

Syndrome Evidence

Comparative Law and Social Science

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Use of Social Science to Provide Context, Explain and Excuse Criminal Behavior

- Psychological syndromes, including the so-called “abuse excuses”
 - Battered woman syndrome
 - Battered child syndrome
 - Child sexual abuse accommodation syndrome
 - Cultural and subcultural explanations for behavior
 - Anthropological insights, sociological research
 - Incitement through violent television and other media
 - Communication research on impact of media on behavior
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Social Science Used to Address Incomplete and Inaccurate Assumptions about Violence

“The law dealing with violence has been generated by men about men’s explosive reactions to threats from other men and provocative words uttered by men...It has been predicated on assumptions of equalities of strength....It has not adapted easily to scenarios of chronic violence or oppression [and inequalities of physical strength].”

Ian Freckelton, Syndrome Evidence
(p. 158)

Battered Woman's Syndrome

- *Ibn-Tamas v. U.S.*, D.C. Court of Appeals, 1979
 - Wife killed her husband, a doctor, after years of physical abuse
 - The defense offered psychologist Lenore Walker, who had conducted research interviews and written a book about battered women, as an expert witness
 - Trial court excluded Lenore Walker's expert testimony
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Battered Woman's Syndrome

- Cyclical patterns in battering relationships – used to show way in which women are led to remain in relationship, and why women may use quiet period to strike back
 - Tension building phase
 - Acute battering incident
 - Loving-contrite
 - Hypervigilance; perception of narrowed options; fear – used to explain why women use violence against batterer rather than leave
 - Psychological phenomenon of “learned helplessness” used to explain why battered women do not leave abusers
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Battered Woman's Syndrome – Acceptance in Various Countries

- Initially, in the USA, trial and appellate courts differed on whether they would permit, or uphold a decision to exclude, expert testimony concerning battered woman syndrome
 - USA: now accepted in most jurisdictions, in part because of effective advocacy of women's groups for legislation permitting it
 - Canada: accepted in Canada (*Lavallee v. R.* 1990)
 - Australia: BWS may be permitted in cases where the “immediate threat” requirement for violent response is not met
 - Travis Irons – *R. v The Queen* (case involving spousal abuse)
 - New Zealand: permitted BWS (in one case, gave additional weight in case involving Samoan culture, because of cultural restrictions on a married woman's independence).
 - Yet, as Freckleton's piece describes, there is great debate over the scientific merit of the BWS.
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Battered Woman Syndrome, PTSD

- BWS is sometimes now described as a variation of Post-Traumatic Stress Disorder (PTSD)
 - PTSD emerged as a psychological disorder around the time of the Vietnam War (1960s-1970s) when young American men returned to the USA after combat with serious psychological problems
 - In 1980, the American Psychiatric Association first added PTSD to the third edition of its *Diagnostic and Statistical Manual of Mental Disorders* (DSM-III). It has been revised and included in subsequent editions.
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Features of PTSD

- Presence of a traumatic stressor, “outside the range of usual human experience,” that would likely cause stress in anyone who experiences it
 - Persistent re-experiencing of the trauma – especially when a situation resembles the original stressor event
 - Persistent avoidance of stimuli associated with the trauma or numbing of general responsiveness, not present before the trauma
 - Persistent symptoms of increased arousal, such as hypervigilance, lack of concentration, outbursts especially related to reminders of stressor event
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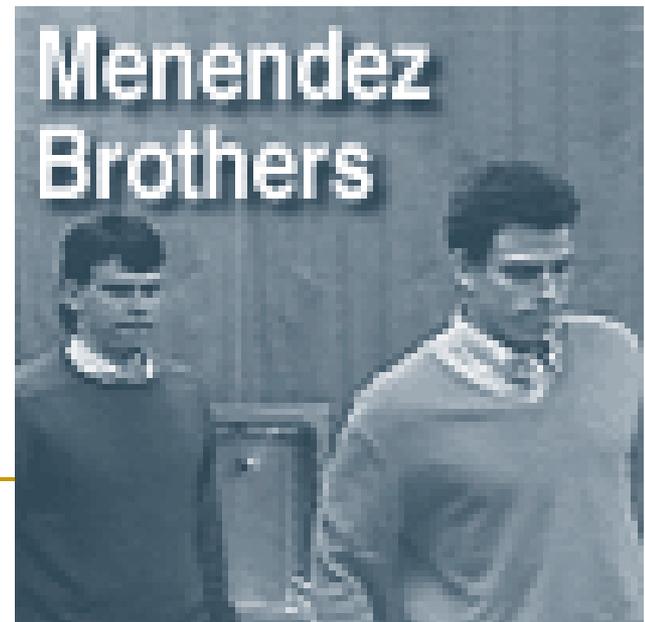
Research on US veterans shows link between exposure to intense combat roles during war and PTSD

- Several studies by the USA VA hospitals, from Vietnam era and Iraq war era, show that combat roles during war are significantly correlated with violent crime rates among vets.
 - Most vulnerable vets (poor, minority, unstable upbringing) are more likely to suffer from long-term reactions
 - Importantly, research with Los Angeles VA center vets shows that combat exposure level, not pre-adult antisocial behavior, is related to PTSD symptoms
 - Yet, is PTSD defense giving vets permission to be violent without consequences?
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The “Abuse Excuse” of Battered & Sexually Abused Children

- The Menendez brothers were sons who killed their parents
- In their California trials they claimed self-defense or lower criminal responsibility because of maltreatment by their strict and abusive father
- Their initial trials ended in hung juries, leading to a public uproar
- They were both convicted in subsequent trials

(picture from www.courttv.com)



“TV Made Me Do It”

The impact of violent TV

<http://www.umc-gbcs.org/white.htm>



Are we conditioning children to become killers?

Violent Media

- Social science evidence on media violence provides scientific support for the causal role of violent media on aggression
 - Using complex multi-stage models, researchers have identified extensive exposure to violent media as a significant risk factor for aggressive behavior
 - Its impact is strongest for most aggressive children
 - In a number of US trials, there have been efforts to introduce expert testimony about this social science evidence in cases in which children mimic criminal actions of movies and TV shows
 - Although the experts have been allowed to testify, the media always win!
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Rape Trauma Syndrome Evidence in Court

- Another form of PTSD
 - Initially identified by Burgess and Holmstrom in their clinical work with rape victims
 - Used to help explain why women might not report rape immediately
 - More controversially, used to support woman's claim of rape
 - Characteristic responses
 - Fear, guilt, shame, sense of loss, diminished trust
 - Disturbance in functioning, lifestyle changes
 - Controversial in the courtroom – particularly when there is an attempt to use it to support prosecution claim that woman was raped, or defense claim that woman was not raped
 - Reliability of RTS has not been well-established
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Cultural and Subcultural Phenomena

- Some legal cases involve behavior by a member of an immigrant or subculture that seems inexplicable outside the group.
 - Lawyers have offered expert anthropologists, sociologists, or psychologists to testify about the meaning, significance, and impact of cultural phenomena.
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Two culture case examples offered by some of my Cornell students (Josephine Deang, Cherise Pais, & Emily Smith)

- A vegetarian Hindu man was mistakenly served a beef burrito at Taco Bell
- He filed a civil lawsuit against the company Taco Bell
 - His Hindu religion strictly forbids eating the meat of cows
 - To purify himself, he needed to journey to India for a cleansing bath in the Ganges River
 - He also required psychiatric services
- ***Should an expert testify about the matter?***
- ***Should Taco Bell be liable for compensating the man for these injuries?***



A second case example from my Cornell students

- A Nigerian woman living in the USA used a razor to make incisions in her 2 sons' faces
 - The incisions were traditional marks that boys needed to participate as adults in their culture
 - The boys were willing participants
- The woman was charged with assault

- ***Should an expert testify about the cultural significance of the incisions?***
- ***Should evidence go to the jury?***



Results – suggest some compromises were made to accommodate the cultural contexts of these actions

- Taco Bell settled the case just prior to the trial.
 - Judge instructed the jury it must convict the Nigerian woman, but then the judge granted an absolute discharge so she spent no time in prison for the assault conviction.
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Conclusions about Syndrome Evidence

■ Positive aspects

- Can help explain context, meaning, and significance of a litigant's actions to the factfinders (judge, jury, or lay assessors)
- Can help counter commonly accepted myths

■ Problematic aspects

- Expert testimony about syndromes runs the risk of substituting new myths, if the syndrome evidence is not based on credible scientific evidence
 - The heightened standards for admissibility of scientific evidence (judicial review in USA, following *Daubert* trilogy of cases) forecasts increased challenges to syndrome evidence
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