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When psychoanalysis meets Law and Evil:
perversion and psychopathy in the forensic clinic

Jochem Willemsen and Paul Verhaeghe

Introduction: the polymorphous perversity of every subject versus law and evil

Since Freud, the discourse on sexual deviations has made a full circle. Before Freud, sexual aberrations were considered to be rare, sinful and criminal. In a word: Evil. Freud himself demonstrated that sexual deviations are not that rare and can even be understood as part of normal psychosexual development. It is only in cases where fixation and regression were apparent that he considered them to be pathological. As a result, the pre-Freudian criminal sinner was re-interpreted as a patient who had to be treated. After Freud, and largely due to his theory, Western society became much more liberal. Furthermore, the Kinsey Reports of 1948 and 1953 empirically demonstrated that almost nobody fits the norm, i.e., heterosexual coitus in the missionary position with orgasm for both participants. The explanation can be found in Freud's study of infantile sexuality, as elaborated in the still magisterial *Three Essays on the Theory of Sexuality* (1978 [1905]) and further developed in a number of later texts.

In short, Freud discovered what every nanny long knew, namely, that sexuality begins from childhood onwards, if in a very unique manner. There is no such thing as a genital instinct that irresistibly thrusts man toward woman and vice versa right from the start. It is not a question of human instincts, but of drives. The life of the drive develops through the component drives that are only later gathered under the coordinating flag of so-called genital sexuality. These drives are both partial and autoerotic. Partial means that they concentrate on certain bodily areas (oral, anal, genital,...) rather than on the body in its entirety. Autoerotic

means that these drives focus firstly on parts of the *subject's* body, not on that of the other. On the basis of these readily observable data, Freud concludes that our sexuality is grounded in a polymorphously perverse predisposition. Moreover, this polymorphously perverse predisposition is the basis of the original and universal predisposition of the human sexual drive (Freud, 1978 [1905], pp. 171-172 and p. 231). Almost any “adult” perverse trait can be observed in the child, putting perversion in a completely different light (1). Consequently, according to Freudian theory, the distinction between ‘normal’ perverse traits and the perverse structure is not easy to make.

The combination between Kinsey and Freud provided a secure base to the sexual revolution and the accompanying liberalization in Western society. The net result is that almost every sexual interaction has become acceptable as long as there is mutual consent between the partners. Strangely enough, this means that we have returned to a society in which sexual deviation has become again synonymous with a crime! The 19th century sinner/criminal who was turned into a 20th century patient, has now become a 21st century perpetrator. The so-called liberalization has made things very unclear, because the “diagnostic” criterion for sexual deviation has become more or less synonymous with the absence of informed consent between the partners. Hence the two main contemporary categories of sexual deviancy: rape and paedosexuality. Yet again, in a word: Evil.

A similar reduction shows its effects on another important concept in the forensic field: psychopathy. Throughout its history, this concept was often on the verge of being reduced to antisocial behavior. When Prichard launched the term of moral insanity in 1835, he designated a group of patients with deficiencies in the affective faculty. To Prichard the term ‘moral’ referred primarily to the emotional and conative aspects of the psyche, as in ‘moral treatment.’ Nevertheless, this diagnostic label owed much of its success to the systematic misinterpretation of the word ‘moral’ as referring to antisocial (Werlinder, 1978). In the second half of the 19th century, synonyms such as constitutional inferiority and degenerative insanity became very popular, expressing the idea that psychopathy is associated with innate evil. Although subsequent psychiatrists developed a more comprehensive concept of psychopathy, its judgmental undertones never disappeared. Popular media has taken over this narrow interpretation and continues to portray an image of the psychopath as a thoroughly bad criminal. This image however does not correspond with the current scientific notion of psychopathy, in which a set of personality features are defined that can be applied in a non-forensic context. Indeed, recently, an eminent scholar in this area advanced Oskar Schindler, the savior of hundreds of Jews, as a psychopath (Lykken, 2006).

The question we are facing now is *how to understand perversion and psychopathy independently of this contemporary reduction, while at the same time acknowledging the link with the Law*. Below we will address the description of the criminal behavior of the pervert

and the psychopath. But instead of focusing on the nature and frequency of this behavior, and the chance of relapse, we will study the psychic dynamics that lead to this behavior. Following this, the problem of perversion and psychopathy will be approached in separate steps, in which the Oedipal situation, and the relation to the Law and to language are described through Freudian-Lacanian theory. Where possible, we will use fragments of interviews conducted during our own on-going research among male detainees. Yet before we start, we must clarify our use of the concepts of perversion and psychopathy.

In psychoanalytic literature, psychopathy is often sided with perversion. In this paper however, we will advocate that perversion and psychopathy are two clearly distinct clinical *tableaux*, each having relevance in the forensic field (2). Perversion in the context of this paper refers to the clinical structure as defined by Lacan, implying a specific relation towards the Other and a specific way of regulating the drives. We use the term of psychopathy in the way Robert Hare has conceptualized it. In the 1980s Hare began to lift this concept from a swamp of misconceptions and popular ideation by making a *retour à* Hervey Cleckley's original work on the topic (1976 [1941]). In contrast to the common idea that a psychopath is simply a mad criminal, Hare's elaboration consists of a specific constellation of interpersonal, affective, and lifestyle characteristics. On the interpersonal level, psychopaths are grandiose, arrogant, callous, dominant, superficial, and manipulative. Affectively, they are short-tempered, unable to form strong emotional bonds with others, and lack empathy, guilt, and remorse. These interpersonal and affective characteristics are associated with a socially deviant (although not necessarily criminal) lifestyle that includes irresponsible and impulsive behavior and a tendency to ignore or violate social conventions.

Hare developed an instrument to assess psychopathy. The Psychopathy Checklist - Revised (PCL-R) consists of twenty items that have to be scored zero, one, or two by a trained clinician (Hare, 2003). Zero means that a certain feature of psychopathy is absent, two means that it is definitely present, while one is scored in cases when the feature is somewhat present. This assessment has to be based on a semi-structured interview in combination with a thorough study of the forensic dossier (containing interrogations, investigations, etc.). Collateral information is indispensable in order not to be conned by a psychopath. This assessment procedure results in a score between zero and forty. The most rigorous and most frequently used cut-off point for psychopathy is a score equal to or greater than thirty, although a cut-off point of twenty-five has been advocated for Europe (Hare, Clark, Grann, & Thornton, 2000). The PCL-R is presently considered the golden standard for the assessment of psychopathy (3). During the last decade, the concept has gained tremendous importance in forensic psychology, and has been described as “what may be the most important forensic concept of the early 21st century” (John Monahan on the cover of *Handbook for psychopathy* by Patrick, CJ).

The forensic clinic meets classic psychoanalytic theory

It is by no means coincidental that the perverse subject is rarely found in the normal consultation room, contributing to the difficulty of the theoretical formulation of perversion. The most important descriptions of perversion come from compulsory treatment, that is to say, the forensic clinic. The same goes for psychopathy. The first documented encounter between a psychoanalyst and a psychopath was in the context of the forensic clinic (Abraham, 1935 [1925]). This introduces an important bias: here we are always dealing with “perpetrators.” This must be taken into account, because it clearly concerns a selective group. Research concerning the so-called sub-criminal or “successful” psychopath is as scarce as research about exhibitionists or sadomasochists (4).

Let's start with perversion. What do these forensic descriptions teach us about perversion, particularly with the Freudian criterion “deviations with respect to the goal” (Freud, 1978 [1905])? Three characteristics emerge:

- the enactment in reality of a rigid pre-genital scenario,
- that compulsively imposes itself on the pervert subject,
- and establishes a relationship of power.

The first characteristic is fairly classical: it is not enough just to have perverse fantasies; they must also be carried out in a “hands on” manner (with the exception of voyeurism and exhibitionism). Nevertheless, this requires further clarification. Ever since the sexual revolution, neurotic subjects have also performed their fantasies, with the result that this criterion becomes considerably more blurry. Moreover, the perverse character must not be sought in the specific content of the sexual scenario - any paraphiliac scenario can be enacted in a normal-neurotic context. The specifically perverse aspect lies in its rigidity, combined with its unfree character. Any deviation causes anxiety and tension. From a psychoanalytic perspective, what we are dealing with here is repetition compulsion rather than repetition as such. Indeed, the presence of repetition in neurotic sexuality always introduces something new into the proceeding dialectic of desire (Lacan, 1998 [1964], p. 42-53). Repetition compulsion, in contrast, as Freud discovered in his study of the traumatic neuroses, is indeed compulsive and always fails in its repeated attempt to symbolize the traumatic Real. This indicates a link between perversion and a traumatic anamnesis.

The second characteristic stands in stark contrast to the neurotic ideal: the perverse subject is not the liberated erotic connoisseur of the neurotic's wet dream, quite the opposite.

Empirical research (Ward & Keenan, 1999) into the basic unconscious convictions and cognitive schemes of pedophiles found five convictions, including the sense that the tension cannot be controlled, and this occurring within the larger context of an uncontrollable world. The pervert is fundamentally unfree, compulsively driven to repeat the same thing. It is, moreover, frequently experienced as bizarre; its completion will bring relief but sometimes also shame, disgust, guilt, and depression.

The implication is that the perverse subject is pre-eminently divided. Note that even perverts don't know what drives them; here, the subject division is total. In the forensic context, this causes difficulties because the forensic clinician wants to know what is driving the behavior, and expects to get confessions. The "perpetrator" cannot give them, however, for the simple reason that he barely knows his own motives. This has the clinical consequence that in day-to-day life the perverse subject often presents a banal normality. In neurotics, the division is less extreme and more 'dynamic,' thus presenting combinations of normal and abnormal behavior.

The third characteristic is the most interesting for a number of reasons. Clinical descriptions show how the perverse subject always directs its scenario towards the other in an explicit relationship of power, that is: the power of the pervert. The exhibitionist, for example, only succeeds if the other is shocked, the masochist will explicitly instruct the other what to do, etc. The above-mentioned empirical research (Ward & Keenan, 1999) reveals the paedophile's second basic unconscious conviction: the idea that the world is divided into superior and inferior creatures, the latter being forced to submit themselves to the former. Immediately following from this is the conviction of the need to control the other and the world in general.

This last point shows how the power relationship is not restricted to perverse acts - the pervert is also frequently the priest of a challenging new "ethic of pleasure" that needs an audience that has to be controlled as well. Here, power is not necessarily synonymous with brute violence; it has to do with the relational aspect, the need to have the situation under control. It is important to stress this, because it means that not every pervert inevitably comes into contact with the police.

A different picture emerges from the forensic study of the criminal psychopath. Psychopathy is associated with an earlier onset of delinquent behavior, faster recidivism, more excessive use of violence, and more violence in institutions (e.g., Porter, Birt, & Boer, 2001; Woodworth & Porter, 2002). The prototypical psychopath, as described by Cleckley, is an incorrigible thief and swindler who does not refrain from using threat or violence. We do not adhere to the image, propagated by popular media (and some researchers), of the psychopath as a cruel or sadistic criminal, pre-eminently a serial killer. Although the

psychopath has few considerations for the rights and emotional life of other people, it is not common for him to derive sexual excitement from dominating and tantalizing his victims. The psychopath's criminal attitude seems mainly directed towards material gain.

However, the psychopath's criminal tendencies cannot be reduced to a purely instrumental orientation. Cleckley noted that many antisocial acts of the psychopath are inadequately motivated, in a sense that crimes are committed even when the material gain is not needed or ridiculously small. Moreover, they commit crimes at moments or in situations in which the chance of being caught is all too evident. As Greenacre noted, "[s]kill and persuasiveness are combined with utter foolishness and stupidity" (2001 [1945], pp. 364).

This does not mean that the psychopath commits his crimes in a compulsive way. The compulsiveness that can be noted in the neurotic (e.g., kleptomania, pyromania) and in the pervert's sexual praxis, is absent in the psychopath. The psychopath misses the rigidity and stereotypy of such compulsions; he is a versatile criminal who commits a broad range of different crimes (Porter, Birt, & Boer, 2001). Take for instance their sexual offences: instead of being fixated on one type of victim, they are able to abuse anyone they can, minors as well as adults. Their choice of victimizing minors is often inspired by the simple reason that they are more easily controllable. Another motive can be their thrill-seeking: abusing a child out of curiosity. Or otherwise, a minor is just the first person they can get their hands on, for instance their own children. All possible motives for psychopaths seem to have in common that they are not guided by some fundamental fantasy or fixation on a particular libidinal object. In contrast with the pervert, the psychopath who commits sexual offences is never a specialized offender.

This lack of fundamental fantasy can also be found in the sexual life of psychopaths, typified by Cleckley as "impersonal, trivial, and poorly integrated" (Cleckley, 1976, p. 359). The psychopath seems to regard sex very casually, without any desire to explore or to ravish the partner in a shared experience. Sexual activity with a prostitute or casual pickup is experienced at the same level as sexual activity with their partner, because what they feel is not about to bring out loyalty or love. In Robert Hare's Psychopathy Checklist, the psychopath's sexuality is characterized as promiscuous sexual behavior, referring to frequent impersonal, casual, or trivial sexual activities. Homosexuality and heterosexuality can co-occur, mainly motivated by thrill-seeking. "Evidence of consistent, well-formulated deviation was extremely rare in a large group of male psychopaths personally observed in a closed psychiatric institution" (Cleckley, 1976, p. 359).

The pervert and the Law: disavowal

It's now an open secret that yesterday's victims of sexual abuse run the risk of becoming today's perpetrators. However, the link between the victim and the abuser is considerably more complex than a simple black and white picture. The connection between a PTSD based on sexual abuse and the perverse structure does not mean that every victim of sexual abuse becomes a perpetrator, let alone perverse. Within Lacanian theory, a subject's specific structure will depend on the specific relational structure between it and the Other (Verhaeghe, 2004). The combination of a chronic traumatic anamnesis and a neurotic structure is also very well possible, and results in *Borderline*.

Hence the question is: what sort of original relation between the subject and the Other is necessary for perversion to occur, and where does trauma fit into this process? The forensic descriptions all point towards an abusive Other, traditionally anticipated to be the father or his replacement - fitting well with our phallic-patriarchal expectations. The idea that a mother might abuse her child is incompatible with our conventional myths of motherly love. At least three women were necessary to explode this myth (Badinter, 1980; Wellton, 1988, 1995, 1996; Motz, 2001). Empirical research has meanwhile shown that sexual delinquents are significantly less securely attached than other delinquents and, moreover, that this insecurity has to do in particular with attachment to the mother rather than the father (Ward, Hudson, Marshall, & Siegert, 1995; Smallbone & Dadds, 1998).

Let us first return to normal development. The infant's inevitable starting point is the passive position, that is to say, it is reduced to being the passive object of the mother's desire and acquires the basis of its own identity through a mirroring alienation coming from the (m)Other. Once this basic identity is sufficiently stable, the next step will see the child attempting to take the active position. In-between is a transitional phase where the child still clings to the secure relationship through the use of the "transitional object" (classically the pacifier). In this way, the anxiety about losing the mother can be managed. In a normal, Oedipal situation, the father's function is to create a situation where the child's further development can take place, if only by the fact that the mother's desire is channeled towards him.

In the psychogenesis of perversion this doesn't happen. The mother reduces the child to her passive object, to the thing that makes her whole. Because of this mirroring, the child remains under her control, a part of herself (5). The child thus gains no representational entry into its own drive, let alone to any subsequent elaborations of its own desire. In structural terms, it is reduced to the phallicized object (*a*) through which the mother fills in her own lack, the process of separation never taking place (6). As a third figure, the father is reduced to a powerless observer defined as insignificant by the mother. This banalizing of the Other of authority will return later on when the pervert takes the Law into its own hands as regards *jouissance* (7).

In this manner, the child finds itself in a paradoxical position: on the one hand, it is the imaginary phallus of the mother - a win for the child. On the other hand, the price the child pays for this is high: there is no separation; any further development into its own identity will be blocked. In response, the child will perform a characteristic reversal in the attempt to safeguard its gain. The child will try to exchange its passive position for the active, taking the reins in its own hands whilst at the same time maintaining the privileged position. In clinical terms, this is most evident in masochism. The masochist presents him or herself as an object of enjoyment for the other, albeit in such a way that s/he has created the whole scenario and directs it - this is the instrumental aspect that clearly shows the passive-active reversal, on condition that "active" is interpreted as "leading." The pervert may appear passive, but is not.

In Lacanian theory, subjectivity is considered as an enduring structure between the subject and the Other, focusing on drive and desire. This explains why every structure entails mechanisms of defense as well. The perverse subject formation has its own distinctive mechanism. Defense is always directed towards an underlying anxiety, beginning with the subject's own drive tension and subsequently elaborated through exchanges with the first and second Others and their desire. With this, we have reinterpreted Freud's castration anxiety in terms of an anxiety either about being unable to satisfy the Other's phallic desire, or of being *too* able to satisfy it (see Verhaeghe, 2004, p. 351ff). In perversion, we are dealing with a particular manifestation of the second situation: the subject is defined as the perfect answer to the phallic desire of the first Other. In Freudian terms, this implies *the lack of* castration, that is to say, the mother's castration (Freud), the Other's castration (Lacan). At the same time, the phallic lack *beyond* the mother-child dyad is indeed recognized; particularly in the form of the powerless and insignificant second Other.

This equivocalness is grounded in the typically perverse defense mechanism: disavowal (Freud, 1978 [1927]). Through disavowal, the pervert adopts a double stance. He disavows the phallic lack (for himself and for the mother), while at the same time recognizing its existence (for the rest of the world in general and for the father in particular). The result is a clear-cut split: the pervert lives in a divided world where lack and the regulating law are both recognized and disavowed at the same time.

We found an example of this split in the statements of a pervert priest who was convicted for sexually molesting dozens of minors. During the first interrogation immediately after his arrest, he admitted the following:

"I admit that some twenty or thirty years ago, I first discovered that I got sexually aroused by touching minors. I felt that my penis got into an erection. At that moment, I decided for myself that I had to be careful, all the more because I already observed that a certain child was looking at my crotch when I touched him. Although I tried, it wasn't easy to suppress these feelings. I admit

that I looked for children in swimming pools. But I still insist that I did not have sexual contacts with them.”

At the start of the second interrogation, he asked for a psychiatrist, and he admitted that he might have “repressed” certain things:

“In my mind, there might be a split between “the priest” who by definition wouldn't do such things, and me as a “person,” who might have got up to something without the priest knowing it.”

Despite this defense mechanism, the underlying anxiety persists since in this particular situation it involves anxiety about being reduced to the passive object of the Other. Hence the pervert's typical reversal of positions: the perverse subject compels others to assume the passive position of the object, while taking the active position for himself. In this way, the underlying anxiety can be mastered. In practice, this means that not only will the pervert turn himself into the instrument of the Other's enjoyment; he will also submit this other to his own system of rules *à propos* enjoyment.

Perverse anxiety is often understood as an Oedipal anxiety, i.e., an anxiety about the castrating father. This is wrong; the anxiety is about the maternal superego. It was the first Other who was in control, and the perverse scenario is explicitly aimed at reversing this situation. This is the main reason why behavioral treatments based on the “paternal” superego usually fail: they are beside the point, that is, they fail to address the maternal superego of the pervert. The anxiety lies at a much deeper level, closer to the psychotic anxiety about being devoured by the Other. The reaction against the imposition of the paternal law will frequently be aggression.

Disavowal is not restricted to the sexual relationship. It determines the pervert's entire relation to the symbolic Other, that is, towards authority and *jouissance*. In the pervert's own world there is no lack and his own laws are imposed on the Other. In the conventional world, the law will apparently be followed, that is to say, the pervert acts on the assumption that *others will follow the conventional rules* and he will make full use of this knowledge.

Indeed, the original relation will repeat itself with the successors to the first and second Others in adult life albeit with a passive-active reversal. The perverse subject will assume an instrumental position towards the subsequent “first” Other, in order to ensure that Other's enjoyment. This is the paradox from a neurotic point of view: the pervert is firmly convinced that he works himself to death for the Other's enjoyment (8). Hence the persistent ideas that the victims “asked for it,” that they “do enjoy it, you know,” etc., ideas that were certainly true for the original first Other. This conclusion may similarly be found - in a reduced version - in the so-called “cognitive distortions,” testifying time after time to the conviction that the

victim was “cooperative,” or even that it was the victim who took the initiative (Hall, 1995; Kennedy & Grubin, 1992; Ward, Hudson, Johnston, & Marshall, 1997). This can be illustrated by an episode of an interview with a pervert who was convicted for raping his five-year old son.

Interviewee: In the morning, I hear that Jeffrey is awake at seven thirty, I say “Jeffrey, it's a bit early” and he responds “But I have to go to the toilet.” I agree and I hear him going to the living room and turning on the television. I say: “Jeffrey, it is too early for Sesame Street. Come in bed with daddy. But you have to be good and sleep.” What I always used to do with him when he was little was this ... [*he sings a child's song while acting as if he is handling the ears of the child*]. And by doing that, he gets excited and he starts bouncing on me. I say: “No Jeffrey you can't do that.” [*he says what the child would have said:*] “Yes, yes, mammy and daddy do the same” and he starts to bounce, he pulls down my pajama trousers and he takes my genitals. [*he says what the child would have said:*] “Eat up.” But I say: “No don't eat that up.” [*he says what the child would have said:*] “Eat p'ick.” I explained it like that to child protection services and they distort it completely [*he sounds angry and astonished*]. Now honestly, that's why I am angry with them, those bastards. They say I allowed him to do it. Oh come on, he asked for it. They say I also asked for it. Don't give me that! They blew up the whole thing.

In its adult manifestation, the re-edition of the original relation has one important advantage, i.e., the passive-active reversal. Despite his instrumental position in ensuring the Other's total enjoyment, the pervert will only feel he has succeeded if he provokes anxiety in this Other (Feher-Gurewich, 2002). This is the pervert's proof that he escaped being totally reduced to the Other's desire, and proof of the turnaround in the relation. It is the Other who has been reduced to the object of enjoyment, the anxiety testifies to this.

The stance is even more equivocal, if that is possible, in the pervert's relation to the replacements of the second Other, the Other of law and authority. The Other's law is not only challenged and unmasked as an insipid convention, appropriate only for the little people. In all the relations where the perverse subject truly participates, the law is completely swept aside. In its place, the pervert will substitute its own law, i.e., a pseudo-ethos preached with abundant conviction to which the Other is obliged to submit. Any book by marquis de Sade illustrates this characteristic, which is never absent from the perverse structure. Pages of meticulous descriptions of perverse scenarios alternate with chapters that outline the Sadean ethos of *jouissance* in an attempt to convince the other of the rightness of its justice in comparison to the wishy-washy nature of conventional law.

This relation to the Law - challenge, ridicule, and replacement - results in the pervert's focus on the gaze of the second Other, intended to make it clear to this Other that he is powerless. This means that there is indeed a triangular structure in the perverse structure,

albeit in the equivocal way we saw above. The neurotic, on the other hand, will always experience the gaze of such a third figure as a censure, and for precisely this reason will try to avoid it as much as possible.

The psychopath and the Law: retraction

In contrast to the perverse structure, the psychopath's father does not emerge as a powerless observer defined as insignificant by the mother. On the contrary, a significant number of the psychopaths we interviewed spoke with veneration about their father. The Belgian psychoanalyst and psychiatrist Léon Cassiers has made some interesting statements from a structural point of view that will guide us in the exploration of this problem (Cassiers, 1975). His central proposition is *that the psychopath puts into question the legitimacy of the lack that is created by the Symbolic order*. He points out that the Oedipus complex of the psychopath is characterized by an ambiguous discourse on the side of the mother: on the one hand she recognizes the Law, but on the other hand she considers its representant in the family, the father, as being capricious and violent. The Law is adopted by the psychopath, not foreclosed, and separates the child from the mother. But at the same time the Law cannot function as a safeguard, because its point of reference has a threatening quality. As a consequence, the psychopath's strategy will consist of denouncing the legitimacy of the Law and the lack it entails through cunning or through force.

In our discussion of Cassiers, we want to stress that violence may not be confused with aggression. Colette Soler makes the distinction between different kinds of violence (2003). First there is the violence that consists in a transgression of the Law. This violence often takes the form of aggression: physical or sexual aggression, neglect of children, bullying, criminality, etc. Second, there is a form of violence that marks the establishment of a Law, and more generally a social discourse. The violence here lies in the fact that the establishment of a social discourse – as democratic as it can be – requires the subjection of the individual to a given order. In order to obtain a position in the discourse, the individual has to accord to certain norms and ideals and he has to pay the price of his freedom. This second kind of violence is also present in the Oedipus complex: the passage from the dual relation with the mother towards the triangular structure of the Oedipus complex is marked by alienation and castration.

Returning to Cassiers, we claim that the Oedipus complex of the neurotic does not differ that much from the Oedipus complex of the psychopath since they are both marked by the second kind of violence. However, the difference lies in the way the father handles the violence that is structurally implied in the establishment of the Law. In the neurotic, the violence of the Law is obscured by the desire of the father. The neurotic's father can be divided into a Symbolic father and a Real father (Lacan, 1994 [1956-1957]). The Symbolic

father is the father in as much as he fulfils his function as referent to the Law, while the Real father is the man of flesh and blood. The Real father does not coincide with the Symbolic father: referring to the Law is a function he fulfils, a job that he does. Moreover, the Real father is himself subjected to the Law he refers to. Besides this function, he is also a subject of desire – a desire in which the mother somehow plays a role. In other words, the father himself is not-all Law, he is divided between Law and desire and is marked by a lack. In as much as the father ties together Law and desire, he obscures the fact that the Law is based on violence.

Characteristic for the psychopath's Oedipus complex is the absence of a tie between Law and desire. Several psychoanalytic authors have described the typical familial constellation in which psychopathy emerges. Greenacre was the first to describe the typical situation of "a stern, respected, and often obsessional father who is remote, preoccupied, and fear-inspiring in relation to his children; and an indulgent, pleasure-loving, frequently pretty but frivolous mother who is often tacitly contemptuous of her husband's importance" (Greenacre, 2001 [1945], pp. 48). Lacan also refers to the psychopath's father as being *le monstre sacré*: "They are often characters strongly marked by a style of radiance and success, but in a unilateral manner, in the register of unbridled ambition or authoritarianism, sometimes of talent, of genius. They don't necessarily have to be a genius, have merit, or be mediocre or nasty, it's sufficient that this be unilateral and monstrous" (Lacan, 1993 [1955-1956], pp. 204). In our own research we find this typical constellation (indulging mother – idealized father) in a sufficient enough proportion of the sample interviewed for it not to be coincidental. In structural terms this constellation consists of a father who, himself not being subjected to the Law, applies the Law to his own liking and as a means of dominating the Other, rather than a means to gain recognition and love from the Other. This father is not marked by the lack, so the mother does not function as an object *a*, cause of desire, for the father. Since the structural violence implied in the establishment of the Law is not hidden by desire as in the neurotic, the violent and threatening dimension of it remains all too evident. Therefore, for the psychopath the Law is based on violence instead of desire. The Law functions in a contradictory way in the psychopath: he will refer to the Law, *but the Law will always have an illegitimate character to him because it is based on violence* (Cassiers, 1975).

When a psychopath is asked about his ethical viewpoints, he will not hesitate to invoke great principles such as Politeness (as one psychopath said: "politeness goes a long way") or Tolerance (as another claimed: "I think you must accept everyone the way they are"). However, in the larger scope of their lives, these principles seem rather virtual than real. The sincerity with which these principles are invoked contrasts strongly with the lack of impact they have on their actions. A similar contradiction can be observed when they speak about their criminal actions. The psychopath will present his criminal action as a righteous one or even as a moral obligation. For instance one psychopathic drug dealer claimed that to him "dealing drugs was a matter of conscience." He added that he was addressing the demands of the market, so he was right to do so. These statements are not just *a posteriori*

justifications of behavior. They testify to the psychopath's *a priori* conviction that something illegitimate has happened to him and that he has the right, and even the obligation, to correct this initial injustice. This injustice is the lack that the subject has to bear once he identifies with the Law.

This *a priori* feeling of entitlement reminds us of those who declare themselves to be the 'exceptions' (Freud, 1978 [1916]). Freud refers to people who feel exempt from the most common rules and obligations, and who refuse to be subjected to the general displeasures of life. When asked to make a temporary sacrifice for the sake of a better end, they affirm that they have renounced enough, suffered enough and have a claim to be spared any further demands. This typical relation towards the Law and the lack is "connected with some experience or suffering to which they had been subjected in their earliest childhood, one in respect of which they knew themselves to be guiltless, and which they could look upon as an unjust disadvantage imposed upon them" (Freud, 1978 [1916], pp. 313).

It seems that the psychopath is caught in a double and contradictory movement: the movement in which he identifies with the Law will confront him with the illegitimate nature of the lack, and in order to correct this illegitimacy he has to break the Law and retract the lack (e.g., by stealing or swindling the object from the Other). To the psychopath, invoking and breaking the Law are part of one reality and the psychopath is blind to this contradiction. The contrast with perversion can be made at this point since the pervert lives in two split realities: one in which the lack and the regulating Law are recognized and another where the lack is disavowed and a new Law is installed.

This contradiction is also notable in the speech of the psychopath. A detailed study of videotapes and interviews with psychopaths revealed that the narratives of psychopaths contain more negations, contradictory statements, fewer cohesive ties, frequent skipping from topic to topic, and plots that are less likely to be resolved (Williamson, 1991; Brinkley, Bernstein & Newman, 1999; Brinkley, Newman, Harpur & Johnson, 1999). In our experience this is the typical defensive style of the psychopath and we suggest coining it as *retraction*, in order to differentiate it from neurotic repression and perverse disavowal. It appears that psychopaths frequently use retractors (Rieber & Vetter, 1994), i.e., a word, phrase or clause which detracts from the statement preceding it. Freud denoted a similar mechanism, namely kettle-logic in his book about *Jokes and their relation to the unconscious* (Freud, 1975 [1905]). This logic goes as follows. A. borrowed a copper kettle from B., and after he had returned it, was sued by B. because the kettle now had a big hole in it which made it unusable. A's defense was: "First, I never borrowed a kettle from B. at all; secondly, the kettle had a hole in it already when I got it from him; and thirdly, I gave him back the kettle undamaged." Each of these defenses is valid in itself, but taken together they exclude one another.

Let's take two examples, one from Rieber and Vetter (1994), and another from our own research project:

Example 1: “John is an honest person. Of course he has been involved in some shady deals!”

Example 2: is a fragment of an interrogation of a man who provided the weapon for a murder. After admitting that he gave a weapon to the killer, he claimed to be ignorant about its purpose: “I assure you that I never knew that this weapon would be used for the murder. I would never provide a weapon that is to be used for a murder, and even if I did, I would never give a pistol but a revolver: a revolver never jams and doesn't throw out a shell.”

In these examples, the psychopath is unable to perceive the contradiction in his statement. This inability has nothing to do with lack of intelligence (the man from the second example had an IQ of about 130). Rather, it seems that the psychopath identifies with the first part of the statement (in example 1 about honesty; in example 2 about moral objections to deliver a weapon for a murder) enough to place himself in that position (example 1: the position of honesty; example 2: the position of good intentions). The fact that he occupies this position makes it impossible for him to see that the second part of his statement corresponds with a different position (example 1: shady deals; example 2: delivering an efficient murder weapon). The signifier corresponding to the first position is juxtaposed to the signifier corresponding to the second position, without dialectical relation. The psychopath identifies completely with the first signifier, pretends to correspond with it, so the signifiers that follow are arbitrary or even contradictory: *ex falso sequitur quod libet*. We consider this way of operating the chain of signifiers a mode of defense. The selective identification with one signifier without dialectification through a second signifier preserves the psychopath from the confrontation with the illegitimate and threatening gap between the signifiers (9).

However, this lack of dialectical relation between signifiers makes it impossible for the psychopath to express a desire through signifiers, since desire resides precisely in the gap signifiers. It is the neurotic's dividedness between a first and a second signifier that allows him to express a desire in signifiers addressed to the Other. The psychopath does not seem to be marked by this division and is unable to assume the position of a subject of desire.

The inability to take the position as a subject of desire also means the inability to take responsibility; because responsibility refers to the degree to which one assumes one's own desire. Indeed, the psychopath can admit what he did, but at the same time he is unable to acknowledge the true nature of his act, his intention to do it and the consequences of his act. He will invoke circumstances, coincidence, and provocation by the victim, etc., all to avoid the idea that he as a subject stands at the origin of the act.

Take for instance the following fragment of a psychopath who was convicted for robbery and murder. He admitted to the murder, but described it as an accident:

Interviewee: I think he [*the future victim*] had seen a shadow because he yelled “Is anybody there?” while entering. So I stood behind the wall and thought: I will surprise him, he will run away, so we [he and his two companions] can escape. As I jump up in front of him, he yells “hmm you bastard!” [*he imitates the yell of the victim*] and grabs me. You know, I have much respect for that, and if someone broke into my house, I think I would have the same reaction. I think that this man's mentality was so young in his mind that he did not know any better... He grabs me, I panic at that moment and we enter a struggle in which he trips over my shoes. He pulls me along in his fall, and in that fall I make a swinging move. Now, I myself can believe what I tell you - although you might look at it in an objective way - but nobody else believes what I say now. And I understand that, because it is not very credible when they find a corpse with a hammer stuck in its head. Nonetheless, this man pulls me down, and I make a swinging move in order to keep my balance. When I get back up, I see that my hammer stuck in his skull and everywhere was blood.

Interviewer: So there was only one blow? [*I knew that the coroner had counted 13 blows*]

Interviewee: No, that is another thing. [*irritated*] Of course, according to the court, the definition of a blow is rather unclear. That man grabbed me, in a state of panic we shove around, left and right, and he got small cuts on his head. They counted nine of those cuts. Excuse me, but according to me those are not blows. A blow from a hammer is something completely different from little cuts from a fight. But I leave aside the forensic evidence. At the time of my trial, I made a forensic enumeration of all possible angles and bloodstain patterns and how they didn't accord with what the prosecutor would say, but my lawyers told me: “Don't do it, because if you do the jury will think that you want to talk yourself out of it.” And that was not what I wanted because I am guilty.

Notice the retraction in his attitude towards the victim (“much respect” versus “this man's mentality was so young”), and the psychopath's relative freedom to change the meaning of the word “blow” and “guilt.”

The psychopath's inability to endure the division between signifiers has important consequences on the development of identity and the psychopath's relation towards the lack of the Other. The psychopath does not have the ability to develop an identity through the concatenation of signifiers. The possibility for depression is always present. Furthermore, unable to bear his own lack, the psychopath will not tolerate the lack of the Other either. At this point anxiety can arise. We will develop these two points.

First, the development of identity. The psychopath is structurally inclined to narcissism. Unable to define himself as a particular subject, different from all others, he presents himself as exceptional, better than all others. Here again, the psychopath reminds us

of the character-type described by Freud (1978 [1916]) as the ‘exception,’ because, independent from any real achievement, he thinks very highly of himself, resulting in the magnification or even the invention of his virtues. They may identify with “very ‘high’ ideals” that are “especially expansive, and utterly detached from reality” (Greenacre, 2001 [1945]) but they might also turn to external reality to gratify their narcissism (Deutsch, 2001 [1955]). However, this narcissism is only a make-shift for his inability to apply the dialectical operation of signifiers that is required for identity formation.

An important part of identity formation is the installation of an Ego-ideal. The Ego-ideal is a signifier that organizes the subject’s position in the Symbolic order and forms an important part of his conscience. This signifier contains the promise of the possibility to neutralize the division of the subject between Law and desire: when the subject lives up to the expectancies of the Other, he will gain recognition and even love of the Other. Of course, no neurotic ever completely complies with the ideals, but the tendency towards them is more or less present. In the psychopath the Ego-ideal does not function at all. This is obvious from his lack of conscience (10). However, this also means that the psychopath lacks the possibility to gain recognition and love of the Other by living up to certain standards and ideals. The psychopath will often complain about this, in a sense that he feels misunderstood and mistreated. The psychopath has no other possibility to gain recognition and love than by manipulation or force. Here we see two typical figures of the psychopath: those who gain respect by being ‘strong personalities,’ ruthless, uncompromising and dominant, and those who gain love by sweet-talk, charm, and pitiful drama. However, when they succeed social recognition will not lead to personal dignity and love will not lead to mutual engagement.

In case these strategies fail, the psychopath finds himself in a difficult situation. Here depression can arise, with most of the symptoms we meet in neurotic depression. However, one symptom is always absent, notably a lack of self-esteem and self-reproach. The depressive psychopath is demanding, dominant, moaning, peevish, manipulative and often violent. A suicidal gesture cannot be excluded. Suicide often appears very impulsive and without the typical neurotic fantasy about the reaction of the Other (“will they miss me?”). One psychopath claimed that suicidal thoughts did come up once in a while, but just as a sudden thought that stayed only for a few seconds. In the following fragment another psychopath comments on his suicide attempt:

Interviewer: In that depressive period, were you often thinking about death, or making a plan to commit suicide?

Interviewee: No, it was all of a sudden. I stopped taking my medication, I was tired of it, and I always put the pills aside. Then all of a sudden I made the decision. There was no plan... I just wanted to stop medication because I felt bad about it. But I kept on receiving my pills, and I saved them. No I just put them aside, not to save them. I put them in a box. In the evening, while going

to my closet, I saw them and I thought: why not? No, I didn't reflect on it one single moment. If there would have been a revolver, I just would have put it to my head. I didn't think about the fact that I would leave behind my mother and my daughter. I just said: why not? No farewell note, nothing.

The negations and the retractions in this fragment all concern the question why he kept his medication. It seems impossible for him to conceive of his death wish, just as the earlier cited murderer was unable to conceive of his intention to kill.

Second, the relation towards the lack of the Other. To the psychopath, the father must seem like a fraud and an imposture: the father claims to incorporate something that he cannot incorporate, he takes a position that cannot be the position of a subject, so he must be a fraud. The neurotic considers the lack of the Other as legitimate and he feels obliged to it. The hysteric and the obsessional subject each try to fill in the lack of the Other in their own way: respectively by identifying with the Other's phallic desire and by offering phallic objects (Verhaeghe, 2004). The psychopath however, will not accept the lack of the Other because it refers to violence. The psychopath cannot think of the lack of the father in terms of his cause of desire (the mother), he thinks of it in terms of deceit. This will be the basic attitude of the psychopath towards the Other: the lack of the Other is a fraud. Any demand the Other addresses to him is therefore considered illegitimate.

During the interviews we conducted, we found this attitude over and over again in the psychopath's attitude towards his victims. Consider the following fragment in which a swindler talks about having conned his girlfriend, and others:

Interviewer: Do you find it embarrassing towards your girlfriend that you conned her?

Interviewee: No, I have little problems with emotions.

Interviewer: So you do not feel ashamed or guilty?

Interviewee: No, my sense of guilt is very small, or in fact... nil. [...] I never feel guilty about financial scams because you cannot con someone who has got no money. Those who have no money are impossible to con. The people I con are themselves so greedy that they are looking for more on a very short term. This is something that is normally impossible. Therefore, these people are not honest with themselves. So I have no problems afterwards. When I put up a fraudulent system and a foolish peasant is willing to invest 400.000 euros in an illegal system... I put this money in my pocket and don't bring it back and I disappear with 400.000 euro. Once I step into my car I forget about this peasant.

Interviewer: So in fact you misuse the greed of other people.

Interviewee: Yes, that's the definition of fraud.

The psychopath is unable to interpret the motives of others in terms of lack and desire. This results in a basic distrust and suspicion towards the motives of other people. During the research project we conducted, we frequently encountered psychopaths who reported feeling distrustful under the gaze of the Other. However, this distrust does not develop into shame or social phobia such as in the neurotic. Rather, it tends to result in periods of social withdrawal, fugues and paranoid ideation. Several psychopaths reported that the use of a narcissistically invested object such as beautiful women or an impressive car made them feel more at ease in the interaction with others. Others maintain a 'close' relation with their indulgent mother or girlfriend who demonstrates an astonishing endurance towards the caprices of their child/partner: she has no Demand towards him. Others grow old in solitude.

Conclusion: law and evil

Our main argument in this paper is that psychopathy and perversion are two distinguishable clinical diagnoses, each of which has relevance within the forensic field. In perversion the partial drives are elaborated into a fixated sexual praxis in which the castration of the first Other is disavowed. In psychopathy however, sexual praxis is not marked by a specific fantasmatic structure, but by opportunism and absence of emotional attachment. While the pervert structure is primarily organized in relation to the first Other (i.e., the subjects relation to *jouissance*), psychopathy demonstrates a particular organization in relation to the second Other (i.e., the subjects relation to authority). In psychopathy the father's authority is founded on violence rather than on desire, so the Law and the lack have an illegitimate and threatening statute. The psychopath's mode of defense is retraction, by which he identifies with the Law or a given signifier and at the same time denounces its legitimacy. In the forensic clinic, this results in different attitudes towards crime. The pervert sexual offender is unable to assume responsibility due to the belief that he sacrifices himself for the Other's enjoyment. The psychopath, on the other hand, is unable to assume responsibility because he feels *a priori* justified in his actions.

Once the difference between psychopathy and perversion is made, many new questions arise. The first question is how psychopathy should be considered in relation to the three structures of classical psychiatry: neurosis, perversion, and psychosis. Is psychopathy a fourth structure? Can we speak of a psychopathic subject in the same way we speak of a pervert subject? In this paper, we substantiated that psychopathy differs fundamentally from the structure of perversion. Another important question is the differential diagnosis between psychopathy and psychosis, which in some cases requires a sophisticated clinical approach (see for instance Declercq, Vandenbroucke, & Storme, 2008). Although we did not pay attention to this question, we join the long-established consensus in psychiatry that

psychopathy and psychosis are separate diagnoses (Werlinder, 1978). During the historical development of the concept, psychopathy has scarcely been connected with psychosis, and more frequently with neurosis.

Based on our analysis of the psychopath's relation towards the Other, we are inclined to see some correspondence with the neurotic structure. In common with the neurotic, the psychopath is not the object of the mother's desire because he identified with the Symbolic father. However, the differences lie in the way the psychopath's father appears in the Oedipus complex, in the way the psychopath relates to the Symbolic order, and in the way the psychopath handles the lack. Therefore it can be argued that psychopathy is a different structure, a fourth structure next to neurosis, perversion, and psychosis. The conceptual benefit of having this clear-cut distinction would be to reduce the risk of confusion between neurosis and psychopathy. One of the main reasons why the concept of psychopathy became outdated in Continental psychiatry was precisely the lack of differentiation between neurosis and psychopathy: psychopathy was often used as a generic term to designate the broad area of psychopathology that floats between clear madness and normality (Werlinder, 1978).

A clear demarcation between psychopathy and neurosis would also have the benefit of making evident that the treatment model for neurosis should not be transposed unaltered to the treatment of psychopathy. Although conclusions are advanced with caution, the general consensus is that the traditional treatment programs for offenders are not suitable for psychopathy (Hare, 2006). Although Wong and Hare (2005) proposed guidelines for the treatment of psychopaths, they affirm that the goal of this treatment is damage control, and not changing the personality: "it is unrealistic to try to effect fundamental changes in the psychopath's personality structure" (p. 10). In our understanding, these words echo Freud's repeated statement that a reliable character is necessary for psychoanalytic treatment: "Deep-rooted malformations of character [*Ausgeprägte Charakterverbildungen*], traits of an actually degenerate constitution, show themselves during treatment as sources of a resistance that can scarcely be overcome" (Freud, 1975 [1904], p. 254). In his paper *On narcissism*, Freud even acknowledges narcissism as a limit in the treatment of neurotics: "it seemed as though this kind of narcissistic attitude in [neurotic patients] constituted one of the limits to their susceptibility to influence" (Freud, 1978 [1914], p. 73).

In contrast to this pessimism, Lösel and Schmucker (2005) found very reassuring evidence for the treatment of sexual offenders. In a meta-analysis involving 22,181 sexual offenders, they found that treatment succeeded to reduce sexual recidivism by 37% in comparison with sexual offenders who receive no treatment. This reassuring conclusion might inspire optimism about the treatment of perversion (see also the case study of De Masi, 2007). The diagnostic confusion between psychopathy and perversion might have made some

psychoanalysts conclude that perversion is untreatable, while in fact it is psychopathy that is untreatable.

Footnotes

(1) This is why the question of perversion has to be reformulated. Not, why did someone become perverse? But, why didn't we all remain perverse? Freud's answer is well known: the Oedipus complex is the developmental phase that takes care of normalization. The combination of somatic immaturity of the genitals and anxiety about the father causes the child to take its distance from its pre-genital desire for the mother and identify with the normative image presented by the father. Later, with the somatic maturity of puberty, the child will address itself to other others. At that point, the early pre-genital drives will be submitted to the genital drive as such and reduced to what precedes coitus.

(2) In this paper, we will not pay attention to the diagnostic problem in differentiating psychosis and psychopathy. Interesting clinical remarks on this topic are made by Cleckley (1976 [1941]), Deutsch (2001 [1955]) and in the case study of Declercq, Vandembroucke, and Storme (2008).

(3) All cases of psychopathy cited in this paper have a score on the PCL-R of 30 or more in order to have clear-cut examples.

(4) In field research on sadomasochism, Weinberg, Williams, and Moser (1984) found that the contract of the pervert forms an obstacle for criminal behavior. Although "pushing the limits" was an acceptable violation of the original contract, transgression of the rules was not. One homosexual man involved in sadomasochism said: "Once in a while there is a top who really wants to hurt someone. Word gets around and no one goes near him" (p. 386). This might explain why few to no sadomasochists are found in jail.

(5) "This creates in the perverse person the deep belief that she is not a whole being, but her mother's part-object, just as she experienced her mother when she was a very young infant" (Welldon, 1988, p. 9).

(6) Lacan expresses it as follows: "The whole problem of the perversions consists in conceiving how the child, in its relationship with its mother - a relationship that is constituted in analysis not by the child's biological dependence, but by its dependence on her love, that is, by its desire for her desire - identifies with the imaginary object of her desire insofar as the mother herself symbolizes it in the phallus" (Lacan, 2006 [1959], pp. 462-463). See also André (1993).

(7) This forms the basis for what are today called "cognitive distortions" (Bumby, 1996). These distortions are assumed to comprise part of the etiology and, moreover, to sustain the continuation of perverse behavior (Stermac & Segal, 1989). In the cognitive-behavioral approach, it has recently been accepted that these distortions contain basic *unconscious*

convictions (Van Beek & Mulder, 2002). From our perspective, such “cognitions” are taken over during subject formation through the mother's perverse mirroring. The most important subsequent “distortion” in perversion is that the other enjoys the scenario, with the pervert as the instrument of this enjoyment - this is the kernel of the perverse subject formation.

(8) “Perversion adds a recuperation of the ϕ that would scarcely appear original if it didn't interest the Other as such in a very particular way. It is only my formulation of fantasy that enables one to see here how the subject makes itself the instrument of the Other's *jouissance*.” (Lacan, 2006 [1960], pp. 697).

(9) This identification is not to be confused with the “as-if” identification in psychosis. Helene Deutsch addressed this question and noted two differences (2001 [1955]). First, the psychopath only identifies with objects which correspond to his ego ideal. While the “as-if” personality searches for a stable but often dull object of identification (e.g., housewife, factory worker), the psychopath especially searches for identifications that mark his grandiosity. Second, the “as-if” personality is not aware of his disturbance while the psychopath, firmly pretending that he is what he pretends to be (e.g., a successful salesman), knows that he does not correspond with it. When he gets exposed, he laughs it away.

(10) The psychopath and the neurotic live in a different timeframe. The intermingling of past, present and future that is introduced into the life of the neurotic by the Ego-ideal (‘When you will have lived up to these standards and reached these goals, you will be...’) is completely absent in the life of the psychopath. Indeed, the psychopath never feels encumbered by unfavorable circumstances (e.g., being in prison). One of their typical expressions goes like this: “I’m an optimist, I don’t look back to the past, I always look into the future.” Of course, this is not true: the psychopath does not look into the future, he does not make many mid- to long-term plans; he is guided by the spur of the moment and does not possess the determination and patience to realize goals in life.

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