Criminal Culpability through the Lens of FASD

Aiming to Convince of Truth by Appealing to Lifelikeness

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Karen’s Disclosure

No conflicts / nothing to disclose
Learning Objectives

1. Identify generally-held societal assumptions that contribute to findings of criminal culpability

2. Consider why real-life implications of a FASD clash with traditional findings of criminal culpability such that what is generally assumed to be intentional may not be

3. Identify considerations and develop strategies for more accurately forming criminal culpability inquiries
"Lifelikeness"

Accurately representing or imitating real life

Relatable
What is culpability?

Culpability measures the degree to which a person can be held morally or legally responsible for action or inaction. It is a graduated dividing line—a spectrum—assigning, first, whether blame, guilt, or fault exists and, if so, to what degree.
Background / Theory

• Aim: protect society’s fundamental values

• Definition of crimes: act + level of intent

• Resolution and sentencing: society’s response to a violation of criminal laws
The overarching requirement is that a sentence must be proportionate to the gravity of the offense and the degree of responsibility of the offender.
The Basic Question

Society asks:
Given what this person did
--and--
given what their intent was,
do they deserve some form of punishment?

If so, how much?
• Actions society prohibits (or says we need protection from)

• “Conscious”
• A spectrum—from deliberate, intentional, knowing, reckless to negligent
Other offender characteristics
“Bad” Act

• Did it happen or didn’t it?
• Did the accused cause it?
“Bad” Intent?

• Did we intend to do the bad act knowing it was bad?

• We believe we can tell—we just know
Intent is inferred from the relationship between words, actions, environments and contexts through the lens of generally-held assumptions and presumed expectations.
Assumptions

all function the same
free will
voluntary, intentional decisions

Reality
Assumptions

- all function the same
- free will
- voluntary, intentional decisions
- stuck in time

Reality

different structure
different development
different functioning
different perceptions
different reactions, sensitivities
Intent depends on what’s inside us and what’s outside us
One never steps into the same river twice

--Heracletus
Evolving Understanding & Standards

- identification
- how we identify / diagnostic criteria
- services & intervention
- populations
Evolving Understanding & Standards

- analyze intent
- degree of responsibility of the offender
- not limited to the past: forward thinking
- mitigation