

FUTURE DANGEROUSNESS

● Must separate:

- Dangerousness [defendant characteristic]
- Risk assessment [measurement of the probability of future offenses]

FUTURE DANGEROUSNESS

- Assessing defendants' risk of committing future violent acts
- Need to separate 2 classes of causes (Douglas & Skeem, 2005):
 - Dynamic risk factors: changeable; environmental
 - Static risk factors: stable; personality traits; mental illness

FUTURE DANGEROUSNESS

- S.C.: 2 dimensions in capital sentences
 - Individualized assessment – scores on tests, expert psychological opinion, etc. on the specific offender
 - Guided discretion: sentencer must consider (1) dangerousness of the offender, (2) the facts of the crime, and (3) the personal moral culpability of the offender
- Individualized assessment is divided into
 - Dangerousness judgment (prong 1 of G.D.)
 - Moral culpability assessment (prong 3 of G.D.)

GUIDED DISCRETION

- Intended to reduce capriciousness
- Intended to promote penal goals
 - Retributive justice [just deserts]
 - Consequential justice [deterrence]
- Intended to promote defensible sentencing criteria
- It is hard in practice to integrate guided discretion with individualized assessment because dangerousness judgment and culpability tend to be conflated. [fundamental attribution error?]

INDIVIDUALIZED ASSESSMENT

- Culpability assessment
- Dangerousness judgment

CULPABILITY ASSESSMENT

- Goal: determine level of moral responsibility for the crime
- “Individualized” means a moral inquiry into offender blameworthiness
- Should include:
 - Severity of crime
 - Intentionality/deliberateness
 - Offender’s cooperativeness
 - Offender’s remorse
 - Offender’s disabilities [disorders]
 - Offender’s disadvantages [poverty, etc.]

DANGEROUSNESS JUDGMENTS

- Goal: Determine whether offender exceeds a threshold of risk that justifies death
- Should involve:
 - Empirical estimate of the probability of future dangerous behavior
 - Assessment of whether capital crimes are likely to be committed [i.e., dangerousness for the specific legal purpose of capital punishment]

DANGEROUSNESS JUDGMENTS

- Some states use it as the primary component of death sentences
- Juror studies show that discussions of dangerousness occupy a large portion of their deliberation time – most time is spent deciding how dangerous the offender is
- Legally, dangerousness judgment must be different than culpability assessment
 - Dangerousness goes to penal goal of consequentialism [deterrence]
 - Culpability goes to retribution
 - They may support different sentences

DANGEROUSNESS JUDGMENTS

- There are some common errors in dangerousness judgments
- Group-based assessments [e.g., test scores that correlate with recidivism] result in errors:
 - Division fallacy: attributing group characteristics to an individual based solely on membership in a test group [all group correlations are imperfect empirically: most heads of state are married; the pope is a head of state; the pope is highly likely to be married]
 - Psychological tests and statistics introduce this source of error

DANGEROUSNESS JUDGMENTS

- Further errors in dangerousness judgments:
- The use of some excellent group predictors of dangerousness may be constitutionally inappropriate: gender, race, and poverty
- Clinical vs. “actuarial” (tests, group membership) judgments: clinical judgments are not substantiated by scientific data showing reliability
- Even the best actuarial measures have not been well enough validated to warrant their use as supporting a particular sentence

DANGEROUSNESS JUDGMENTS

- Violence Risk Appraisal Guide (best-studied and validated normative tool for estimating dangerousness)
- Developed by measuring recidivism in 618 men released from prison for serious crimes
- 50 predictor variables were studied in an attempt to predict subsequent recidivism
- 12 were found to predict recidivism

DANGEROUSNESS JUDGMENTS

12 VRAG predictors

- Biggest: Hare Psychopathy Checklist score
- Next-biggest: psychological maladjustment during elementary school
- Other 10: are small but significant predictors that do not add much discrimination

DANGEROUSNESS JUDGMENTS

VRAG problems

- Used to predict dangerousness in capital cases after a single offense – but 618 Ss were mostly repeat offenders
- Virtually none of the 618 had committed capital murder
- All 618 had been classified as mentally disordered
- No data are available on VRAG's ability to predict specific crimes [which is necessary to distinguish capital from non-capital sentences]

DANGEROUS PERSONALITY SYNDROMES

- Not mental illness, so does not reduce culpability
- Anti-social personality
- Sociopathy
- Psychopathy

ANTISOCIAL PERSONALITY DISORDER

"When I'm good, I'm very good. When I'm bad, I'm better." (Mae West)

- Practically synonymous with criminal behavior
- Not mentally ill
- Knows right from wrong
- Cruel
- Most are law abiding

ANTISOCIAL PERSONALITY DISORDER – DSM IV TRAITS (at least 3 for classification)

Criticism of APD:

- **The criteria change with each new edition of the *DSM*. The diagnosis was substantially changed with DSM-III when the APA decided to distinguish between child and adult characteristics, and substituted behavioral criteria (like truancy or law violations) for personality criteria (like callousness and selfishness). In the DSM-III-R, the focus was on violence and a list of violent acts . The current DSM-IV says that anything that is not sociopathy, psychopathy or dyssocial personality disorder is antisocial personality disorder, but there is considerable overlap. There are millions of possible variations in symptoms because there are at least 62 different measurable items.**

SOCIOPATHY

- Lack of conscience/character
- Narcissism
- Self-gratification
- Selfish & egocentric
- Basically, an unsocialized person

SOCIOPATHY - TRAITS

- Exaggerated sexuality
- Exaggerated boasting
- Inability to resist temptation
- Antagonistic/argumentative
- Contemptuous of opposite sex
- No social bonding with others
- Egotistical
- No conscience

ANTISOCIAL PERSONALITY DISORDER – DSM IV TRAITS (at least 3 for classification)

- Violates social norms
- Manipulative
- Lacks forethought
- Irritable
- Reckless disregard for safety
- Consistently irresponsible
- Lack of remorse for hurting others

PSYCHOPATHY

- A more profound variation on sociopathy and anti-social disorder (Dr. Mabuse)
- Extremely cold-blooded, coupled with surface charm
- Predatory
- Extreme lust for power and control
- Extremely intimidating
- Criminal acts, such as killings, seem to be unmotivated

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS (scored 1, 2, 3)

- Glib & superficially charming (smooth, verbally facile)
- Grandiose self-worth (cocky, braggart)
- Thrill-seeking/easily bored
- Pathological lying (sly, deceptive)
- Conning (cheats, defrauds)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Lacks behavioral control (rages, tantrums)
- Sexual promiscuity (including sexual coercion)
- Early (< 13) behavior problems (bully, vandalism, arson)
- Lack of long-term goals (aimless, nomadic)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS (scored 1, 2, 3)

- Absence of remorse or guilt for transgressions
- Shallow affect (cold, though seemingly gregarious)
- Callousness (tactless, contemptuous)
- Parasitic lifestyle (exploitative, selfish)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Impulsivity
- Irresponsibility (no sense of honor or obligation)
- Does not accept responsibility for actions
- Multiple short relationships and marriages

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Juvenile delinquency (13 – 18)
- Violations of probation or conditional release
- Criminal versatility (crimes of many types)

HARE PSYCHOPATHY CHECKLIST: IT'S NOT UNITARY

- Conceptual analysis: 4 facets
- Factor analysis: 2 orthogonal factors

HARE PSYCHOPATHY CHECKLIST: CONCEPTUAL ANALYSIS

- Facet 1: interpersonal behavior
- Facet 2: emotional expression
- Facet 3: lifestyle
- Facet 4: antisocial traits

HARE PSYCHOPATHY CHECKLIST: FACTOR ANALYSIS

- Factor 1: Psychopathy (constellation of traits related to this personality type)
- Factor 2: Chronically unstable life style
- These are independent, orthogonal factors: people with unstable life styles are not necessarily psychopaths (remember Prof. Eckenrode's video)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS (scored 1, 2, 3)

- Glib & superficially charming (facet 1; factor 1)
- Grandiose self-worth (facet 1; factor 1)
- Thrill-seeking/easily bored (facet 3; factor 2)
- Pathological lying (facet 1; factor 1)
- Conning (facet 1; factor 1)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Lacks behavioral control (facet 2; factor 2)
- Sexual promiscuity (**no loading**)
- Early (< 13) behavior problems (facet 4; factor 2)
- Lack of long-term goals (facet 3; factor 2)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS (scored 1, 2, 3)

- Absence of remorse or guilt for transgressions (facet 2; factor 1)
- Shallow affect (facet 2; factor 1)
- Callousness (facet 2; factor 1)
- Parasitic lifestyle (facet 3; factor 2)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Impulsivity (facet 3; factor 2)
- Irresponsibility (facet 3; factor 2)
- Does not accept responsibility for actions (facet 2; factor 1)
- Multiple short marriages (**no loading**)

HARE PSYCHOPATHY CHECKLIST: 20 TRAITS

- Juvenile delinquency (facet 4; factor 2)
- Violations of probation or conditional release (facet 4; factor 2)
- Criminal versatility (facet 4; factor 2)

HARE PSYCHOPATHY SCALE

- Arguments against its use to predict future dangerousness
 - Has a 2-factor structure; which factor is the defendant?
 - There are 4 different facets; which apply to the defendant?
 - 2 of the 20 items (10%) do not belong on this scale

HARE PSYCHOPATHY SCALE

- Arguments against its use to predict future dangerousness
 - Of the 18 items that “belong” on the scale, only one-quarter measure anti-social personality
 - Validity correlations do not rise to forensic standard (remember: it’s the square of the correlation, not the correlation, that is the variance accounted for)
 - Validity correlations are not crime-specific for murder
 - Validity correlations are not specific for one-crime defendants.