



## Antisocial Personality Disorder and Legal Responsibility: A Systematic Review of the Evidence

### *Trastorno de la Personalidad Antisocial y Responsabilidad Legal: Una Revisión Sistematizada de la Evidencia*

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#### ABSTRACT

This article presents a systematic review on the legal responsibility of individuals diagnosed with Antisocial Personality Disorder from 2018 to 2024. In recent years, a debate has been maintained on the legal treatment of psychiatric disorders, including personality disorders, due to the complexity in managing their imputability in the legal system. The PRISMA model criteria were used to review and select studies relevant to this objective in academic databases. The results show that there is evidence of alterations at the neuroanatomical level that may affect the volitional capacity of people with APD, resulting in poor impulse control. However, some authors agree that, despite these alterations, individuals with this diagnosis are fully aware of their actions and their consequences when committing a crime, so this diagnosis would not necessarily constitute a reason for mitigation of their imputability. This article highlights the importance of continuing to develop theory and evaluation methods to establish adequate legal treatment.

**Keywords:** imputability, antisocial personality disorder, psychopathy, legal responsibility.

#### RESUMEN

Este artículo presenta una revisión sistematizada sobre la responsabilidad legal de individuos diagnosticados con Trastorno de Personalidad Antisocial en el período 2018 - 2024. En los últimos años se ha mantenido un debate sobre el tratamiento legal de trastornos psiquiátricos, incluyendo los

trastornos de la personalidad, debido a la complejidad en el manejo de su imputabilidad en el sistema legal. Se emplearon los criterios del modelo PRISMA para la revisión y selección de estudios pertinentes a este objetivo en bases de datos académicas. Los resultados muestran que existe evidencia de alteraciones a nivel neuroanatómico que pueden afectar la capacidad volitiva de las personas con TPA, y que resultan en un deficiente control de impulsos. Sin embargo, algunos autores coinciden en que, a pesar de estas alteraciones, los individuos con este diagnóstico tienen plena conciencia de sus actos y sus consecuencias al momento de cometer un delito, por lo que este diagnóstico por sí mismo no constituiría necesariamente una razón para atenuar su imputabilidad. Se resalta la importancia de continuar desarrollando la teoría y métodos de evaluación para establecer un tratamiento legal adecuado.

**Palabras clave:** imputabilidad, trastorno antisocial de la personalidad, psicopatía, responsabilidad legal.

#### INTRODUCTION

One point of intersection between Psychology and Law is the analysis of criminal behavior. In this context, one of the most relevant debates is the relationship between criminality and the presence of psychological disorders (Jácome et al., 2023). Although there is a connection between personality and delinquency (Human-Hendricks & Roman, 2014; Aguirre et al., 2013), this relationship is complex and cannot be considered in a unidimensional way (Manunza & Giampaolo, 2018).

This link between mind and law directly influences the concept of imputability, which is the foundation of legal responsibility. Imputability implies the attribution of an act and its consequences to a person, which justifies that person being held accountable to society for his or her actions, whether positive or negative. Without imputability, true responsibility cannot exist (Ronco, 2014).

In this context, the literature agrees on the fact that the concept of imputability is based on three main axes. On the one hand, typicality is considered, a concept that implies that every action or omission contemplated in the legal field must be contained in some criminal type. To determine this, an objective typicality analysis process must be carried out, where it is understood that the acts committed are directly classified in a legal document, and subjective typicality, which has to do with those acts that, although they are not specifically classified in a legal type, there are antecedents of similar situations in which the jurisprudence has ruled on a certain legal action (Mata, 2020).

The second axis on which the concept of imputability is based is unlawfulness, within which it

must be ruled out that the act in question does not have any cause of justification, which determines that said action or omission is contemplated in the Law (Arias et al., 2022). Finally, culpability must be considered, that is, that the individual had prior knowledge of the act committed and its consequences (Mata, 2020).

Taking into account the above, for an individual to be considered accountable, it is necessary that he or she has sufficient cognitive abilities to have the capacity for self-determination and freedom to decide. Therefore, when a possible crime is committed, it is necessary to determine that the subject has acted in accordance with his or her free will, and that said actions have been previously reasoned and that there has been a conscious decision-making process regarding the fact and its consequences.

Another concept associated with imputability is criminal conduct, understood as those behaviors that deliberately transgress the norms and all forms of social control that monitor compliance with coexistence guidelines dictated by a legal framework (Chirino & Giménez, 2018). This type of behavior can be considered an expression of the particular psychopathology of the perpetrator of the crime, in the event of a psychic disorder. These aspects of the individual's personality must be subject to examination, because it could be determined that his condition of mental pathology implies an alteration of his cognitive and volitional capacities, and, therefore, that he is not imputable.

Therefore, the concept of imputability, defined as the determination that a person is subject to a penalty established by law (Casanueva, 2014), is closely related to psychological factors, since it implies that the subject has a set of minimum psychic faculties to be aware of his actions, and that there is no alteration of his will at the time of "deciding" to commit them.

However, individuals with a personality disorder have symptomatic characteristics that may predispose them to the manifestation of criminal behavior, such as impulsiveness, emotional coldness, and lack of empathy (Chirino & Giménez, 2018). Personality disorders are stable phenomena over time, occurring from adolescence or early adulthood of a subject, being inflexible and manifesting in all spheres of life, causing clinically significant discomfort in the functionality of people.

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<sup>1</sup>The American Psychiatric Society in the third edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) changed the term "psychopath" to "Antisocial Personality Disorder" and in the fourth edition to "Antisocial Personality Disorder". However, several authors establish differences between psychopathy (personality traits, heritable, deviant behaviors) and Antisocial Personality Disorder (criminal behaviors, antisocial). While there are other studies that

The Diagnostic and Statistical Manual of Mental Disorders DSMV-TR (American Psychiatric Association [APA], 2019) defines personality disorders as "an enduring pattern of internal experience and behavior that departs markedly from the expectations of the subject's culture" (p. 733).

Additionally, the International Classification of Diseases ICD-11 (World Health Organization [WHO], 2019) stipulates that personality disorders involve an alteration of some aspects of the self, such as identity, self-esteem, self-perception and self-direction, in addition to interpersonal dysfunctions, such as the ability to develop and maintain close relationships, understand the points of view of others, and resolve interpersonal conflicts.

To assess personality disorders, it is proposed, first of all, to assess the presence of this type of alterations, and to identify whether these are of late onset, since in that case they would not be considered a personality disorder. On the other hand, it is necessary to stipulate the severity of the alterations, since, if they do not meet a minimum requirement of severity, they could not be considered a disorder, but a personality difficulty. Finally, the need to assess the quality of the disorder is highlighted, which is established through the description of a domain of traits, that is, those dimensions of the personality that stand out most in the individual (Figuroa, 2018).

As for Antisocial Personality Disorder (APD), its main characteristic is a persistent pattern of indifference and violation of the rights of others, which begins in childhood or early adolescence and continues into adulthood. This pattern has been commonly referred to as psychopathy,<sup>1</sup>sociopathy, or antisocial personality disorder (López, 2013).

For an individual to receive this diagnosis, certain considerations must be met: they must be at least 18 years old; they must have had a history of behavioral disturbances before turning 15, and these transgressions must not be associated with age-appropriate norms. Other characteristics of this disorder include aggression toward other people or animals, destruction of property, deception or theft, or violation of rules characterized by impulsivity and lack of remorse, according to the DSM-5TR diagnostic manual (APA, 2019).

Despite being a known disorder with an established assessment and diagnosis, the etiology of Antisocial

statistically identify a positive correlation between psychopathic traits with ASPD (DeLisi, 2023). Many non-psychopathic criminals may have a diagnosis of ASPD (Aluja, 1991), in addition, the literature shows that approximately only one third of people with ASPD are diagnosed with psychopathy (Salvador et al., 2015). Therefore, the present review includes research that addresses the legal liability of psychopathic traits in addition to those related to ASPD.

Personality Disorder is not fully understood. Evidence indicates the existence of a biological component, that is, heritability in its onset (Shin-Yee, 2023). In addition, genetic factors (MAOA gene) and neurobiological factors (abnormalities in the orbitofrontal and anterior temporal cortex) are known to be associated with the development of this disorder (Frazzetto et al, 2007).

In addition to the existence of genetic indicators, it is considered to be a multifactorial construct, in which the environment in which the individual develops intervenes. Within this category, it is necessary to consider that adverse childhood experiences, understood as various forms of abuse, neglect, and other forms of childhood adversity, are related to mental health alterations throughout development, including psychiatric and personality disorders (Alvela et al., 2019).

People diagnosed with ASPD have not only been exposed to a greater number of adverse experiences during their childhood, but the accumulation of these experiences contributes to the emergence of more serious, violent and chronic manifestations of criminal behavior (Cáseres-Serrano & López-Robledo, 2018).

The influence of family economic status on children's antisocial behavior has been shown to be a low-relevance predictor, in contrast to the significant influence of negative family characteristics such as neglect, hostility, indifference, and physical abuse. In environments characterized by these family dynamics, children tend to internalize a view of the world as cold, inhospitable, and punitive, which shapes their perception of life as a struggle for survival and control of the environment. In addition, the lack of opportunities to learn socially appropriate behaviors adds to the challenges faced by this population (Sue et al., 2010).

On the other hand, another factor that seems to be involved in the etiology of ASPD is the presence of psychopathology in childhood, such as Oppositional Defiant Disorder and Conduct Disorder. Several authors consider that the symptomatology of these disorders acts as a prodromal factor of the diagnostic characteristics of ASPD (DeLisi et al., 2019).

It is important to clarify that the diagnostic characteristics associated with Antisocial Personality Disorder may share similarities with other disorders, which is why the importance of an adequate differential diagnosis is highlighted. It is possible to establish this differentiation with Narcissistic Personality Disorder, which shares the characteristic of manifestations of explosive and ruthless behavior, but differs from ASPD in the fact that it does not present aggression and deceit (Serra, 2016).

Likewise, Substance Use Disorder is similar in the impulsivity and irresponsibility component (Santos-de Pascual et al., 2020). In this case, consumption must be

ruled out when diagnosing ASPD, because antisocial behaviors can be better explained by the influence of substance use.

Another disorder that shares certain characteristics with ASPD is Borderline Personality Disorder, which is even categorized as a personality disorder, and is similar in the impulsive and manipulative nature of its behavior. However, those diagnosed with this disorder use this type of behavior as a means to obtain validation and affection, while in ASPD individuals seek to obtain pleasure in transgressing social norms (Fisher & Hany, 2019).

In the legal field, in the past only psychopathologies such as schizophrenia (and other psychosis spectrum disorders), intellectual disability, and certain mood disorders were considered as categories subject to non-imputability, without taking into account personality disorders alone. In more recent years, the idea of mental illness has spread, under the consideration that personality disorders constitute a sufficient cause to consider a significant alteration of the capacity of an individual to understand and discern the consequences of their actions, provided that these alterations show a degree of consistency, relevance, severity or intensity to affect said faculties, differentiating this symptomatology from other types of anomalies or emotional and passionate states (Oranges, 2018).

Currently, it is widely believed that a mere diagnosis of ASPD and psychopathy is not sufficient to exempt one from criminal liability. These psychopathologies also require that they generate one of the following psychological effects: a) a lack of understanding of the illegality of the act and b) a lack of action in accordance with that understanding (González, 1997). Since these disorders do not affect the “understanding of illegality”, they can only cause the second psychological effect: a lack of action in accordance with that understanding.

This effect, closely related to the will, can vary in intensity, and depending on the degree of affectation of the will, it can give rise to a complete, incomplete or mitigating exonerating circumstance (Roxin, 1981). According to the “theory of responsibility for the result”, a subject is considered responsible for the act committed due to the occurrence of the result (Jiménez, 1976).

In relation to similar research carried out recently, Orenes (2020) stands out, who carried out a systematic review of the bibliographic evidence on the application of psychiatric expert evidence as a tool for the diagnosis of different psychiatric pathologies and its consequent application of the legal concept of imputability. This research revealed that, in the case of Borderline Personality Disorder, in many cases the imputability of the defendants was completely annulled, since it was

considered that this disorder constitutes an alteration of cognition and will, in addition to the perception of the reality of the subjects. On the other hand, no reduction of imputability was applied in the case of Antisocial Personality Disorder, since it was considered that these individuals are fully aware of reality and act of their own free will.

On the other hand, Manunza & Giampaolo (2018) examined the legal consequences applied to a sample of offenders associated with the crime of harassment, among which were people with pathological personality traits. This study showed that the presence of these traits is associated with repetitive and persistent harassment behaviors. However, it is concluded that it is the interaction of several psychopathological aspects among which are personality alterations, which determine a specific behavior, and that these must be present in a high degree of severity for it to be referred to as mental insanity, which can reduce or exclude an individual's competence to commit a crime.

In short, the relationship between TPA, accountability and legal responsibility is a matter of debate. Due to the high prevalence of this disorder in the prison population, considering it as a cause of non-accountability would complicate the prosecution and prevention of crime. Some positions see TPA as an attenuating factor of mental responsibility, while others maintain that people with this disorder are aware of their actions and have full connection with reality when committing crimes. The dangerousness and moral disorder associated with TPA could justify not reducing accountability in these cases. (Borbón, 2021).

In this sense, the present article aims to carry out a systematized review of the legal responsibility attributed to subjects diagnosed with Antisocial Personality Disorder in the period 2018 - 2024. Addressing this problem from the framework of Legal Psychology allows us to obtain an updated overview of what the theory establishes about the characteristics of this disorder, its relationship with criminal behavior and the legal responsibility of those who meet its diagnostic characteristics.

## METHODOLOGY

This document constitutes a Systematized Review of the Scientific Evidence of the Narrative Synthesis type regarding the Imputability of Antisocial Personality Disorder in the period 2018 - 2024. This review is based on the PRISMA criteria (Preferred Reporting Items for Systematic reviews and Meta-Analyses) (Urrutia & Bonfill, 2010), standardized for the adequate presentation of scientific information in this type of documents.

The search terms used for the literature review were selected to locate studies published in English and Spanish. The terms "Imputability" and "Imputability

Disorder" were used, separated by the Boolean operators AND and OR to find these terms in the titles, abstracts or keywords of the studies, prior to the screening process based on the inclusion and exclusion criteria.

The academic databases in which this review was carried out were Web of Science, Scopus, Medline, Pubmed, Social Science Database, Psychology Database, Science Direct and Dialnet.

The search criteria used in this review were the following:

- Inclusion criteria: Scientific articles published in journals with a peer review process; Scientific articles written in English and Spanish; Scientific articles located in the databases described previously; Scientific articles that match the search terms; Scientific articles published in the period 2018 - 2024.
- Exclusion criteria: Books; Undergraduate, Master's or PhD theses; Dissertations; Book chapters; Incomplete texts.

The screening and selection process of the scientific articles was carried out using the Rayyan tool (Ouzzani et al., 2016), which allows the organization of documents extracted from the different academic databases selected, and the review of the relevance of the studies and their compliance with the inclusion criteria. Subsequently, a process of reading, analysis and synthesis of the selected studies was carried out in order to obtain information concerning the objective of the research.

## RESULTS

This study aimed to examine the recent literature regarding the legal treatment of Antisocial Personality Disorder. Below are the general results of the articles selected after the screening process, and the categories of results based on the objective of the review.

**Table 1.** Scientific articles selected by year of publication.

Year of publication	Number of studies	Code
2018	2	A3, A5
2019	6	A1, A2, A4, A7, A8, A9
2020	2	A6, A10
2021	1	A11
2023	2	A12, A13

Source: Own elaboration

After carrying out the search for studies in the selected academic databases, 78 scientific articles were located, of which 4 duplicate documents were eliminated, and 61 that did not meet the inclusion

criteria, obtaining a total of 13 articles. The selected studies were published between 2018 and 2023, reflecting an updated state of the art regarding the debate on the legal responsibility of subjects diagnosed with TPA and the need to further research on this topic.

The selected scientific articles present relevant advances in topics such as the contribution of neuroscience to the study of individuals diagnosed with APD, jurisprudence regarding its treatment, and the contribution of psychology from a theoretical point of view and as a basis for legal decision-making. Table 2 presents a summary of the theoretical contributions found in the selected documents, categorized according to the areas described above.

**Table 2.** Scientific articles selected by theoretical categories.

Category	Number of studies	Code
Contributions from neurosciences	4	A1, A2, A5, A10
Review of jurisprudence	3	A3, A8, A13
Contributions of psychology to legal treatment	7	A4, A6, A7, A9, A11, A12

Source: Own elaboration

## DISCUSSION

Understanding the unlawful nature of an act and the ability to act on that understanding at the time of the crime are crucial to determining legal liability. Personality disorders, including ASPD, and psychopathy vary in intensity and severity from one individual to another. Likewise, the diagnostic criteria and symptoms of ASPD and psychopathy do not guarantee a total loss of the ability to understand the unlawful nature of actions. Therefore, the diagnosis of these psychopathologies does not automatically imply a reduction in sentence; an analysis of the circumstances of the crime is required to determine the extent of the impairment in the ability to understand the unlawfulness of the conduct (Borbón, 2019).

Currently, there is little consensus on whether APD and psychopathy should be considered as grounds for non-imputability. Legal decisions must be based on the personal variables of each case and on the conceptual difference in the capacity for guilt between law and neuroscience (Harbottle, 2019). This lack of consensus reflects the complexity of integrating neuroscientific knowledge into the legal field, where imputability must be assessed in a multidimensional manner.

In this sense, psychology has a direct impact on criminal law by providing useful technical knowledge to distinguish between common criminals and those

who enjoy committing illegal acts. This last characteristic is key to determining the imputability of an individual, as it indicates a cognitive capacity preserved during the illegal conduct (Castillo, 2019). The psychological approach allows a more nuanced assessment of legal responsibility, differentiating between different criminal profiles.

Studies of brain abnormalities do not provide conclusive evidence of a medically significant impairment that invalidates cognitive abilities in people diagnosed with APD (Borbón, 2019). Some argue that considering the neurobiological alterations of APD as a cause of non-imputability is reductionist. A correlation is required between antisocial behavior and an inability to rationalize conduct, manifested in various contexts of the subject's life. Thus, a subject cannot be considered non-imputable if he has a "degree of awareness" of his actions and their illegality (Jurako & Malatesti, 2018).

Functional models have been proposed to explain the signs and symptoms of these disorders. The neuromoral theory of antisocial behavior proposes that dysfunction of neural networks underlying moral behavior is a fundamental cause of this phenomenon. This dysfunction results in emotional, thought, and behavioral alterations, facilitating the development of antisocial behavior (Raine, 2019).

However, for these factors to be considered in the imputability, brain impairment must be demonstrated. In addition, although the theory suggests a volitional alteration due to the involvement of specific areas of the brain, it must be specifically considered and assessed whether the subject had full knowledge of his actions and their consequences. This approach poses a significant challenge in legal practice, given that the precise assessment of brain impairment and its impact on the moral behavior of the individual is not a simple task (Raine, 2019).

Furthermore, psychopathy can hardly be considered a unitary phenomenon, with a single cause and homogeneous manifestation, according to its multidimensional structure. For example, reduced sensitivity to emotional stimuli and aversion to threat signals in psychopaths explains their lack of intrinsic motivation towards the well-being of others and their lack of empathy. These individuals also show a deficit in the regulation of decision-making, possibly caused by atypical connectivity in cortical areas (Decety, 2020).

Similarly, some approaches consider psychopathy as an adaptive response to adverse environments. Empirical evidence is not sufficient to consider psychopathic learning abnormalities as manifestations of disabilities due to internal or neuroanatomical impairments. For this reason, a social intervention approach is proposed to mitigate the negative effects of psychopathy, suggesting that societies could benefit from adjusting the physical and social environments

that exacerbate these traits (Jurjako et al., 2021). This adaptive approach offers a broader perspective to understand and manage these disorders in legal contexts.

On the other hand, studies on gender differences and forms of manifestation of ASPD and psychopathy show that ASPD is less prevalent in women compared to men. Likewise, women with high scores in psychopathy tend to commit mostly impulsive crimes, and have a higher incidence of personality disorders, especially histrionic and borderline. On the other hand, psychopathic traits in women with zero, partial or total responsibility are similar, and psychopathy has been seen to be more associated with personality disorders than with psychotic or schizophrenia spectrum disorders (Carabellese et al., 2019).

In relation to incidence, in the United States, approximately one-third of the male prison population sentenced for homicide has been classified as psychopathic. Linked to this, the positive correlation found between psychopathy scores and the ASPD ( $\rho = 0.72$ ) is interesting, in terms of criterion validity. Furthermore, psychopathy is frequently cited during capital sentencing proceedings (DeLisi, 2023). This high prevalence and the use of psychopathy in sentencing proceedings reflect the importance of this disorder in the penal system.

An analysis of sentences carried out by Álvarez et al. (2019) shows that the majority of defendants do not present impairments in their intellectual and volitional capacities. Thus, subjects with TPA without comorbidity with other pathologies are not considered unaccountable. Those to whom exemptions or alternative measures were applied suffered from disorders in addition to TPA. This shows the need to consider comorbidity and other contextual factors when evaluating imputability.

In any case, TPA and psychopathy are especially prevalent in the prison population, which is an indication of non-causality to reduce their legal responsibility (Fernández, 2020). Expert evidence is a judicial method to adequately assess the acts committed and the possible reduction of imputability based on the diagnosis of psychiatric disorders. Since TPA is frequently related to criminal behavior and is characterized by an inability to adapt to norms and display violent behavior, the possibility of reducing imputability is limited.

Legal provisions, such as the Orlando reform, tend to recognize the chargeability of defendants with APD due to their tendency to commit violent acts without an admission of guilt (Oranges, 2018). This underlines the need for an individualized assessment of each case, considering both clinical and legal aspects.

The debate on the imputability of psychopathy and ASPD seems to have reached a stalemate. First, as

clinical categories, the nature of these disorders is heterogeneous, and offers little prospect for integration with neuropsychological data to yield definitive conclusions on criminal responsibility. Second, these categories were not created to differentiate between criminally responsible antisocial individuals (Jurjako et al., 2023).

Ultimately, to the extent that psychopathy or ASPD does not impair an individual's volitional capacities, i.e., their ability to control their behavior, they will not be excused from culpability for criminal acts. Psychopathy is also not generally accompanied by delusions of the kind that would deprive the affected person of the ability to understand the nature of their act. Whether it would prevent them from "knowing that the act or omission was morally wrong" is a considerably more controversial question, one that continues to divide opinions among psychologists, lawyers, and philosophers. Finally, not only can psychopathy and ASPD be rejected as exonerating or mitigating conditions, they may even serve as aggravating factors in sentencing (Malatesi et al., 2022).

## CONCLUSIONS

The determination of legal responsibility depends crucially on the ability to understand the wrongfulness of one's actions and act accordingly. Although the presentation of ASPD and psychopathy can vary in intensity and severity, their diagnosis does not automatically imply an inability to understand the wrongfulness of one's actions. Studies of brain abnormalities in individuals with ASPD do not provide conclusive evidence of significant impairment that negates their cognitive abilities. Therefore, it is necessary to evaluate the specific circumstances of the crime to determine how these conditions affect the mental faculties of the accused.

The debate over whether ASPD and psychopathy should be considered grounds for non-imputability remains unresolved, highlighting the complexity of integrating neuroscientific and psychological knowledge in the legal field, where imputability requires a multifaceted assessment. Legal provisions and sentencing analyses tend to recognize the legal responsibility of defendants with ASPD due to the clinical particularities of the disorder and the absence of recognition of guilt. Ultimately, if these psychopathologies do not significantly affect volitional and cognitive capacities, they do not absolve individuals of guilt, and in some cases, they may aggravate the sentence.

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