propensity towards recidivism,²⁷ and potential association with violence.²⁸

²³ *R v Mohammed Sharif* [2010] EWCA Crim 1709.

²⁴ M. Sellbom and L.E. Drislane, ‘The Classification of Psychopathy’ (2021) 59 *Aggression and Behavior* 101473; T.J. Harpur, R.D. Hare and A.R. Hakstian, ‘Two-Factor Conceptualization of Psychopathy: Construct Validity and Assessment Implications’ (1989) 1 *Psychological Assessment* 6; M.R. Levenson, ‘Psychopaths are Not Necessarily Impulsive, etc.: A Reply to Feelgood and Rantzen’ (1993) 3 *Theory & Psychology* 229; S.O. Lilienfeld, S.F. Smith, K.C. Sauvigné, C.J. Patrick, L.E. Drislane, R.D. Litzman, and R.F. Krueger, ‘Is Boldness Relevant to Psychopathic Personality? Meta-Analytic Relations with Non-Psychopathy Checklist-Based Measures of Psychopathy’ (2016) 28 *Psychological Assessment* 1172.

²⁵ S.N. Mullins-Sweatt, N.G. Glover, K.J. Derefinko, J.D. Miller and T.A. Widiger, ‘The Search for the Successful Psychopath’ (2010) 44 *Journal of Research in Personality* 554; M.K. Mahmut, J. Homewood and R.J. Stevenson, ‘The Characteristics of Non-Criminals with High Psychopathy Traits: Are They Similar to Criminal Psychopaths?’ (2008) 42 *Journal of Research in Personality* 679; M. Snyder, ‘Self-Monitoring of Expressive Behavior’ (1974) 30 *Journal of Personality and Social Psychology* 526.

²⁶ L. Wallace, D. Fido, A.L. Sumich and N. Heym, ‘A Systematic Review on the Current Conceptualisations of Successful Psychopathy’ (2022) 3 *Forensic Science International: Mind and Law* 1000076; C.R. Boddy, R. Taplin, B. Sheehy and B. Murphy, ‘Finding Psychopaths in White-Collar Jobs: A Review of the Evidence and Why It Matters’ (2022) 17 *Society and Business Review* 217.

²⁷ K.S. Douglas, G.M. Vincent, and J.F. Edens, ‘Risk for Criminal Recidivism: The Role of Psychopathy’ in C.J. Patrick (ed), *Handbook of Psychopathy* (2nd edn., Guilford Press, 2018), pp. 682-709; S.S. Weaver, M. Dargis, K.A. Kiehl and M. Koenigs, ‘Criminal Histories and Rates of Recidivism among Two Subtypes of Psychopathic Individuals’ (2022) 49 *Criminal Justice and Behavior* 471; P.S. Blagov, C.J. Patrick, S.O. Lilienfeld, A.D. Powers, J.E. Phifer, N.C. Venables, M. Hudak,

However, there is growing evidence which demonstrates that categorical differences misstate the nature of psychopathy. It can prove to be difficult, if not impossible, to differentiate (and define) clinically, successful/corporate psychopaths from unsuccessful psychopaths.²⁹ For many researchers at the cutting-edge of science in the field, psychopathy is best understood as a dimensional construct, rather than one with clear demarcated boundaries. While the latter is potentially a more transferrable standard to the criminal law, one either is or is not a psychopath, the former, dimensional understanding is arguably the more scientifically accurate approach.³⁰ Sellbom and Drislane, for example, consider the unitary account of psychopathy, with its clear demarcated boundaries, as essentially indefensible in light of contemporary research.³¹

Footnote 27 continued

D.J. Herres, K. Lieb, S.C.G. Leigh G. and Cooper, 'Personality Constellations in Incarcerated Psychopathic Men' (2011) 2 *Personality Disorders: Theory, Research, and Treatment* 293; B.M. Hicks, K.E. Markon, C.J. Patrick, R.F. Krueger J.P. and Newman, 'Identifying Psychopathy Subtypes on the Basis of Personality Structure' (2004) 16 *Psychological Assessment* 276; M.E. Olver, L.A. Sewall, G.E. Sarty, K. Lewis and S.C.P. Wong, 'A Cluster Analytic Examination and External Validation of Psychopathic Offender Subtypes in a Multisite Sample of Canadian Federal Offenders' (2015) 124 *Journal of Abnormal Psychology* 355.

²⁸ S.M. Gillespie, A. Jones and C. Garofalo, 'Psychopathy and Dangerousness: An Umbrella Review and Meta-Analysis' (2023) 100 *Clinical Psychology Review* 102240; C. Garofalo, C.S. Neumann and P. Velotti, 'Psychopathy and Aggression: The Role of Emotion Dysregulation' (2021) 36 *Journal of Interpersonal Violence* NP12640-NP12664; D.G. Cornell, J. Warren, G. Hawk, E. Stafford, G. Oram and D. Pine, 'Psychopathy in Instrumental and Reactive Violent Offenders' (1996) 64 *Journal of Consulting and Clinical Psychology* 783; R.D. Hare, 'Psychopathy as a Risk Factor for Violence' (1999) 70 *Psychiatric Quarterly* 181.

²⁹ M. Koenigs, L. Young, R. Adolphs, D. Tranel, F. Cushman, M. Hauser, and A. Damasio, 'Damage to the Prefrontal Cortex Increases Utilitarian Moral Judgements' (2007) 446 *Nature* 908; M. Koenigs, M. Kruepke, J. Zeier, and J.P. Newman, 'Utilitarian Moral Judgment in Psychopathy' (2012) 7(6) *Social Cognitive and Affective Neuroscience* 708.

³⁰ See, e.g.: C. Campos, R. Pasion, A. Azeredo, E. Ramiao, P. Mazer, I. Macedo, and F. Barbosa, 'Refining the Link between Psychopathy, Antisocial Behavior, and Empathy: A Meta-Analytical Approach across Different Conceptual Frameworks' (2022) 94 *Clinical Psychology Review* 102145; N. Haslam, M.J. McGrath, W. Viechtbauer, and P. Kuppens, 'Dimensions Over Categories: A Meta-Analysis of Taxometric Research' (2020) 50(9) *Psychological Medicine* 1418.

³¹ M. Sellbom and L.E. Drislane, 'The Classification of Psychopathy' (2021) 59 *Aggression and Behavior* 101473.

From a criminal law perspective, this is a more complicated outcome than the traditional unitary conception, with which criminal courts are well-versed. Popular, commercial psychopathy tests, e.g. the Hare Psychopathy Checklist –Revised (PCL-R), and its variants, are commonly used in courtrooms and necessitate the use of diagnostic cut-offs.³² The PCL-R test itself is not without its controversies, critics, and alternatives.³³ Furthermore, the PCL-R test itself is heavily focused on “criminality” as a key classification criterion.³⁴ For example, a defendant who is hitherto unknown to the criminal justice system will score lower on the test than a person with a criminal history, notwithstanding comparable scores for all other Facets of the test.³⁵ This is clearly problematic in the case of cor-

³² R.D. Hare, *Manual for the Hare Psychopathy Checklist-Revised* (Multi-Health Systems, 1991); R.D. Hare, ‘The PCL-R Assessment of Psychopathy’ in A.R. Feltous and H. Saß (eds), *The Wiley International Handbook on Psychopathic Disorders and the Law* (2nd edn., John Wiley & Sons 2020), pp. 63-106.

³³ I. Jeandarme, J.F. Edens, P. Habets, L. Bruckers, K. Oei and S. Bogaerts, ‘PCL-R Field Validity in Prison and Hospital Settings’ (2017) 41 *Law and Human Behavior* 29. Cf. M. Olver, K. Stockdale, C.S. Neumann, R.D. Hare, A. Mokros, A. Baskin-Sommers, E. Brand, J. Folino, C. Gacono, N.S. Gray, K. Kiehl, R. Knight, E. Leon-Mayer, M. Logan, J.R. Maloy, S. Roy, R.T. Salekin, R. Snowden, N. Thomson, S. Tillem, M. Vittaco and D. Yoon, ‘Reliability and Validity of the Psychopathy Checklist-Revised in the Assessment of Risk for Institutional Violence: A Cautionary Note on DeMatteo et al.’ (2020) 26 *Psychology, Public Policy, and Law* 490.

³⁴ See, for example: D. DeMatteo, S.D. Hart, K. Heilbrun, M.T. Boccaccini, M.D. Cunningham, K.S. Douglas, J.A. Dvoskin, J.F. Edens, L.S. Guy, D.C. Murrie, R.K. Otto, I.K. Packer, and T.J. Reidy, ‘Statement of Concerned Experts on the Use of the Hare Psychopathy Checklist—Revised in Capital Sentencing to Assess Risk for Institutional Violence’ (2020) 26 *Psychology, Public Policy, and Law* 133; C.B. Gacono, J.L. Loving, F. Barton Evans III and M.T. James, ‘The Psychopathy Checklist-Revised: PCL-R Testimony and Forensic Practice’ (2002) 2 *Journal of Forensic Psychology Practice* 11; J.F. Edens, J.L. Skeem, and P.J. Kennealy, ‘The Psychopathy Checklist in the Courtroom: Consensus and Controversies’ in J.L. Skeem, K.S. Douglas, and, S.O. Lilienfeld (eds), *Psychological Science in the Courtroom: Consensus and Controversy* (The Guilford Press, 2009), pp. 175-201; J.F. Edens, M.S. Magyar and J. Cox, ‘Taking Psychopathy Measures “Out of the Lab” and into the Legal System: Some Practical Concerns’ in K.A. Kiehl and W.P. Sinnott-Armstrong (eds), *Handbook on Psychopathy and Law* (Oxford University Press, 2013), Chpt. 14; C.J. Patrick, D.C. Fowles and R.F. Krueger, ‘Triarchic Conceptualization of Psychopathy: Developmental Origins of Disinhibition, Boldness, and Meanness’ (2009) 21 *Development and Psychopathology* 913.

³⁵ Facet 1- affective deficits; Facet 2- interpersonal deficits; Facet 3- behavioural deficits; Facet 4- criminal behaviour. J.L. Skeem and D.J. Cooke, ‘Is Criminal Behavior a Central Component of Psychopathy? Conceptual Directions for

porate offenders, who tend not to have a long documented history with criminality.

While important to acknowledge, the criticisms in relation to the validity, or appropriateness of the use of the PCL-R test do not affect the overarching arguments of this paper. Regardless of which diagnostic test is used,³⁶ the scientific literature supporting the existence of psychopathy is voluminous and cannot be ignored. This is contrary to the current UK Sentencing Guidelines approach referred to previously. It is submitted that Courts should not abstain from engaging with the extant scientific literature on psychopathy, for example, when sentencing a corporate offender with psychopathy. However, a second point must follow: sentencing remarks, notably when they contain stigmatic labels such as “psychopathy”, can have a lasting and deleterious effect on an offender’s life, so accuracy of language matters. Sentencing judges, in incorporating considerations of psychopathy into their sentencing, ought to: (i) consider contemporary understandings of psychopathy as elaborated in the scientific literature, particularly as they relate to its non-unitary nature, and (ii) be mindful of the stigmatic nature of any labels they choose to employ. The latter point will be the focus of the remainder of this paper.

Footnote 35 continued

Resolving the Debate’ (2010) 22 *Psychological Assessment* 433; J.L. Skeem and D.J. Cooke, ‘One Measure Does Not a Construct Make: Directions toward Reinvigorating Psychopathy Research—Reply to Hare and Neumann’ (2010) 22 *Psychological Assessment* 455. Cf. R.D. Hare and C.S. Neumann, ‘The Role of Antisociality in the Psychopathy Construct: Comment on Skeem and Cooke’ (2010) 22 *Psychological Assessment* 446.

³⁶ Alternatives include: Psychopathic Personality Inventory–Revised; the Elemental Psychopathy Assessment; Triarchic Psychopathy Measure; B-Scan 360; and the Psychopathic Personality Inventory—Revised. In respective order, see: S.O. Lilienfeld and M.R. Widows, *Psychopathic Personality Inventory–Revised* (Psychological Assessment Resources, 2005); D.R. Lynam, E.T. Gaughan, J.D. Miller, D.J. Miller, S. Mullins-Sweatt and T.A. Widiger, ‘Assessing the Basic Traits Associated with Psychopathy: Development and Validation of the Elemental Psychopathy Assessment’ (2011) 23 *Psychological Assessment* 108; C.J. Patrick, D.C. Fowles and R.F. Krueger, ‘Triarchic Conceptualization of Psychopathy: Developmental Origins of Disinhibition, Boldness, and Meanness’ (2009) 21 *Development and Psychopathology* 913; C. Mathieu, R.D. Hare, D.N. Jones, P. Babiak and C.S. Neumann, ‘Factor Structure of the B-Scan 360: A Measure of Corporate Psychopathy’ (2013) 25 *Psychological Assessment* 288.

III CRIMINAL PUNISHMENT AND COMMUNICATING CENSURE

This section will introduce a communicative account of the criminal law because stigma, particularly that generated via a criminal label, is affected by the form and effectiveness of communication, at both a societal and State level. To ignore the communicative aspect of criminal law and punishment would render the forthcoming discussion of stigma and labelling incomplete. Therefore, a communicative account of the criminal law is introduced with the intention that further discussion in this paper on psychopathy and stigma will build upon this theoretical foundation and ultimately provide a broad, encompassing understanding of the overlapping subjects of this paper: psychopathy, fair labelling, and stigma.

Non-criminal fines alone are, as Kahan argues,³⁷ an inappropriate vehicle for communicating censure.³⁸ The State may choose to criminalise certain actions because they are particularly wrongful in nature,³⁹ have the potential to inflict a serious level of harm,⁴⁰ and the offending action is of a kind which warrants a public response.⁴¹ This can be contrasted with private wrongs, such as torts, which need not be decried in the same way. In choosing to criminalise, the State is further asserting that non-criminal alternatives are inappropriate to effectively sanction the particular activity, or may not pose enough of a deterrent threat.⁴² As imprisonment and fines are incommensu-

³⁷ D.M. Kahan, ‘Punishment Incommensurability’ (1998) 1 Buffalo Criminal Law Review 691.

³⁸ D. Husak, ‘The Price of Criminal Law Skepticism: Ten Functions of the Criminal Law’ (2020) 23 New Criminal Law Review 27.

³⁹ M.S. Moore, *Placing Blame: A Theory of the Criminal Law* (Oxford University Press, 1997); M.S. Moore, ‘A Tale of Two Theories’ (2009) 28 Criminal Justice Ethics 27; D. Husak, *Overcriminalization* (Oxford University Press 2008).

⁴⁰ J. Feinberg, *Harm to Others* (Oxford University Press, 1984); R.A. Duff, and S.E. Marshall, ‘“Abstract Endangerment”, Two Harm Principles, and Two Routes to Criminalisation’ (2015) 3 Bergen Journal of Criminal Law and Criminal Justice 131; J. Stanton-Ife, ‘What is the Harm Principle For?’ (2016) 10 Criminal Law and Philosophy 329.

⁴¹ S.E. Marshall and R.A. Duff, ‘Criminalization and Sharing Wrongs’ (1998) 11 Canadian Journal of Law and Jurisprudence 7; G. Lamond, ‘What is a Crime?’ (2007) 27 Oxford Journal of Legal Studies 609; J. Edwards and A.P. Simester, ‘What’s Public about Crime?’ (2017) 37 Oxford Journal of Legal Studies 105.

⁴² P.H. Robinson and J.M. Darley, ‘Does Criminal Law Deter? A Behavioural Science Investigation’ (2004) 24 Oxford Journal of Legal Studies 173; S. Shavell,

nable,⁴³ and there is no way to guarantee that the offender is the one who ultimately pays the fine, which is particularly pertinent in the corporate setting,⁴⁴ criminal sanctions may be presented as a personal sanction placed on a wrongdoer. Even where an overlap occurs between punishment and other sanctions, punishment is unique in that it is intentionally punitive in nature,⁴⁵ and seeks to vindicate and reassert the victim's 'trampled' moral worth through punishment.⁴⁶

Punishment is a multifaceted aspect of criminal law, and one which effectively separates criminal law from other areas of law. Punishment is the State's way of addressing an offender *qua* offender.⁴⁷ Punishment not only imposes hard treatment on an offender, through imprisonment for example,⁴⁸ but it also expresses blame, condemnation,⁴⁹ and importantly for present purposes, stigma. While McAdams views the expressive function of laws as a means to facilitate coordination,⁵⁰ this is not the approach which is forwarded in this paper. Under the communicative account of criminal law, punishment communicates the public's disapproval to the offender. Hard treatment then, in essence, provides prudential reasons not to act in a proscribed manner.⁵¹ The censure aspect of punishment thus speaks to the offender's moral agency. Hard treatment, particularly

Footnote 42 continued

ãCriminal Law and the Optimal Use of Nonmonetary Sanctions as a Deterrent' (1985) 85 Columbia Law Review 1232.

⁴³ Kahan, n 37; C. Mott and L.H. Solomon, 'Alternative Punishments: How Laypeople and Judges Impose Alternative Noncarceral Sanctions' (2024) 30(3) Psychology, Public Policy, and Law 326.

⁴⁴ I. Coca-Vila, 'What's Really Wrong with Fining Crimes? On the Hard Treatment of Criminal Monetary Fines' (2022) 16 Criminal Law and Philosophy 395.

⁴⁵ Husak, n 39, p.93.

⁴⁶ M. Dan-Cohen, *Normative Subjects: Self and Collectivity in Morality and Law* (Oxford University Press, 2016), p.178.

⁴⁷ S.G. Mayson, 'The Concept of Criminal Law' (2020) 14 Criminal Law and Philosophy 447.

⁴⁸ J. Feinberg, *Doing and Deserving*. (Princeton University Press 1970); A.Y.K. Lee, 'Defending a Communicative Theory of Punishment: The Relationship between Hard Treatment and Amends' (2017) 37 Oxford Journal of Legal Studies 217.

⁴⁹ R.A. Duff, *The Realm of Criminal Law* (Oxford University Press 2018), p. 19.

⁵⁰ R.H. McAdams, *The Expressive Powers of Law: Theories and Limits* (Harvard University Press 2015).

⁵¹ A. von Hirsch, 'Harm and Wrongdoing in Criminalisation Theory' (2014) 8 Criminal Law and Philosophy 245; J. Kleinig, 'Punishment and Moral Seriousness' (1991) 25 Israel Law Review 401, p. 417.

imprisonment, acts as a ‘potent symbol of moral condemnation’:⁵² it plays a denunciatory role.⁵³ Even where imprisonment is not imposed, a public trial and conviction fulfils what Roxin describes as an ‘existential need’ for censure to be publicly communicated.⁵⁴ One of the aims of which is that the offender will see the errant nature of their ways and repent.⁵⁵ Punishment is a communicative act and is most effective when the communicative aspect of punishment is respected and utilised effectively.⁵⁶

As punishment is ‘designed to stigmatize’,⁵⁷ it is unjustified if the offender does not deserve to be stigmatised.⁵⁸ In a regulatory context, the Law Commission of England and Wales has stated that the ‘intention or one of the important effects of criminal conviction is to create significant stigma.’⁵⁹ More recently, the Law Commission have reaffirmed this position: ‘The criminal law should only be employed to deal with wrongdoers who deserve the stigma associated with criminal conviction because they have engaged in seriously reprehensible conduct. It should not be used as the primary means of promoting regulatory objectives.’⁶⁰ The State should therefore con-

⁵² D.M. Kahan, ‘What do Alternative Sanctions Mean?’ (1996) 63 *University of Chicago Law Review* 591, p. 621.

⁵³ B. Wringer, *An Expressive Theory of Punishment* (Palgrave Macmillan 2016), pp. 18-41.

⁵⁴ C. Roxin, ‘Prevention, Censure and Responsibility: The Recent Debate on the Purpose of Punishment’ in A.P. Simester, A. Du Bois-Pedain and U. Neumann (eds), *Liberal Criminal Theory: Essays for Andreas von Hirsch* (Hart, 2014), pp. 23-42, p.40.

⁵⁵ R.A. Duff, *Punishment, Communication, and Community* (Oxford University Press 2001), pp. 81-82; V. Tadros, *The Ends of Harm: The Moral Foundations of the Criminal Law* (Oxford University Press 2011).

⁵⁶ See: A. Sarin, M.K. Ho, J.W. Martin, and F.A. Cushman, ‘Punishment is Organized around Principles of Communicative Inference’ (2021) 208 *Cognition* 104544.

⁵⁷ D. Husak, ‘Proportionality in Personal Life’ (2021) 15 *Criminal Law and Philosophy* 339, p.343.

⁵⁸ J. Stanton-Ife, ‘Strict Liability: Stigma and Regret’ (2007) 27 *Oxford Journal of Legal Studies* 151, p. 154;

⁵⁹ The Law Commission, ‘Criminal Liability in Regulatory Contexts’ (2010) available at: https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/30/2015/06/cp195_Criminal_Liability_consultation.pdf (Accessed, 30 April 2025), para. 3.8.

⁶⁰ The Law Commission, ‘Corporate Criminal Liability: An Options Paper’ (2022), available at: https://s3-eu-west-2.amazonaws.com/cloud-platform-e218f50a4812967ba1215eaecede923f/uploads/sites/30/2022/06/Corporate-Criminal-Liability-Options-Paper_LC.pdf (Accessed, 30 April 2025), para. 1.28.

sider the nature and severity of the potential stigma which an offender will likely experience under a particular offence, including corporate offences. As will be addressed in the next section, the criminal label generates stigma and therefore an inapposite label generates unwarranted levels of stigma, thus making the label unfair to the offender. The interplay between punishment, stigma, and the communicative function of criminal law will now be explored.

IV THE NATURE OF STIGMA

Duff cogently asserts that stigma is an ‘*effect* of criminal conviction and it marks those who are stigmatized (for it is people, not actions, that are stigmatized) in a way that is likely to make a significant, deleterious, difference to their social standing and relationships’.⁶¹ The effects of a criminal label can be profound on the offender and result in, amongst other things, status loss and stigmatisation.⁶² These can be difficult for the offender to expunge.⁶³ Such collateral consequences, as they are generally known, can continue long after the trial has ended and impact on an individual’s ability to live a full life.⁶⁴ Collateral consequences affect one’s employability, possible reintegration into society, or ability to attract others to work for their company, for example.⁶⁵ Additionally, stigma is a particularly impactful phenomenon for individuals who have mental health disorders. Stigmatisation may reduce their utilisation of mental health services,⁶⁶ and even lead to self-stigmatisation.⁶⁷

⁶¹ Duff, n 49, p.18. Husak, above n 39, p.94.

⁶² B.G Link, and J.C. Phelan, ‘Conceptualizing Stigma’ (2001) 27 *Annual Review of Sociology* 363.

⁶³ C. Uggen and L. Blahnik, ‘The Increasing Stickiness of Public Labels’ in J. Shapland, S. Farrall and A. Bottoms (eds), *Global Perspectives on Desistance* (Routledge 2016), Chapter 12; S.E. Lageson, ‘Criminal Record Stigma and Surveillance in the Digital Age’ (2022) 5 *Annual Review of Criminology* 67.

⁶⁴ W.A. Logan, ‘Informal Collateral Consequences’ (2013) 88 *Washington Law Review* 1103.

⁶⁵ See further: E. Rasmusen, ‘Stigma and Self-Fulfilling Expectations of Criminality’ (1996) 39 *Journal of Law and Economics* 519; C. Uggen and R. Stewart, ‘Piling On: Collateral Consequences and Community Supervision’ (2014) 99 *Minnesota Law Review* 1871; E. Gunnison and J.B. Helfott, *Offender Reentry: Beyond Crime and Punishment* (Lynne Rienner, 2013); P.M. Harris and K.S. Keller, ‘Ex-Offenders Need Not Apply: The Criminal Background Check in Hiring Decisions’ (2005) 21 *Journal of Contemporary Criminal Justice* 6; *King v. US Bank National Assn.*, 53 Cal. App. 5th 675, 266 Cal. Rptr. 3d 520 (Ct. App. 2020), p.695.

One’s deviant status may become, as Becker argues,⁶⁸ a master status, which effectively nullifies any of one’s positive characteristics in the eyes of society.⁶⁹ The labelled individual is then viewed by society as unable to act morally and is seen as having a propensity to break other societal rules in the future. Criminality is thus portrayed as a core trait of the person which overrides other positive aspects of their character.⁷⁰ Furthermore, the labelled individual may internalise their deviant label such that it comes to dominate their identity.⁷¹ Thus, while the stigma associated with a criminal conviction and label usually erodes with the passage of time,⁷² certain labels are particularly sticky and their associated stigma can persist long after the offender has served their sentence,⁷³ and may even extend to those who associate with the offender.⁷⁴ Pertinently, Marz has shown that peer labelling, condemnation, and stigmatisation in relation to anti-money laundering offences was resisted amongst bankers in an effort to protect their reputations.⁷⁵ These rationalisations of deviance and

⁶⁶ K. Martin, A. Taylor, B. Howell A. and Fox, ‘Does Criminal Justice Stigma affect Health and Health Care Utilization? A Systematic Review of Public Health and Medical Literature’ (2020) 16 *International Journal of Prisoner Health* 263.

⁶⁷ K.E. Moore, J.P. Tangney and J.B. Stuewig, ‘The Self-Stigma Process in Criminal Offenders’ (2016) 1 *Stigma and Health* 206; P.W. Corrigan and A.C. Watson, ‘The Paradox of Self-Stigma and Mental Illness’ (2002) 9 *Clinical Psychology: Science and Practice* 35.

⁶⁸ H.S. Becker, *Outsiders: Studies in the Sociology of Deviance* (The Free Press, 1963).

⁶⁹ R. Paternoster and L. Iovanni, ‘The Labeling Perspective and Delinquency: An Elaboration of the Theory and an Assessment of the Evidence’ (1989) 6 *Justice Quarterly* 359; W. Lee, ‘Revisiting Labeling Theory: Empirical Test of Informal Labeling Process’ (2024) 47 *Journal of Crime and Justice* 188.

⁷⁰ J. Gunnar Bernburg, ‘Labeling Theory’ in M.D. Krohn, N. Hendrix, G. Penly Hall, and A.J. Lizotte (eds), *Handbook of Crime and Deviance* (2nd edn, Springer Nature 2019), 179.

⁷¹ J.M. Waite-Jones, ‘Deviance and Labelling’ in J.M. Waite-Jones and A.M. Rodriguez (eds), *Psychosocial Approaches to Child and Adolescent Health and Wellbeing* (Springer Nature 2022), 145.

⁷² N. Shover, *Aging Criminals* (Sage, 1985), pp. 60-61.

⁷³ A. Cherney and R. Fitzgerald, ‘Efforts by Offenders to Manage and Overcome Stigma: The Case of Employment’ (2016) 28 *Current Issues in Criminal Justice* 17; M. Denver, J.T. Pickett and S.D. Bushway, ‘The Language of Stigmatization and the Mark of Violence: Experimental Evidence on the Social Construction and Use of Criminal Record Stigma’ (2017) 55 *Criminology* 664.

⁷⁴ E. Tinnney, ‘The “Stickiness” of Stigma: Guilt by Association after a Friend’s Arrest’ (2023) 61 *Criminology* 354.

stigmatic labels have important implications for the potential rehabilitation of the offender.⁷⁶ A corporate offender will struggle to take responsibility for wrongdoing which they, and their peers, do not view as wrongful, despite them being potentially deterred from acting in that way again due to instrumental reasons, namely fear of apprehension and punishment. Further, these persons are more prone to recidivism and less likely to be deterred due to their deviance being rationalised by their peers.⁷⁷ This is an issue which is further compounded by a person with psychopathy's ability to fake socially acceptable responses to censure, without actually acknowledging their own wrongdoing.⁷⁸

This convergence of systemic, corporate issues and the nature of psychopathy doubtless makes full rehabilitation challenging. If repenting one's wrongdoing as an offender is an expectant element of punishment, as Duff argues,⁷⁹ it is certainly a difficult outcome to realise in circumstances like these, especially when 'sincere repentance is necessarily voluntary',⁸⁰ and should not be contrived.

⁷⁵ A. Marz, "'It Could Have Been Us.'" Peer Responses to Money-Laundering Violations in the Dutch Banking Industry' (2024) 81 *Crime, Law and Social Change* 281; W. Stadler and M. Benson, 'Revisiting the Guilty Mind: The Neutralization of White-Collar Crime' (2012) 37 *Criminal Justice Review* 494.

⁷⁶ J.G. Bernburg, M.D. Krohn and C. Rivera, 'Official Labeling, Criminal Embeddedness, and Subsequent Delinquency: A Longitudinal Test of Labeling Theory' (2006) 43 *Journal of Research in Crime and Delinquency* 67; A. Hadji-matheou, 'Criminal Labelling, Publicity, and Punishment' (2016) 35 *Law and Philosophy*, 567, p.572.

⁷⁷ P. Funk, 'On the Effective Use of Stigma as a Crime-Deterrent' (2004) 48 *European Economic Review* 715; Y. Lee and J. Kim, 'Psychopathic Traits and Different Types of Criminal Behavior: An Assessment of Direct Effects and Mediating Processes' (2020) 80 *Journal of Criminal Justice* 101772, p.6.

⁷⁸ B.R. Walker and C.J. Jackson, 'Moral Emotions and Corporate Psychopathy: A Review' (2017) 141 *Journal of Business Ethics* 797, p.798; A.D. Pardue, M.B. Robinson and B.A. Arrigo, 'Psychopathy and Corporate Crime: A Preliminary Examination, Part 1' (2013) 13 *Journal of Forensic Psychology Practice* 116; A.D. Pardue, M.B. Robinson and B.A. Arrigo, 'Psychopathy and Corporate Crime: A Preliminary Examination, Part 2' (2013) 13 *Journal of Forensic Psychology Practice* 145; D. Goleman and R. Boyatzis, 'Social Intelligence and the Biology of Leadership' (2008) *Harvard Business Review*, 1, available at: <https://hbr.org/2008/09/social-intelligence-and-the-biology-of-leadership> (Accessed 30 April 2025).

⁷⁹ R.A. Duff, 'Punishment, Communication, and Community' in M. Matravers (ed), *Punishment and Political Theory* (Hart, 1999), pp. 48-68; R.A. Duff, n 41.

⁸⁰ K.L. Sifferd, 'Deserving Blame, and Sometimes Punishment' (2024) 18 *Criminal Law and Philosophy* 133, p.144.

The stigma associated with a criminal label can be detrimental to one’s life, but in the corporate world, there is some evidence of attempts to mitigate its significance and guard against its deleterious effects. If the traits associated with psychopathy are seen as beneficial when hiring executives,⁸¹ at least for some, the collateral consequences associated with a stigmatic label may be lessened. Within wider society however, this rationalisation of deviance should not occur, and the full level of stigma would likely be felt by the offender.⁸² After all, criminal law communicates and censures on the polity’s behalf,⁸³ and not a subset thereof.⁸⁴ Therefore, outside of their corporate bubble, offenders who are labelled as psychopaths would likely experience an unmitigated level of public opprobrium manifested in the form of stigmatisation and exclusion based on their newly acquired status as a “psychopathic criminal”.

V FAIR LABELLING AND STIGMA

If the criminal law is to provide a proportionate response to wrongdoing, then the level of expressive condemnation of punishment should not be disproportional to the wrongdoing.⁸⁵ The severity of punishment, including the criminal label and associated stigma, ought to be reflective of the blameworthiness of the offender and the community’s views on the matter.⁸⁶ If the criminal law’s communicative function is to be respected, then differential labels ought to apply to offenders based on their respective levels of blameworthiness and forms of wrongdoing.⁸⁷ ‘The battery of restrictions created by

⁸¹ D. Hill and H. Scott, ‘Climbing the Corporate Ladder: Desired Leadership Skills and Successful Psychopaths’ (2019) 26 *Journal of Financial Crime* 881.

⁸² D. Husak, ‘The “But Everyone Does That!” Defence’ in D. Husak (ed), *The Philosophy of Criminal Law: Selected Essays* (Oxford University Press, 2010), pp. 338-361.

⁸³ R.A. Duff, *Punishment, Communication, and Community* (Oxford University Press, 2001).

⁸⁴ *R v Hayes and Palombo* [2023] EWCA Crim 304; *Ivey v Genting Casinos* [2017] UKSC 67.

⁸⁵ Feinberg, n 40.

⁸⁶ S.P. Green, *Criminalizing Sex* (Oxford University Press, 2020), p.72; J. Horder, ‘Rethinking Non-Fatal Offences against the Person’ (1994) 14 *Oxford Journal of Legal Studies* 335.

⁸⁷ J. Chalmers and F. Leverick, ‘Fair Labelling in Criminal Law’ (2008) 71 *Modern Law Review* 217; A. Cornford, ‘Beyond Fair Labelling: Offence Differen-

criminal law' is designed to provide an appropriate response to the offender's wrongdoing to ensure that they are 'justly treated'.⁸⁸ An important part of just treatment in this context is the accurate labelling of offenders, not just offences. Labelling influences the stigmatic effects felt by an offender, which is, in turn, intimately linked to core considerations of criminal sentencing, namely proportional punishment and censure.

Labelling can also play a more symbolic function, particularly where the public's understanding of a crime is limited, or their current opinions on the matter are inapposite. A criminal label can then be utilised by the State, or judge in a criminal trial, to signal to the public how a crime or offender ought to be viewed and stigmatised.⁸⁹ There is a moral conflict between normative stigma, as expressed by the State or judiciary, and the actual stigma experienced by the offender,⁹⁰ where the two messages do not converge. As a result of this conflict between the public's 'shared moral norms' and the State-communicated level of normative stigma,⁹¹ the offender may become under/over-stigmatised.⁹² Accurate labels which express the appropriate normative level of condemnation and generate a proportional level of stigma are the ideal, particularly if they are of a kind which is readily understood by the public. Esoteric labelling may be accurate in a clinical context, but if its meaning is not well-understood by the public, the risk of under/over-stigmatisation becomes all the more apparent.

Footnote 87 continued

tiation in *Criminal Law*' (2022) 42 *Oxford Journal of Legal Studies* 985; A. Ashworth, 'The Elasticity of Mens Rea' in C.F.H. Tapper (ed), *Crime, Proof and Punishment: Essays in Memory of Sir Rupert Cross* (Butterworth, 1981), Chapter 3; G. Williams, 'Convictions and Fair Labelling' (1983) 42 *Cambridge Law Journal* 85.

⁸⁸ Dan-Cohen, n 46, pp.206-207.

⁸⁹ V. Tadros, 'The Homicide Ladder' (2006) 69 *Modern Law Review* 601, p.618; S.P. Green, *Thirteen Ways to Steal a Bicycle* (Harvard University Press, 2012), p.53.

⁹⁰ L.M. Friedman, *Impact: How Law affects Behavior* (Harvard University Press 2016), p.26.

⁹¹ Kahan, n 52, p.636.

⁹² Husak, n 57, pp.353-354.

VI LABELLING CORPORATE OFFENDERS AS PSYCHOPATHS.

The choice of name with which an offender will be labelled, and the ordering of the names matters when it comes to potential stigmatisation. The literature in the area of psychopathy and corporate crime has often employed mental disorder-focused language through its use of the label ‘corporate psychopath’,⁹³ or ‘successful psychopath’,⁹⁴ rather than the generally preferable approach of referring to a “person with psychopathy”, or similar. Diagnosis-first labelling, much like crime first labelling,⁹⁵ can reinforce the offender’s status as a psychopath, first and foremost, thus turning it into a Beckerian master status for them. This attribution can then hinder the potential rehabilitation and societal reintegration of offenders.⁹⁶ They are effectively dehumanised,⁹⁷ with the negative associations of their mental disorder replacing many positive traits of the individual in the public’s view.

⁹³ See, for example: C.R. Boddy, ‘Corporate Psychopaths’ in D.C. Poff and A.C. Michalos (eds), *Encyclopaedia of Business and Professional Ethics* (Springer International Publishing, 2023), pp. 425-428; P. Babiak, C.S. Neumann and R.D. Hare, ‘Corporate Psychopathy: Talking the Walk’ (2010) 28 *Behavioral Sciences & the Law*, 174; P. Babiak and M.E. O’Toole, ‘The Corporate Psychopath’ (2012) 81 *FBI Law Enforcement Bulletin*, pp. 7-11.

⁹⁴ See, for example: S.F. Smith, A.L. Watts and S.O. Lilienfeld, ‘On the Trail of the Elusive Successful Psychopath’ (2014) 15 *Psychological Assessment* 340; S.N. Mullins-Sweatt, N.G. Glover, K.J. Derefinko, J.D. Miller and T.A. Widiger, ‘The Search for the Successful Psychopath’ (2010) 44 *Journal of Research in Personality* 554.

⁹⁵ For example, contrast the labels: “sex offender” and “person who has committed sexual offences”.

⁹⁶ M. Denver, J.T. Pickett and S.D. Bushway, ‘The Language of Stigmatization and the Mark of Violence: Experimental Evidence on the Social Construction and Use of Criminal Record Stigma’ (2017) 55 *Criminology*, 664, p.681; S. Ispa-Land and C.E. Loeffler, ‘Indefinite Punishment and the Criminal Record: Stigma Reports among Expungement-Seekers in Illinois’ (2016) 54 *Criminology*, 387; J.G. Bernburg, ‘Labeling Theory’ in M.D. Krohn, N. Hendrix, G. Penly Hall and A.J. Lizotte (eds), *Handbook on Crime and Deviance* (2nd edn, Springer International, Switzerland, 2019), pp.179-196.

⁹⁷ L. Shi, J.R. Silver and A. Hickert, ‘Conceptualizing and Measuring Public Stigma toward People with Prison Records’ (2022) 49 *Criminal Justice and Behavior* 1676; G.A. Boysen, R.A. Isaacs, L. Tretter and S. Markowski, ‘Evidence for Blatant Dehumanization of Mental Illness and its Relation to Stigma’ (2020) 160 *The Journal of Social Psychology* 346.

This is certainly the case with psychopathy as psychopaths are often portrayed, including by courts, as individuals with ‘no redeeming values’.⁹⁸ While rehabilitation can prove difficult,⁹⁹ stigmatic labelling certainly hinders potential societal reintegration and affects numerous aspects of the labelled offender’s life.¹⁰⁰ These effects and hindrances, in turn, require justification if adherents of diagnosis-first labelling are to maintain this seemingly unjustifiable approach.

Person-centred labelling, as suggested in this paper, potentially reduces the adherence of the label as a master status by, first and foremost, centring the label on the individual, and thereafter providing descriptors of the person’s mental state. Ultimately, under this approach, the offender is portrayed as a person- a member of the polity- first, rather than a psychopath. This has the potential to mitigate undeserved levels of stigma and to promote societal reintegration.¹⁰¹

Furthermore, labels relating to an offender’s mental health can have a negative impact on their potential level of punishment.¹⁰² The psychopath label is a particularly emotive one which can lead to support amongst the public and lay jury members for harsher punishment,¹⁰³ though the results of some studies suggest that a label *simpliciter* is less important to determinations of punishment than the facts of the case.¹⁰⁴ Additionally, Perricone *et al.* note that ‘the impact of neuroscientific evidence is not monolithic, but can lead to

⁹⁸ *Rivera v. Humphrey*, No. CV 113-161 (S.D. Ga. June 10, 2015).

⁹⁹ See, for example: S.A. De Brito, A.E. Forth, A.R. Baskin-Sommers, I.A. Brazil, E.R. Kimonis, D. Pardini, P.J. Frick, R.J.R. Blair and E. Viding, ‘Psychopathy’ (2021) 7 *Nature Reviews Disease Primers* 49; J.D.M. van Dongen, ‘The Empathic Brain of Psychopaths: From Social Science to Neuroscience in Empathy’ (2020) 11 *Frontiers in Psychology* 493832.

¹⁰⁰ This includes, access to housing, employment, and the ability to attract and hire staff to one’s company.

¹⁰¹ M. Denver, A. Ballou, and S.E. DeWitt, ‘What’s in a Label? Public Use and Perceptions of Labeling Alternatives in Criminology’ (2024) 41(6) *Justice Quarterly* 763; A. Cox, ‘The Language of Incarceration’ (2020) 1(1) *Incarceration* 1.

¹⁰² C.M. Berryessa and B. Wohlstetter, ‘The Psychopathic “Label” and Effects on Punishment Outcomes: Metaanalysis’ (2019) 43 *Law and Human Behavior* 9.

¹⁰³ J.F. Edens, E.N. Mowle, J.W. Clark and M.S. Magyar, ‘“A Psychopath by Any Other Name?”: Juror Perceptions of the DSM-5 “Limited Prosocial Emotions” Specifier’ (2017) 31 *Journal of Personality Disorders* 90; M.T. Boccaccini, D.C. Murrie, J.W. Clark and D.G. Cornell, ‘Describing, Diagnosing, and Naming Psychopathy: How do Youth Psychopathy Labels Influence Jurors?’ (2008) 26 *Behavioral Sciences & the Law*, 487.

either mitigated or aggravated sentences by interacting with penal philosophy’.¹⁰⁵ As demonstrated in their study, mock jurors tended to vary the level of recommended punishment based on whether or not they were instructed to be mindful of retribution as a sentencing goal.

As noted at the outset of this paper however, the judiciary should not entirely shy away from using the psychopath label. If an offender is clinically diagnosed, then this label reflects their mental state and helps to explain to the public the multitude of factors considered by the sentencing judge, particularly where a mitigated sentence is handed down to an otherwise fully culpable offender.

VII EXERCISING CAUTION IN USING THE LABEL —PSYCHOPATH’.

In respecting the communicative function of the criminal law, as discussed above, expressive State condemnation should not be disproportional to an offender’s wrongdoing. Social reintegration, employment, and one’s ability to live a complete life are all impeded, to an unwarranted extent, when an offender is stigmatised to a disproportional extent. It is argued that the indiscriminate application of the “corporate psychopath” label occasions this sort of injustice.

If psychopathy is to be treated like other established mental disorders, and its effects on an offender’s level of blameworthiness are to be assessed at sentencing, then this process demands transparency. The accurate labelling of defendants facilitates this. The psychopath label is potentially highly stigmatic, and its use certainly warrants careful attention, particularly if invoked at the sentencing stage of a criminal trial. As previously argued, once branded a psychopath, an offender may struggle to rid themselves of the attending stigma. The persistence of stigmatic effects on an offender may impede their lives in tangible ways long after their sentence has ended, thus extending punishment beyond that intended by the sentencing judge.

¹⁰⁴ J. Cox, D.S. DeMatteo and E.E. Foster, ‘The Effect of the Psychopathy Checklist–Revised in Capital Cases: Mock Jurors’ Responses to the Label of Psychopathy’ (2010) 28 *Behavioral Sciences & the Law*, 878.

¹⁰⁵ A. Perricone, A. Baskin-Sommers and W.K. Ahn, ‘The Effect of Neuroscientific Evidence on Sentencing Depends on How One Conceives of Reasons for Incarceration’ (2022) 17 *PLoS One* e0276237. Available at: <https://doi.org/10.1371/journal.pone.0276237>, p.1 (accessed 30 April 2025).

It is argued therefore that the corporate psychopath label, and other similar diagnosis-first labels, are brutish in nature.¹⁰⁶ They are likely to be insensitive to an offender's particular mental disorder, given the non-unitary, dimensional nature of psychopathy. Notwithstanding the axiomatic fact that corporate offenders can cause enormous levels of societal and economic harm,¹⁰⁷ if a defendant is clinically diagnosed with psychopathy, then judicial disengagement with established science and resultant refusal to label an offender as a being diagnosed with psychopathy, or antisocial personality disorder with a psychopathy specifier is unjustifiable. This conclusion is in stark contrast to the current approach of the UK Sentencing Guidelines discussed previously.

The public believe that they have a well-formed, but negative image of what a prototypical psychopath is.¹⁰⁸ Therefore, where the diagnosis has impacted sentencing considerations, then the sentencing remarks, which resultantly label them, must be considered in their drafting. Variations in symptomatic presentations, and their resulting effects on an offender's blameworthiness ought to be reflected in any labels attached to a defendant at sentencing, wherever possible. There is a clear translational issue here. If psychopathy is viewed as a dimensional construct, and may be thus viewed as a maladaptive variant of the normal personality,¹⁰⁹ then the more accurate scientific question is: how psychopathic is the offender? Rather than the traditionally binary question of, are they a psychopath? Courts ought to communicate their answers to these questions through their use of accurate and appropriate labels, in addition to explanatory remarks as part of sentencing.

¹⁰⁶ (Un)successful psychopath would fall within this category.

¹⁰⁷ A. Wall-Parker, 'Measuring White Collar Crime' in M.L. Rorie (ed), *The Handbook of White-Collar Crime* (John Wiley & Sons 2020), pp. 32-44; J.C. Helmkamp, K.J. Townsend and J.A. Sundra, 'How Much Does White Collar Crime Cost?' (1997) Available: <https://www.ojp.gov/pdffiles1/Photocopy/167026NCJRS.pdf> (Accessed 30 April 2025); G. Cliff and A. Wall-Parker, 'Statistical Analysis of White-Collar Crime' in Oxford Research Encyclopaedia of Criminology. Available at: <https://doi.org/10.1093/acrefore/9780190264079.013.267> (Accessed 30 April 2025).

¹⁰⁸ S. Toney-Smith, J.F. Edens, J. Clark and A. Rulseh, "'So What is a Psychopath?'" Venireperson Perceptions, Beliefs and Attitudes about Psychopathic Personality' (2014) 38 *Law and Human Behavior* 490.

¹⁰⁹ A. Sanz-García, C. Gesteira, J. Sanz, and M.P. García-Vera, 'Prevalence of Psychopathy in the General Adult Population: A Systematic Review and Meta-Analysis' (2021) 12 *Frontiers in Psychology* 661044.

VIII RECOMMENDATIONS AND PRACTICAL IMPLICATIONS.

State labels can, as previously discussed, indicate to the public the level of opprobrium and stigmatisation which an offender ought to experience, and thus must be chosen carefully. They may also help publicly communicate the underlying reasons for varying levels of culpability and blameworthiness between otherwise identical offenders. The label “corporate psychopath” has become somewhat normalised in academic and scientific literature, as well as in popular media, notwithstanding notable exceptions mentioned previously in this paper. It is, however, noticeably absent from case law, which arguably reflects judicial disengagement with psychopathy and corporate crime, as is sometimes mandated, in the UK for example, rather than judicial unease with the label itself. This label, and its routine use in several fora however, leads itself to the potential creation of a master status for corporate offenders, notwithstanding current judicial disengagement.

The corporate/successful psychopath label, which has populated much of the discourse in this field, is problematic on several fronts. First, as a disorder-first label, it, in many ways, cements the offender’s master status as a psychopath. On a rudimentary level: they are a psychopath first and foremost. Second, diagnosis-first labelling does nothing to mitigate against the apparent harshness of the stigmatising effect of the label and thus, risks over-stigmatising corporate offenders and impeding their potential reintegration into society.¹¹⁰ Third, it does not attempt to differentiate between clinically distinct presentations of psychopathy, and instead facilitates the equal stigmatisation of all variants by society. And, fourth, as personality disorders are pervasive and not setting-specific,¹¹¹ a so-called corporate psychopath would need to also exhibit these traits outside of work, thus calling into question the need for a differentiating “corporate” label whatsoever.

It seems unlikely that a concise label can capture the multitude of potential clinical presentations in a way that communicates the offender’s mental state in an intelligible manner to the public, and the

¹¹⁰ A similar outcome can be seen in relation to sexual offences: S. Göbbels, T. Ward and G.M. Willis, ‘An Integrative Theory of Desistance from Sex Offending’ (2012) 17 *Aggression and Violent Behavior* 453.

¹¹¹ G. Newton-Howes, L.A. Clark, and A. Chanen, ‘Personality Disorder across the Life Course’ (2015) 385(9969) *The Lancet* 727.

creation of entirely new labels which may not be scientifically accurate is to be avoided.¹¹² Psychopath *simpliciter* would likely conjure up images of a stereotypical serial killer in the public's mind. Where the offender is not of this kind, *e.g.* a corporate offender, then the risk of over-stigmatisation through labelling is high. Alternatively, for those who favour a diagnosis of 'antisocial personality disorder with psychopathic traits', as is available under the Alternative DSM-V Model for Personality Disorders, this label could prove useful in guarding against the public's likely perception of psychopathy as a unitary concept and conflating all persons with psychopathic traits with the image of a serial killer for the purposes of stigmatisation. This approach accords with a dimensional understanding of psychopathy, which is arguably the more correct approach in light of contemporary research. The specifier 'with psychopathic traits' inherently suggests,¹¹³ even to the most ill-informed observer, that there are a range of traits under consideration, thus making some individuals "more" psychopathic than others. At a minimum, this label would tend to facilitate deeper reflection on the public's part prior to stigmatising the offender. Though, naturally, such changes in language and the public's understanding of them may take some time to fully materialise.¹¹⁴

In either instance, diagnosis-first labelling should be avoided. Instead, two potential options present themselves: (i) a person diagnosed with psychopathy; or (ii) a person diagnosed with antisocial personality disorder with psychopathic traits (the Alternative DSM-V Model for Personality Disorders approach). It is suggested that the judiciary be encouraged to engage with the science on psychopathy and incorporate it more into their judgments and sentencing remarks, where relevant. The label "antisocial personality disorder with psychopathic traits" is, it is submitted, the preferable option from both a

¹¹² On the use of alternative labels for individuals with criminal records, namely, "returning citizen", see: H.M. Jackl, 'The Effects of Language on the Stigmatization and Exclusion of Returning Citizens: Results from a Survey Experiment' (2023) 25(2) *Punishment & Society* 471.

¹¹³ See, generally: J.L. Anderson and S.E. Kelley, 'Antisocial Personality Disorder and Psychopathy: The AMPD in Review' (2022) 13(4) *Personality Disorders: Theory, Research, and Treatment* 397.

¹¹⁴ Even amongst professionals and professional outlets which encourage person-first language, adoption can prove to be slow. J.K. Dickenson, D. Bialonczyk, J. Reece, T.K. Kyle, K.L. Close, J. Nadglowski, K. Johnson, M. Garza, E. Pash, and, E. Chiquette, 'Person-First Language in Diabetes and Obesity Scientific Publications' (2023) 40(9) *Diabetic Medicine* e15067.

communicative and fair labelling perspective, as well as from a clinical perspective. It reflects the dimensionality of psychopathy to a much greater degree and avoids the undesirable outcomes associated with diagnosis-first labelling.

It is further suggested that an appropriate level of detail be provided as to the offender’s specific diagnosis so as to facilitate greater understanding of the offender’s mental state by a non-scientific audience. In other words, while this paper has argued in favour of greater use of clinically accurate labelling by the judiciary, in particular, labelling an offender without further clinical elaboration risks over-stigmatisation and the attending unjust collateral consequences.

In promoting the labelling of offenders in the above manner, one does not wish to categorically present corporate offenders diagnosed with psychopathy as akin to dangerous and severe personality disorder offenders, as they are known in England and Wales.¹¹⁵ While the increased use of labels risks presenting these corporate offenders as exceptionally dangerous to society,¹¹⁶ with all the attending negative consequences of such a classification, accurate labelling and detailed sentencing remarks of the sort argued for in this paper should help guard against this undesirable outcome. In labelling these individuals, we are not seeking to mark them out as dangerous individuals from whom the public need protecting. Rather, labelling of the sort envisioned in this paper avoids this iatrogenic outcome by rejecting overly reductionist linguistic expressions and instead provides a clinically accurate label alongside more detailed remarks on the nature of the offender’s specific mental state.

Finally, this approach to labelling, as opposed to diagnosis-first, has been shown to reduce punitiveness in other settings, particularly in relation to the labelling individuals with mental illness,¹¹⁷ or sexual offenders.¹¹⁸ It is submitted that the proffered person-first labelling

¹¹⁵ For a detailed analysis of DSPD offenders, see: A. O’Loughlin, *Law and Personality Disorder: Human Rights, Human Risks, and Rehabilitation* (Oxford University Press 2024).

¹¹⁶ They of course present a risk to society and may have caused enormous harm in their offending, but for most corporate offenders, it will be of a different kind to those who are categorised as DSPD offenders.

¹¹⁷ D.H. Granello and T.A. Gibbs, ‘The Power of Language and Labels: “The Mentally Ill” Versus “People with Mental Illnesses”’ (2016) 94 *Journal of Counseling & Development* 31.

¹¹⁸ A.J. Harris K.M. Socia, ‘What’s in a Name? Evaluating the Effects of the “Sex Offender” Label on Public Opinions and Beliefs’ (2016) 28 *Sexual Abuse: A Journal of Research and Treatment* 660.

approach should achieve similar beneficial results in relation to persons with psychopathy. Furthermore, current judicial disengagement, imposed or otherwise, with the topic of psychopathy, notably in non-murder trials, is untenable given the weight of scientific evidence on psychopathy. While accurate labelling and public communication pose difficult translational challenges for judges, and will likely require a sustained effort on the bench's part, and possibly lengthier judgments/sentencing remarks, this difficulty is worth enduring. In doing so, the true nature of an offender's relevant mental state can be communicated to the public as accurately as possible and this will, one would hope, facilitate the adjustment of stigmatisation based on the offender's individual diagnosis and reduce instances of inaccurate stigmatisation.

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