Mandatory Morally Enhancing Treatment of Minors with Psychopathy

On the ethical issues concerning coercive treatment of minors with conduct disorder and limited prosocial emotions

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Resume

In this paper we discuss the ethical implications of systematic identification and mandatory morally enhancing treatment of minors with psychopathy. We outline a scope of the group of minors as well as provide a clarification of what is meant by morally enhancing treatment. We then address two common arguments against state intervention, first the objection against surveillance and secondly the objection that the diagnosing of mental illness of children is in itself problematic. The paper goes on to discuss challenges to mandatory pre-crime state interventions based on the uncertainty of neuropredictions, the diminishing of individual worth, ‘the right to be presumed harmless’, and the potential infringement of parental autonomy. In the end we conclude that mandatory treatment of minors with conduct disorder and limited prosocial emotions is morally permissible.
# Table of Contents

Introduction ................................................................................................................................. 4  
Scope........................................................................................................................................ 6  
Defining Moral Enhancement of Psychopaths............................................................... 8  
Surveillance and Privacy........................................................................................................ 9  
  Skepticism towards surveillance.................................................................................... 9  
  Current practices in teaching and parenting.......................................................... 10  
  Coercive Paternalism and Consequentialism......................................................... 11  
Diagnosing.............................................................................................................................. 13  
  Self-fulfilling prophecy............................................................................................... 13  
  Adaptive strategy.......................................................................................................... 14  
  Pathologizing undesirable behavior........................................................................ 15  
A moral responsibility to potential future victims.................................................... 17  
  Protecting the innocent.............................................................................................. 17  
  Neuropredictions and false positives........................................................................ 17  
  Cognitive enhancement and diminished individual worth.................................... 19  
Can mandatory treatment on possible future offenders ever be moral?.............. 22  
  A right to be presumed harmless............................................................................. 22  
  A paternalistic justification of mandatory treatment........................................ 23  
Autonomy................................................................................................................................. 26  
  The meaning of autonomy.......................................................................................... 26  
  Cognitive bias and flawed reasoning....................................................................... 27  
  The value of autonomy............................................................................................... 28  
Conclusion.............................................................................................................................. 30  
Bibliography.......................................................................................................................... 31  

Introduction

Violent crimes are committed every year. Some amount of them are committed by individuals suffering from antisocial disorders such as psychopaths. This group is responsible for a disproportionately high amount of the collective violent crimes. About 1% of the male population is psychopaths but they make up 16% of the male prison, parole, and probation population. Approximately 93% of them have been in contact with the criminal justice system and are either in prison, on parole or probation. They have a high rate of recidivism, on average three times higher than a nonpsychopath and on average they have four convictions of violent crimes before the age of 40 (Maibom, 2015: 10). Coupled with their high rate of instrumental violence they propose a serious threat to the well-being of innocent people. Because of this, an endeavor to reduce the amount of psychopaths in society is a worthwhile pursuit.

It is the current consensus and understanding that antisocial personality disorders such as psychopathy are avoidable if we intervene early in an individual’s life due to the plasticity of the brain in young children (Walsh, 2013: 51). In more than a decade there has been a surge in the amount of research and books on the topic of human and moral enhancement through neurotechnological means, and the challenges that comes with it on topics such as moral responsibility, freedom of thought, and its possible role in the criminal justice system from both neuroscientists and philosophers (Vedder & Klaming, 2010; Gazzaniga, 2005; Bublitz, 2014 & 2016). With the goal of reducing the amount of future psychopaths in society we would like to suggest a systematic state intervention. In order to exemplify what such an intervention might look like, we have outlined an example:

As part of their education kindergarten and school teachers should be trained in recognizing behavior that is consistent with the DSM-5 criteria for conduct disorder. The concept of epigenetics suggests that environmental factors play a key role in the expression of genes (Walsh, 2013: 44). Because of this, we suggest that teachers should arrange meetings with parents in order to discuss the child’s behavior and the environment in which it grows up. This information would be registered in a database that follows the child through the educational system, enabling different schools and teachers to recognize a potential pattern. If the behavior consistent with the DSM-5 criteria for conduct disorder persists, we advocate that the child should be subject to bioprediction looking for genes such as the monoamine oxidase A (MAOA) that increases risk of antisocial behavior in children who experiences severe maltreatment, tests that focus in the child’s fear
conditioning, brain imagining focusing on the development of the child’s amygdala and anterior cingulate, and other biopredictive methods that we might develop in the future (Glenn et al., 2015: 1692ff). Through the use of talk therapy and family counseling focusing on changing behavioral patterns in the child as well as in the family, we should seek to change the environmental factors that increase the risk of becoming antisocial in adulthood. If behavior consistent with the DSM-5 criteria for conduct disorder persists into adolescence, and biopredictions show that risk factors such as increased testosterone levels at ages 10-12, predictive of violent behavior and drug use later in adolescence (Ibid: 1693), are present we should intensify our efforts and consider introducing effective psychopharmacca as a supplement to therapy. If the behavior persists into late adolescence and psychopathic traits have taken root, and if safe and effective morally enhancing neurotechnological treatments are available, we propose that these treatments should be coercively used as a last resort. Because of the aforementioned highly negative consequences of antisocial disorders such as psychopathy, which include both the harm to future victims as well as the harm to the individual with the disorder, we argue that the above mentioned intervention should be mandatory.

In this paper we are going to (1) address some common arguments against this type of intervention, and (2) argue that there are good moral reasons in favor of introducing mandatory interventions.

In order to do this, we will start out by outlining a scope of what we are referring to when we talk about psychopaths. We do this in order to avoid potential misunderstandings as recent popular culture on psychopaths to some degree has made the term blurred. We then go on to clarify what is meant when we refer to moral enhancement of psychopaths. From there we move on to two common arguments against state intervention, first the objection against surveillance and the infringement on privacy that might follow from it, secondly the objection that diagnosing in and of itself causes harm. We then continue by discussing challenges to mandatory pre-crime state interventions based on the uncertainty of neuropredictions, the diminishing of individual worth as well as ‘the right to be presumed harmless’. Before ending with a discussion on autonomy, we argue that there is at least one strong paternalistic argument in favor of mandatory treatment.
**Scope**

In the following we define what exactly we refer to when talking about psychopathy. 'Psychopath' is a term that is thrown around rather loosely these days. Psychopaths are fascinating and a great number of popular pseudo-scientific books have been published on the subject claiming for instance that psychopaths are everywhere and that most leaders show psychopathic traits e.g. “*Hverdagens Psykopater*” by Henrik Day Poulsen, and all of a sudden everyone realizes that their boss and the guy from accounting they don't like are clear-cut psychopaths. However, when suggesting coercive or semi-coercive treatment of minors with the condition, it is imperative that the scope be very clear and quite narrow to avoid over diagnosing. We are not speaking of children with some psychopathic traits with a little less than average empathy or who are sometimes inconsiderate. We are interested in a narrow group who meet specific criteria and who are likely to become dangerous later on in their lives.

One of the major indicators that teachers and parents should be looking out for is of course antisocial behavior, that is to say lack of empathy and behavior that violates major social norms (Nolen-Hoeksema, 2013: 319). But antisocial behavior is not a strong enough indicator, since most people act antisocially sometimes to some extend. It is a graduated scale and some children may meet some criteria without suffering from psychopathy – or any diagnosable condition for that matter. Hardly any children – or adults – act empathetically all the time, and even if they act antisocially to an extend that could be diagnosed, that does not necessarily mean they fit the profile we are interested in. Some children suffer from so called oppositional defiant disorder, which will cause them to break social norms repeatedly. They are described as: “chronically angry and irritable; are argumentative and defiant, refusing to comply with adult requests; and are vindictive toward others, often blaming them for their own mistakes and bad behavior” (Ibid). These children – troublesome as they may be – are not the ones we are interested in. Rather we would look at the group of children that suffer from conduct disorder. Children with conduct disorder are described as being more antisocial than those with oppositional defiant disorder and their behavior are categorized as follows: “(1) aggression to people and animals, (2) destruction of property, (3) deceitfulness or theft, and (4) serious violations of rules” (Ibid: 321).

An estimated 3 to 7 percent of children and adolescents suffer from conduct disorder, and these children are highly likely to exhibit violent and criminal behavior (Ibid). A further distinction is made depending on the age of the children at the time of the onset of the conduct disorder.
Psychologists distinguish between childhood-onset conduct disorder, if the child is under 10 years old, and adolescent-onset conduct disorder, if the child is over ten years old. Children with childhood-onset conduct disorder tend to get worse as they grow older (Ibid), and are thus more likely to merit coercive moral enhancement. However, not all children with conduct disorder fit our criteria since the degree of the condition can vary greatly. It is measured through the DSM-5 Criteria for Conduct Disorder. For children who meet all the criteria on the DSM-5 Criteria for Conduct Disorder another specifier can be applied to determine if they have limited prosocial emotions. The qualifying traits are as follows: “(a) lack of remorse or guilt for their actions, (b) lack of empathy for others (callousness), (c) lack of concern about performance at school, at work, or in other important activities, and (d) shallow deficient emotions (e.g., insincerity in emotions, using emotions to manipulate others)” (Ibid: 322). Children or adolescents who meet all of the criteria of the DSM-5 Criteria for Conduct Disorder and in addition to that display two or more of the above mentioned traits is what characterizes a person with psychopathy (Ibid).
Defining Moral Enhancement of Psychopaths

The psychopath’s deficient morality is now understood to be largely influenced by the lack of his ability to experience fear, and as a result his absent response to the threat of punishment, and his lack of guilt and remorse (Maibom, 2014: 34; Marsh, 2014: 140, 148f). Because of the pragmatic nature of our goal, to reduce the amount of people suffering from an antisocial disorder such as psychopathy and as a result lower the number of potential future victims, our criteria for a successful moral enhancement is met if the moral conduct from the psychopath increases from a below average moral limit to an average one (Kragh & Ellegaard, 2015: 3f). A precondition for a successful moral enhancement would be that a new bioprediction of the individual shows no increased risk of violent and antisocial behavior.

Such an enhancement could come about in different ways. As long as the treatment is safe, with no severe side-effects, and effective, we do not differentiate between the use of psychopharmaca, invasive or non-invasive treatments nor direct or indirect enhancements. For a discussion on the moral status of these subjects see Focquaert, 2014; Kragh & Ellegaard, 2015; Focquaert & Schermer, 2015.
Surveillance and Privacy

In this chapter we will discuss the surveillance that will be necessary in order to identify potential psychopaths among children and adolescents. We will outline some of the common objections against surveillance in general and argue why we consider that surveillance is in this case justified.

Skepticism towards surveillance

Suggestions involving more surveillance tends to provoke a bit of skepticism in certain circles. In order to detect possible psychopathy in children and adolescents, however, a certain level of surveillance will be necessary, and some people will intuitively object to the idea of monitoring young kids in order gather information about them without their consent or that of their parents. We do consider such skepticism to be reasonable. Throughout the twentieth century non-benevolent governments have tried to control their citizens through surveillance time and time again. As early as 1948, George Orwell voiced the fear of a surveillance-state in his novel *1984*, in which he coined phrases like Big Brother and Thought Police. Soviet Russia, East Germany during the Cold War, or modern day China for that matter are examples of why this skepticism towards surveillance is not just based on imaginary conceptions of threat level. Furthermore, the discussion about surveillance has not become any less relevant after the end of the Cold War. The rise of global terrorism has sparked the discussion, and on top of that the potential for big cyber-companies like Facebook or Google to gather information about their users have given a whole new perspective on the issue of protecting one’s privacy. A few of the most common objections have been articulated by professor Simon Chesterman in his article *Privacy and Surveillance in the Age of Terror*:

“It also increases the possibility of abuse: the loss or misuse of data, especially the discriminatory treatment of particular groups. More generally, however, the very fact of government knowledge, or indeed the possibility of such knowledge, may impact on individuals and society in deleterious ways. The manner in which governments use information to produce self-policing subjects has long been a subject of postmodern social theorists” (Chesterman, 2010: 34).

As already mentioned we do consider such skepticism towards surveillance very reasonable, and referring solely to the benevolent nature of our suggestions in order to justify them would probably not convince many people, since surveillance-states almost always claim to monitor the citizens ‘for
their own sake’. We do however believe that surveillance can still be justified based on two reasons. One being the fact that there seem to be a relevant difference when it comes to children and adults regarding surveillance, since surveillance already forms part teaching and parenting. The other being the potential benefits surveillance and early discovery of psychopathy could lead to on an individual as well as a societal level, as age is a relevant factor in the effectiveness of treatment due to the higher level of plasticity in children’s brains (Walsh, 2013: 51). An early discovery of psychopathy and an early start to the treatment would thus increase the child’s chance of a normal life without legal trouble as well as saving potential future victims of violent crimes.

**Current practices in teaching and parenting**

Monitoring kids is nothing new – we already do it to quite a large extent. Parents monitor their own children and ideally correct them if their conduct fail to live up to the standards of social acceptability, and hardly anyone would regard this kind of surveillance as an infringement of the child's privacy. In fact most people consider this to be an essential part of good parenting. When parents fail to observe and correct their children it is generally frowned upon and considered neglect – and studies have actually shown that children of neglecting parents are more likely to develop conduct disorder (Nolen-Hoeksema, 2013: 325). As it is kindergarten and school teachers also monitor the children in their care. Part of a schoolteacher’s job is to evaluate the children and inform their parents of their general performance in school, including their social skills and ability to interact with the other children. If a kindergarten or school teacher detect antisocial behavior in a child, they will – besides from trying to correct the child – make a mental note of it, it will form part of their evaluation of the child and they will be extra vigilant to see if the behavior continues. The design of classrooms even reflect this. In a standard classroom the teacher stands in front of the pupils who are all facing the teacher. This is of course partly in order for them to be able to see and hear the teacher, but this could have been achieved a number of other ways. The traditional furnishing of a classroom also enables the teacher to view all the students at the same time (Foucault, 1975: 163). A rather high level of vigilance is expected from a normal school teacher, as she must detect all kinds of conduct among the children. Not only bullying but also the general social dynamics in the class. Both kindergarten and school teachers are also required to report it to the authorities if they suspects that a child's parents are abusive or negligent (Trier et al., 2007; BUPL, 2013). This kind of surveillance is generally accepted, and we merely suggest a more systematic approach when it comes to identifying and responding to children with for instance childhood-onset conduct disorder. We would suggest that kindergarten and school teachers receive some training in detecting the traits of conduct disorder and limited prosocial emotions and learned
how to distinguish that type of conduct from normal aggressive or egocentric behavior in children, in order to be able to refer them to a trained psychologist. We have not been able to find any reference to the DSM-5 nor any other diagnosing system relevant to the detection of antisocial behavior in the curriculum of kindergarten and school teachers. This absence combined with the fact that the diagnosing of children in general tends to be a controversial topic - which we will discuss in depth in a following chapter - has led us to believe, that educational professionals currently do not receive sufficient training on this subject.

**Coercive Paternalism and Consequentialism**

Besides from the fact that the type of surveillance necessary to detect psychopathy at an early stage differ only slightly from the current practice among educational professionals, we also believe there would be benefits to a systematic and stringent attempt to identify and help psychopaths at an early age. As we will discuss in depth later on, there is a clear paternalistic as well as a more traditional consequentialist argument for the suggestions we have. We believe that both viewpoints offer convincing arguments for the surveillance. However, the paternalistic argument will seem a priori unconvincing to the anti paternalist. A common objection to the general idea of coercive paternalism is that it is degrading and condescending, since it treats adults ‘as if they were children’. This will supposedly make the subjects of paternalistic coercion less self dependent and render them unable to make decisions for themselves (Conley, 2013: 66 and Feinberg, 1986: 24). The subject matter of this paper is not to defend paternalism against such claims nor to convince anti paternalists. It is, however, worth noting that the subjects in this case actually are children, and treating children as children might after all feel less controversial even to the anti paternalist. However, as we suggest that the parental decisions of certain parents might still get overruled, mandatory treatment would still qualify as paternalistic. The paternalist argument could be articulated as follows:

P1: Psychopaths are likely to encounter troubles both with the law and with society in general.

P2: We ought to protect people from getting in trouble with the law.

P3: By identifying psychopaths at a young age it we are more likely treat their condition effectively.

C: We should identify and treat psychopaths at a young age in order to protect them from getting in trouble with the law.
A very similar non-paternalistic consequentialist argument could be put forward as well:

P1: Psychopaths are likely to commit violent crimes resulting in serious harm to the victims.

P2: We ought to protect people from violent crimes resulting in serious harm.

P3: By identifying psychopaths at a young age we are more likely to treat their condition effectively.

C: We should identify and treat psychopaths at a young age in order to protect people from violent crimes resulting in serious harm.

Though we are not trying to trivialize the potential dangers of surveillance we do believe that the fact that an almost identical type of surveillance is already taking place, along with the potential benefits of identifying psychopaths as early as possible are strong enough arguments to warrant surveillance of this kind.

In this chapter we have discussed some common objections to surveillance and argued that while such objections may in many cases be justified, they are less relevant when the object of the surveillance are children. First of all, since the current practices in both parenting and teaching already involve a great deal of surveillance, which means that our suggestions would for all intents and purposes merely be a more systematic approach to an ongoing practice. Secondly we argue that, because there are great benefits to identifying potential psychopaths at an early stage, as that would increase the odds of treating their condition effectively, there are good moral reasons in favor of identifying psychopaths as early as possible.
Diagnosing

Since the dawn of the anti psychiatry movement in the 1960’s there has been some amount of skepticism towards the diagnosing of mental illness in general and towards the diagnosing of children with mental illness in particular. In the following we will address three of the most common criticisms and attempt to demonstrate why they are not relevant in the case of children with psychopathy. First we will discuss the objection regarding the diagnosis becoming a self-fulfilling prophecy, secondly the claim that behavior that is normally diagnosed is in fact an adaptive strategy to a problem in the surroundings, and thirdly the objection that diagnosing mental illness is society’s way of pathologizing undesirable behavior. The problem of stigmatization – though often brought up in discussions about the diagnosing of mental illness – will not be treated here but rather in the later chapter about the moral responsibility to potential future victims.

Self-fulfilling prophecy
One of the more typical judgments regarding the diagnosing of mental illness is the claim that the diagnosis will become a self-fulfilling prophecy. This is especially common when discussing the diagnosing of children. The objection is based on the assumption that since children are generally more impressionable than adults, a diagnosis will influence the way the adults treat the child, thereby reinforcing the child’s feeling of not being normal. Child psychiatrist, Søren Hertz, articulates this view in a featured article from 2012:

"Vi skal ikke have urealistiske forventninger, men risikoen er igen, at børnene spejler sig i vores tro på begrænsede muligheder, at vi møder dem på en begrænsende måde. Jo mere andre er i tvivl om børnenes muligheder, jo mere i tvivl bliver de selv. Og jo mere afhængige bliver de af særlige hjælpeforanstaltninger. Diagnosekulturen skaber dermed nemt selvføydende profetier.” (Berlingske, 16.01.2012, page 25)

In the article he speaks about diagnosing in general, while mostly referring to children diagnosed with ADHD in his examples. It is, however, problematic to treat all diagnoses as being equal. It is very possible that some teachers and psychologists may be too eager to attach certain diagnoses to children behaving in a certain problematic way in order to ‘explain’ their behavior. However, as we have discussed in the chapter on our scope, psychopathy is a diagnosis that requires rather specific traits and symptoms and should obviously not be easily attached to a child. In the cases where such
traits and symptoms are displayed, however, it seems quite unreasonable to refrain from diagnosing due to fear of creating a self-fulfilling prophecy. One should keep in mind that in order for the diagnosis psychopath to be justified, all of the traits from the DSM-5 on conduct disorder must be present along with limited prosocial emotions. If a child is violent and threatening, lacking empathy, deceitful, and takes pleasure in killing or torturing animals it would seem quite a stretch to blame a subsequent diagnosis for the child’s moral shortcomings.

Adaptive strategy

Some critics of the diagnosing of children claim that the child’s behavior is an adaptive strategy to cope with something exterior. This objection somewhat echoes the famous quote that “insanity is a perfectly rational response to an insane world”. The quote has been ascribed to R.D. Laing, one of the founding fathers of the anti psychiatry movement, and though it is unclear if it is a paraphrase it has gained some reverberation in different groups including those promoting alternative treatments (Lucas, 2015: cp. 2). The argument is based on the fact, that any diagnosing system is in its nature limited to looking at the potentially diagnosable individual and not its surroundings. Psychologist, Svend Brinkmann, puts forward this argument in his critique of our increased ‘tendency’ to diagnose people:

“For det tredje er et problem i patologiseringstendensen, at mange adfærdsformer, der klassificeres som sygelige af diagnosesystemerne, faktisk kan siges at være udtryk for adaptive strategier i forhold til bestemte miljøbetingelser.” (Brinkmann, 2010: 20)

Brinkmann goes on to quote an example from the book Making Us Crazy – DSM: The Psychiatric Bible and the Creation of Mental Disorders about a young girl, Alice, who has been diagnosed with oppositional defiant disorder. However, Alice comes from a chaotic home and her behavior could also be seen as a way to cope with her unfortunate circumstances:

”Modsat behandlingssystemets officielle diagnostiske fortolkning af Alices adfærd, så mener forfatterne, at hun udviser en adaptiv – og ikke patologisk – respons på sit kaotiske miljø, men det er ikke desto mindre barnet og ikke familien, der diagnosticeres og dermed patologiseres af det sociale system, idet diagnosesystemet nødvendigvis opererer på individniveau.” (Brinkmann, 2010: 20)

This is a reasonable objection and it does in fact point towards a weakness in the diagnosing system. By only looking at the individual’s symptoms it is quite possible to overlook social factors that may cause the behavior. Psychopathy does seem to have a genetic component but it is impossible to
point to a single gene that definitively determines the condition, and social factors do in fact play a role (Glen et al., 2015: 1691). However, even if we assume that the behavior is an attempt to adapt to certain exterior conditions – an abusive family for instance – it does not seem plausible that the type of conduct we are referring to could ever be described as a ‘normal’ or ‘healthy’ response. While normal rebellious and defiant behavior could be solved by improving the child’s exterior circumstances, it would be naïve to assume that a child that has come so far as to display serious psychopathic traits would all of a sudden become empathetic, peaceful and sociable due to an exterior improvement alone. However, since there is a correlation between psychopathy and neglect and abuse in the family (Nolen-Hoeksema, 2013: 326), teachers should indeed be mindful of such potential problems. But one thing does not exclude the other. It is quite possible for a teacher to alert the authorities if she suspects abuse in the child’s home, and then still find a way to treat the child. So while it is definitely worthwhile to pay close attention to the child’s social circumstances it does not seem sufficient in the case of a child showing psychopathic traits.

**Pathologizing undesirable behavior**

Lastly we would like to address the objection that says that diagnosing is society’s way of pathologizing undesirable behavior. The argument is based on the assumption that societies need to confirm their value system by labeling alternative ways of life as pathological and wrong by diagnosing them. There are indeed historical examples that clearly demonstrate such a tendency. The diagnosis drapetomania was invented in 1851 to describe the tendency in some North American slaves to attempt to escape from their owners (Brinkmann, 2010: 275). The desire to escape is clearly not a pathological response to enslavement, but on the other hand, the fact that some diagnoses have been used for political purposes does not prove that diagnosing mental illness in general is a dubious activity. Svend Brinkmann quite firmly expresses such a critique:

It is true, that the DSM manuals have been expanded drastically through the years and it is also true that there is an increase in the number people that are being diagnosed with some sort of mental illness or disorder (Ibid: 23). Whether or not this constitutes a problem is not the subject matter of this paper. As already mentioned, the diagnosis that we concern ourselves with here is not one that is easily obtained. Certain very specific and rather serious conditions must be met, and it does not seem likely that many children will be predicated with the diagnosis psychopath. Furthermore, it is clear that psychopaths actually lack a normal human ability to distinguish between conventional transgressions (defined as deviating from social norms) and moral transgressions (defined as violating others’ rights and welfare) (Marsh, 2014: 142). This is a distinction that three year olds as well as adults with Down’s syndrome are capable of making, so discarding the diagnosis as just being another word for ‘evil’, as Brinkmann seems to suggest, is an unjustifiably reductionist endeavor.

In this chapter we have discussed some common objections to the idea of diagnosing mental illness in general and diagnosing children with mental illness in particular. We have examined the frequent argument about diagnoses becoming self-fulfilling prophecies, the argument that mental illness is an adaptive strategy to cope with external problems, and the argument that such diagnoses is a way for society to pathologize undesirable behavior. In all three cases we argue, that the arguments – though in some cases relevant – are not strong when it comes to the diagnosing of potential psychopathy in children.
A moral responsibility to potential future victims

In this chapter we will focus on our moral responsibility to potential future victims of the psychopath's actions. In dealing with this issue we will take a closer look at the problem of false positives and neuropredictions in general. We will then look at an argument claiming that cognitive enhancement constitutes an unacceptable diminishing of individual worth, and see whether or not this argument should prohibit us from using morally enhancing neurotechnological interventions if they come about through cognitive enhancements.

Protecting the innocent

Most people will agree that the protection of future victims is a worthwhile pursuit. In the legal system, the risk of offenders reoffending is taken into account before parole or probation is granted. However, most people does also agree that there are limits to this pursuit. We are not willing to incarcerate all men in a given town to prevent an unknown sex offender from reoffending, even if this would protect future victims. As such, we are willing to do what is necessary to protect the innocent, only when the comparative cost of doing so is low enough. In order to justify preventive actions to protect possible future victims against individuals that have not offended yet, we have to show that the consequences of doing so is not comparatively worse than refraining from acting.

Neuropredictions and false positives

The accuracy of predictions, and the rate of false positives resulting from these predictions, is one of the key factors in determining whether or not to introduce preventive actions to protect future victims. There are some hard moral questions of how accurate a prediction has to be in order for it to be used in any legal setting:

"Furthermore, even if one would hold that the predictions has reached a sufficient level of accuracy, say 75 %, is it then morally right to punish offenders more harshly if we know that 25 % of them will be false positives (i.e., offenders who are predicted to be dangerous, and therefore are punished more harshly, but who are in fact not dangerous at all)?" (Søbirk, 2014: 138).

However, the question of what level of false positives we are willing to accept, should be influenced
by the kind of intervention we are introducing. If we are talking about punishment and incarceration it should be lower, but more benign interventions with less bad consequences for the individual should allow for a higher level, if the interventions can effectively reduce the number of future victims.

There are good reasons to think that in the future neuropredictions can accurately help us identify future offenders. Even if there are challenges to the accuracy on individual risk assessment, there are good reasons to think that group data can provide valuable information on future offending. Group data is already used effectively in the cost assessment in the insurance industry, as well as in weather forecasting (Monahan, 2013: 65f). Evidence suggests that group data would be able to increase our accuracy when predicting the risk of future offending from specific groups. Part of the group that we are proposing to target, those that can be diagnosed with childhood-onset conduct disorder, are associated with a 50 percent rate of criminal behaviour and drug abuse in their adolescence. About 75 to 85 percent of them are chronically unemployed with a history of unstable relationships as adults, and between 35 and 40 percent of them end up diagnosed with antisocial personality disorder. It is in this same group, using the DSM-5 Criteria for Conduct Disorder, that we find those children which in addition to their conduct disorder, matches the criteria for limited prosocial emotions. This diagnosis includes the known traits for psychopathy such as a lack of remorse, guilt, empathy, and most importantly, an impaired ability to experience and recognize fear in others (Nolen-Hoeksema, 2013: 321f).

Several studies have shown that individual predictions of later antisocial and criminal behaviour is possible. By using those that qualifies for the diagnosis for childhood-onset conduct disorder, while following them through their adolescence, we would be able to take preventive action against those that continue to show antisocial behavior or, by using biological factors, continue to be part of a risk group. Such factors range from increased levels of testosterone at the ages 10-12, associated with violent behaviour later in adolescence to minor physical anomalies because of fetal neural maldevelopment measured at age 14 (Glen et al., 2015:1693). Brain scans using fMRI, targeting the amygdala and anterior cingulate might help us predict which individuals will be able to respond to cognitive behavioral therapy, and as antisocial behavior does not seem to be hard-wired in the brain, but is largely brought about by social factors activating certain genes(ibid: 1691), such findings might well enable us to help individuals avoid ending up with an antisocial disorder (ibid: 1694).

This suggests, that even if we have to accept a number of false positives in the process of identifying and neutralizing the dangers of individual psychopaths, these false positives, those that turn out not to be psychopaths but still matches the criteria of conduct disorder, might well end up
better off, insofar as we can help them to avoid becoming antisocial in their adulthood, which in turn will lower the number of future victims from the consequences of antisocial behaviour.

One worry formulated by Greely, is that such neuropredictions might: "[...] reinforce existing stereotypes or create new ones. This in turn might foreclose opportunities for some individuals in the 'less talented on average' group, and might stigmatize the entire group." (Greely, 2006: 248). While reducing the number of future victims is a valuable goal to attain, stigmatization comes with very high costs for a great number of people, and in this case, especially the group of false positives. However, it is at best doubtful that using DSM-5 to identify groups with the risk of becoming psychopaths would increase stigmatization in any meaningful degree. These 'outgroups' expressing antisocial behaviour are already on the edge of society, and are continually judged by the rest of society. While this is a very real problem, in that it makes it more likely that the individual will be cut off emotionally from society, or that he will turn to his peers and be reinforced in his antisocial behaviour, an effective program consisting of therapy and other effective neurotechnological treatments targeting the individual might well enable him to escape the stigmatized group later in his life. A diagnosis that explains why he has had a hard time fitting in, and the promise of help, might even bring about some amount of relief and hope.

Cognitive enhancement and diminished individual worth
Chang and Buccafurni's argument that cognitive enhancement constitutes a diminishing of individual worth was published as a response to a paper by Vedder and Klaming in which they argued for the use of human enhancement for the common good. In this paper, they focused on using neurotechnologies in order to improve eyewitness memory.

However, Chang and Buccafurni's claim that cognitive enhancement diminishes individual worth is not limited as a response to the neurotechnological improvement of eyewitness memory, it makes a broader claim, namely that cognitive enhancement, as defined by Vedder and Klaming, in general constitutes this diminishing. Vedder and Klaming's definition of what cognitive enhancement includes, seems to capture at least one realistic neurotechnological response to morally enhancing a psychopath, namely the enhancement of the psychopath's fear response. We will therefore take a closer look at this definition: "Cognitive functions comprise all processes involved in the organization of information, including perception, understanding, memory, and executive functions." (Vedder & Klaming, 2010: 23).

Perception and understanding is closely linked to how any individual assess a situation. It is now well known, as it has been confirmed in studies through more than fifty years, that psychopaths
have an impaired ability to experience fear, and maybe as a result of this impairment, lacks the ability to recognize fear in others (Abigail, 2014: 147). This lack of fear has been linked to increased willingness to take risks, the failure of responding to the threat of future punishment and a lack of empathic concern for others (Abigail, 2014: 148ff). Because of this, effectively stimulating and enhancing the psychopath’s ability to experience fear through neurotechnological means, might turn out to be one of the more effective ways to reduce the risk of future offending, and thereby reduce the number of future victims. As an alteration of the psychopath’s ability to experience fear will change his perception, and through that his understanding of a given situation, such a treatment would qualify as a moral enhancement brought about by a cognitive enhancement, and is therefore subject to Chang and Buccafurni’s objection.

If cognitive enhancements for the common good diminishes individual worth, then it would seem that such a treatment, even if it saves potential future victims from serious harm, should be regarded as problematic. Chang and Buccafurni argues that such enhancements does in fact diminish individual worth:

"If cognitive capacity manipulation is accepted because it benefits the common good, this would mean that it is also accepted that individual good is worth sacrificing for the common good. We define individual good not simply as the absence of physical or psychological pain but as the presence of respect for cognitive capacities as an intrinsically valuable end in itself [...] In other words, accepting that the individual good is worth sacrificing for the common good violates the intrinsic value of the individual. As a result, the worth of the individual is diminished." (Chang & Buccafurni, 2010: 49).

The argument is deontological in its nature, and rejects the utilitarian focus on pleasure and pain by adding respect for cognitive capacities as an intrinsic value of the individual. However, the argument is not very convincing due to a number of reasons. (1) It is not clear why an enhancement made for the common good, but still benefiting the individual should be regarded as a lack of respect for cognitive capacities. Parents and schools are both in the business of enhancing these capacities. Both through education that enhances an individual’s ability to perceive and understand different problems, and through helping them to navigate in social situations. It is not clear that improvements that give the same benefits, such as an enhancement of the psychopath’s ability to experience fear and thereby enhancing his ability to interact, perceive and understand others, would be wrong just because it comes about an altering of cognitive capacities. And (2) it is not clear that the right not to be diminished is absolute. Surely there are situations where the rights of others, i.e. the life-changing harmful effects on future victims, trumps the individual’s right not to have his
worth diminished.

Because of the instrumental violent nature of the psychopath, there are strong moral reasons in favor of introducing practices that lower the number of potential future victims. We have admitted that the problem of false positives in the criminal justice system exists in this area as well, but that it is a smaller problem in this case because of the difference between the consequences in the criminal justice system and in mandatory preventive treatment targeting people with antisocial disorders. As our ability to make neuropredictions becomes more accurate, it will be possible to minimize the level of false positives.

We have critically discussed one kind of objection to mandatory treatment and argued that Chang and Buccafurni's claim that cognitive enhancements are diminishing individual worth is false, or that they at least will have to expand their argument in order to capture why the altering of cognitive capacities differ morally in any meaningful way from the goals of parents and schools who are raising and educating children with the same goal as cognitive enhancements: to improve their perception and understanding of the world and those around them, and to give them better odds at living a good life as a part of society.

Even if such cognitive enhancements does in fact diminish individual worth, we argue that the rights of future possible victims not to be harmed, outweigh the psychopath’s right not to have his individual worth diminished.
Can mandatory treatment on possible future offenders ever be moral?

In this chapter we will discuss whether or not mandatory treatment on possible future offenders can ever be morally justified. We will start out by looking at Duff's claim that we have a right to be presumed harmless. As this is an argument against interventions without consent, we will discuss if and when this right can be overruled by other considerations. We will then critically discuss a strong paternalistic argument in favor of mandatory treatment on possible future offenders. Because of the controversial nature of paternalism and its relation to autonomy, autonomy will be the subject of our next chapter.

A right to be presumed harmless

In Dangerousness and Citizenship, the retributivist R. A. Duff formulated a: "'right to be presumed harmless' – 'to be presumed free of harmful intentions'." (Duff, 1998: 152). This right serves the purpose of protecting citizens from the criminal justice system by making it immoral to assume that someone is criminally dangerous. However, we are not talking about an absolute right. The right can be forfeited under some special circumstances. In his paper, Duff is making a retributivist argument supporting the idea that we can give out special punishments or punish harder when an offender is dangerous and more likely to commit future crimes. To justify punishing some offenders harder than others for the same crime, namely those that can be classified as responsible yet persistent, serious and violent offenders (Ibid: 141), he lays out a framework for when the right to be presumed harmless is forfeited:

"If someone persists in committing serious crimes, the presumption can be rebutted: not merely because we now have empirically sound evidence that he is not 'harmless' (that he might well commit further crimes); but because he has, by his own criminal conduct, undermined his right to that presumption. Given a suitably reliable prediction that he would probably commit further such crimes, if released after a normal term of imprisonment, we can therefore justifiably redistribute the costs of crime, or its prevention, onto him; we can impose on him the cost of being detained beyond the term of imprisonment he would otherwise serve for his current offence, rather than leaving other citizens to bear the costs of his probable future crimes." (Ibid: 152)
The key qualifier to lose one's right to be presumed harmless is to express a certain kind of behavior, namely a persistent behavior of committing serious crimes. While this right was formulated to protect adults from unjust punishment in the criminal justice system, we assume that the right to be presumed harmless also extends to minors. This raises some challenges for the position that it is morally permissible to use mandatory treatments on minors with conduct disorder because of their future dangerousness. If they have not yet committed the crimes that motivates us to intervene, the right to be presumed harmless entails that we cannot justify any intervention based on a possible future dangerousness.

One might argue that the conditions for the right to be forfeited are too strict. Surely, if the group that person A is a member of, in this case those that can be diagnosed with conduct disorder and limited prosocial emotions, has a high rate of violent behaviour, then we are justified in concluding that there is a correspondingly high risk that person A, all else being equal, is dangerous. However, Duff argues that such actuarial predictions are problematic. Actuarial predictions cannot say that: "[...] this person is dangerous; only that there is a danger that he is dangerous." (Ibid: 154). Duff continues to argue that a person is dangerous if he (1) has traits or desires that can only be fulfilled by criminal conduct, such as the desire to force someone to have sex against their will, and (2) if such a character trait has been displayed in criminal conduct of the appropriate kind (Ibid: 154f). It comes down to: "Respect for autonomy, and the 'presumption of harmlessness' which follows from it" (Ibid: 155).

While this makes a lot of intuitive sense when it comes to the criminal justice system and the threat of incarceration for crimes that may or may not end up being committed, it becomes more blurry when we are talking about early interventions on minors. First, we are proposing mandatory treatment and not incarceration. Secondly, we do not generally 'respect' the autonomy of minors in the sense that Duff is talking about, in fact we often override it for paternalistic reasons, and there seems to be good paternalistic reasons in this case to forfeit the right to be presumed harmless which we will discuss in a moment. And thirdly, in order to diagnose conduct disorder the individual has to display criminal character traits such as physical violence, burglary, destruction of property etc. (Nolen-Hoeksema, 2013: 322). Because of this, an argument could be made that Duff's criteria for displaying criminal character traits has been satisfied.

A paternalistic justification of mandatory treatment

As hinted above, there are good paternalistic reasons to implement mandatory treatment on minors. If we do nothing to help individuals that can be diagnosed with conduct disorder, a significant part
of them will grow up to develop antisocial traits. These traits are associated with severe problems with fitting into society and will, as we have discussed earlier, often lead to a bad life with unstable relationships and time in prison. Most people would agree that these are good things to help less fortunate individuals to avoid. We have good reasons to believe that the development of antisocial traits is something that can be prevented, and the earlier we act in the individual’s life, the more likely we are to succeed. This is due to the plasticity of the young brain (Walsh, 2013: 51). This means that if we wait until the individual comes of age, our chance of successfully treating his condition becomes lower, and will likely require more invasive treatments. It is therefore recommendable that we begin treatment as early as possible. While most parents probably would like to do what is best for their child, we cannot necessarily expect parents from weak homes to support treatment that involves family counseling, individual talk therapy, pharmaceutical drugs or other interventions. We should expect at least some of them to be wary and mistrustful of any government interference in their family life. It should not be controversial to point out that not all parents are equally good at making decisions for their kids. Where mandatory treatment is necessary, it would protect children and their long-term interests especially when they come from these types of homes. In his 2005 paper on Joel Feinberg and hard paternalism, Arneson makes this exact point while talking about good choosers and bad choosers:

"On the whole and on the average, good choosers will tend to gain greater well-being in life, and bad choosers less. [...] Poor choosers can benefit from paternalism, and some could expect to benefit substantially from intelligent paternalist policy over the course of a lifetime. [...] There is then a distributive-justice aspect to the issue of paternalism. In embracing hard paternalism and enforcing sensible well-being-enhancing paternalistic rules, society will be enacting policies that are comparatively better for the bad choosers among its members than for the good choosers." (Arneson, 2005: 275).

If early treatment can be an effective tool in order to prevent the unfortunate individuals with conduct disorder to grow up and develop antisocial and psychopathic traits, mandatory treatment will at least in some cases be the only way of protecting the children of bad choosers. We generally accept that parents do not have the right to choose badly for their children if the consequences of doing so are sufficiently bad. One such example could be the case of a badly hurt child whose parents are members of Jehovah’s Witnesses. The child has lost a lot of blood, and will die if it does not get a blood transfusion. If the parents reject the offer, the state will temporarily take over custody of the child in order to ensure its survival and future well-being. Paternalist policy in our case can be defended on the same grounds if the treatment is (1) a low risk treatment for the child
compared to the consequences of doing nothing, and (2) an effective way to prevent the individual from ending up with antisocial or psychopathic traits.

In this chapter we have critically discussed whether or not Duff's 'right to be presumed harmless' should extend to minors with conduct disorder and limited prosocial emotions. We argue that it should not because of a combination of the following factors: (1) We are advocating treatment and not incarceration, (2) the 'respect' for autonomy that Duff is referring to should not and is not normally extended to minors and, (3) because the behavior that is needed in order to diagnose someone with conduct disorder necessitates the display of criminal character traits. We argue that there is at least one strong paternalistic argument in favor of mandatory treatment when necessary in order to protect children from parents that are bad choosers, much in the same way as we do with injured children in hospitals.
Autonomy

In this chapter we give a general definition of autonomy in order to discuss the moral problems related to undermining the autonomy of parents who may refuse to let their children receive treatment – be it therapeutic or medicinal. We will discuss different criteria for when a decision is qualified to be called autonomous and discuss why seemingly autonomous decisions might sometimes be less autonomous due to cognitive bias. We will argue, that while autonomy is in fact valuable it is not an absolute value and it can be morally justifiable – or even required – to undermine parent’s autonomy under certain circumstances.

The meaning of autonomy

While most people will have an intuitive understanding of the meaning of the word autonomy, the term has historically been the subject of much technical discussion. One of the main problems of this discussion is related to the question of how autonomous an action needs to be in order to meet the necessary conditions to be called autonomous. In his book, *The Theory and Practice of Autonomy*, Gerald Dworkin addresses this problem and exemplifies it with several different views on the term. Without going into too much detail on the many historic and contemporary examples, it is interesting to note that some definitions are definitely too strict to make any sense if we wish to speak of autonomy as something that actually exists. The famous behavioral psychologist, B. F. Skinner, actually denied the very existence of autonomy (Dworkin, 1988: 8). It would of course make no sense to discuss the moral questions concerning the infringement of autonomy, if we denied the existence of such a thing, but it goes to show how varied the opinions on the term are and how difficult it is to give a thorough definition. Dworkin recognizes this as he remarks:

“I use the vague term “characterize” rather than “define” or “analyze” because I do not think it possible with any moderately complex philosophical concept to specify necessary and sufficient conditions without draining the concept of the very complexity that enables it to perform its theoretical role.” (Ibid: 7).

If we by autonomous mean a person free of any sort of external influence then it is doubtful if any autonomous agents have ever existed. When we use the term in this paper, we refer to decisions made by reasonably rational agents, who are not under duress nor influenced by mind altering drugs. Whether or not their decision is based on the advice of another person or something they read
is not relevant as long as they freely – at least freely on a conscious level – choose to let that source influence their decision.

**Cognitive bias and flawed reasoning**

In her book, *Against Autonomy*, Sarah Conly argues that autonomy has historically been overvalued by most philosophers discussing the moral implications of coercive paternalism. This is partly due to what Conly refers to as cognitive bias. People are prone to miscalculate risks and probabilities and generally underestimate their own risk of falling victims of misfortunes even if it is entirely out of their hands to prevent it (Conly, 2010: 21f). One might intuitively think, that if your child is at great risk of facing problems later on in life, you would be willing to do almost anything to prevent this from happening. Some parents certainly would. But it is also a sensitive subject, and people have a tendency to want to protect their children from too much interference. There is also a risk of misjudgement due to natural love parents feel for their own children. It is often harder to judge correctly about those closest to us, and many parents would feel inclined to come up with excuses for their children’s behavior. Furthermore, we often have conflicting desires. It may be logically inconsistent to autonomously not want to let a therapist near your child who suffers from conduct disorder and limited prosocial emotions while simultaneously wanting your child to live a good life without getting into trouble with the criminal justice system. But there is nothing that prevents people from being logically inconsistent at times. Even if you want what is best for your child more than you want to be free from therapeutic interference, the immediate presence of the unwanted interference in one’s personal life combined with the uncertainty and potential nature of your child’s future legal trouble, might well induce some parents to reject the offer. In such a case coercive paternalism would actually help people get what they autonomously want the most, but because of flawed reasoning and cognitive bias are unable to pursue. As Conly puts it: “Coercive paternalism takes certain decisions out of our hands. It does this in order to help us do what we want to do (…)” (Conly, 2010: 33).

It could also be argued in this case, that a child who meets these conditions are likely to end up in a situation, where his or her autonomy will be severely limited if no early help is provided. So a minor reduction of parental autonomy might well lead to a much more autonomous life for the child in the future, because it is less likely to end up in prison and more likely to have meaningful and stable relationships with other people (Nolen-Hoeksema, 2013: 321).
The value of autonomy

While there is hardly any question as to whether or not autonomy is in some way valuable, philosophers disagree as to how much and in what way. Joel Feinberg considers autonomy to be an absolute value and considers governmental infringements of autonomy to be highly blamable:

“Part of the answer, I think, is that when it is applied by another party to oneself it seems arrogant and demeaning. It says in effect that there are sharp limits to my right to govern myself even within the wholly self-regarding sphere, that others may intervene even against my protests to “correct” my choices and then (worst of all) justify their interference on the ground (how patronizing!) that they know my own good better than I know myself.”

(Feinberg, 1986: 23)

Others, like Conly, have the more moderate view that while autonomy is valuable, its value is instrumental rather than intrinsic, and that the question of whether or not paternalistic interference is permissible should be a question of costs and benefits:

“In all these theories, a natural division between permissible and impermissible paternalism is hard to find – because, I will argue, no division exists other than that provided by a cost-benefit analysis. What makes paternalism permissible is not a function of the intrinsic features of the situations as much as how much some interventions costs us, both in terms of psychological burden and social ones” (Conly, 2010: 7).

We tend to agree with Conly on this subject. Considering things such as cognitive bias, conflicting desires and the fleeting nature of the very concept of autonomy, it seems unreasonable to claim that autonomy is a priori off limits. As we have discussed, there is considerable harm associated with the violent crimes of psychopaths. They are severely overrepresented in crime statistics and the nature of their crimes tend to be characterized by instrumental violence (Maibom, 2015: 10). When considering this issue through Conly’s method of analyzing costs and benefits, it seems that in this case the costs of not intervening are very high: (1) Several innocents could end up severely hurt or murdered and as a result experience a loss of autonomy, and (2) a person that might have been able to live a productive and meaningful life may have to spend many years in prison, and will as a result lose the right to make many autonomous decisions during his incarceration, probation and parole. The cost of intervening seems low in comparison: A parent suffers an undermining of his or her autonomy regarding a parental decision that seems dubious in the first place. While autonomy is - as previously mentioned - valuable, every situation should be evaluated independently, and in this case we would argue that the autonomy of parents should be overruled in favor of the concern for
the potential future victims, the child itself, and the loss of autonomy that both parties would suffer if the child grows up to develop an antisocial disorder such as psychopathy and commits a violent crime.

In this chapter we have discussed the problems concerning the finer nuances regarding the concept of autonomy, and given a rough definition of the minimum conditions that we consider sufficient for a decision to be autonomous. Furthermore, we have introduced various factors that might interfere with the ability to make rational decisions such as cognitive bias and flawed reasoning. We have looked at two different views on how to value autonomy, and we conclude that it is morally permissible to override autonomy if the cost of not doing so is comparatively higher.
Conclusion

In our chapter on surveillance and privacy we conclude that the kind of surveillance that we propose is not significantly different from the surveillance that children are already exposed to, and that it is morally justifiable especially because of the greater chance of success if antisocial behavior is recognized and treated early in life.

In our chapter on diagnosing we conclude that the objections are not sufficiently relevant to render the practice that we propose unethical when it comes to the diagnosing of children with conduct disorder and limited prosocial emotions.

In the chapter focusing on our moral responsibility to potential future victims we conclude that the problem of false positives should not prohibit us from introducing mandatory treatments because of the low cost and potential advantages that the treatments might bring them. We conclude that the claim that cognitive enhancements are an unacceptable diminishing of individual worth fails to demonstrate its validity.

In our chapter on whether or not it can ever be morally right to introduce mandatory treatments on potential future offenders, we conclude that ‘the right to be presumed harmless’ can be forfeited if the target group is minors with conduct disorder. We then conclude that the protection of children of parents that are ‘bad choosers’ is a strong paternalist argument in favor of mandatory treatment.

In the last chapter on autonomy we conclude that autonomy has instrumental and not intrinsic value, and that it is morally permissible to infringe upon parents autonomy if the costs of not doing so are comparatively higher.

In the end we conclude that the above mentioned objections to mandatory treatment of minors with conduct disorder and limited prosocial emotions fail to give a reasonable account of why the practice is unethical, and that the positive benefits are sufficiently great to make the practice morally permissible.
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