

# Future Dangerousness: the Errors in its Principles and the Harm it Facilitates

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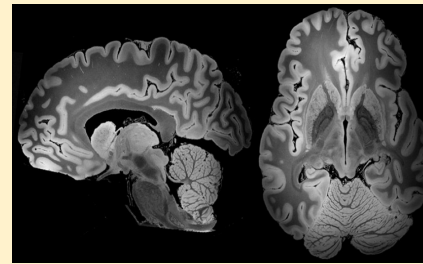
The Laidlaw Programme and Laidlaw Foundation are the funding source for this research.

## Introduction

- The use of Future Dangerousness was established in the criminal case *Barefoot v Estelle* and holds the precedent in the Texas Court of Appeals.
- Future Dangerousness is the additional qualifier to justify the death penalty in capital cases.
- There are fundamental issues with the principle of Future Dangerousness, according to the scientific fields themselves, as well as the ethical guidelines that dictate their utilization.
- To predict Future Dangerousness, the consulted clinicians do not have an in-person consultation with the accused and derive their conclusions from those made in a laboratory.
- This report argues that Future Dangerousness is a contradictory practice that should not be used in criminal court, especially in capital cases.

## Abstract

'Future Dangerousness' is the term used to refer to the prediction that an individual in the criminal justice system will commit a violent act in the future. After deciding whether the person being tried is guilty, the question of future dangerousness extends the punishment further, in most cases, and leads to the death penalty. After being asked whether the accused is guilty, juries are asked a 'yes-or-no' question whether the individual either 'is' or 'is not' a future threat to society after hearing the 'risk assessment' from experts. Risk assessments provide the jury with a percentage chance of the defendant committing a crime in the future through clinical, statistical, and physiological analyses. The utilization of the scientific method as a means in reaching the statistical conclusion of future dangerousness gives the prediction empirical grounds, making the expert testimonials about a person's future character regarded as legitimate, as well as extremely influential to a case.



## Ethical Inconsistencies

Future Dangerousness contradicts the ethical guidelines of the scientific fields responsible for providing a prediction. Every field requires an in-person consultation to provide a legitimate conclusion.

- Section 7 of the APA's 'Principles of Medical Ethics' explicitly states; 'it is unethical for a psychiatrist to offer a professional opinion unless he or she has conducted an examination.'
- Section 5.04 of the 'APA Ethics Code' by the American Psychological Association condemned previous Future Dangerousness testimonies, stating; 'the unreliability of psychiatric predictions of long-term future dangerousness... was an established fact within the profession' and argued against its use, especially in capital cases.
- The American Medical Association's 'Council on Ethical and Judicial Affairs' establishes that physicians must; refrain from making clinical diagnoses of individuals they have not had the opportunity to personally examine.'

## Scientific Fundamentalism

- Nancy Cartwright defines scientific fundamentalism as 'the belief that the laws of fundamental physics hold with complete generality.'
- Nancy Cartwright outlines the flaws of scientific fundamentalism when regarding the laws of mechanical physics. Referencing her arguments, I have used her claims to also include fields like psychology, psychiatry, and neurology, that base predictions like Future Dangerousness from results attained in controlled, laboratory experiments.
- To reference results derived in a controlled environment when making claims about subjective criminal cases coincides with Cartwright's claims that their conclusions become convoluted and inapplicable. Future Dangerousness, and its lack of in-person consultations, brings heavy skepticism for the relevance of the expert's derived prognosis, much less its merit as a concept in general.

## Legal and Scientific Inabilities

- The *Daubert v Merrell* Standard and the Federal Rules of Evidence, Rule 702 require the expert witness to; be of credible position, exercise rational scientific methods, and reference enough empirical data.
- However, the empirical basis of a scientific conclusion does not inherently suggest the relevance of the information included in the development of a prediction, nor would it firmly establish a relation in the everyday environment- as they are also referencing relations established in controlled, laboratory environments.
- The dissent from Justice Rehnquist claimed the criterion for discerning legitimate testimonials 'unfairly requires judges to play amateur scientists in determining whether a particular method is scientifically valid.' The inability for both scientific and legal professionals to justify the relevance of scientific conclusions to real-life cases illustrates even further how inapplicable scientific conclusions are.

## Conclusion

- The inconsistencies in legal and ethical code surrounding the requirements for expert testimony in psychology and psychiatry reveal the inadequacies of 'Future Dangerousness' as a legal practice
- The shortcomings of scientific conclusions and their applicability into real-life environments further emphasize the lack of legitimacy inherent in 'Future Dangerousness' in both logical and ethical principle.
- The use of 'Future Dangerousness' is a harmful oversimplification that gives credence to predictions that are regarded as unreliable from the medical communities through which they are attained.
- Future Dangerousness is a contrived, and harmful practice that should never be used in criminal, and most importantly capital, cases.

## Resources

- Brian Sites, 'The Danger of Future Dangerousness in Death Penalty Use' 34 Fla. St. U. L. Rev. 959 (2007)
- Barefoot v Estelle*, 463 U.S.
- Barefoot v State*, 596 S.W.2d
- Jurek v Texas*, 482 U.S. 262, (1976)
- J. Illes, E Racine, MP Kirschen, ed. J. Illes 'A Picture is Worth 1000 Words, but Which 1000?' in *Neuroethics: Defining the Issues in Theory, Practice, and Policy* (Oxford University Press, 2006)
- Roman Linz, Reena Pauly, Jonathan Smallwood, Veronika Engert, 'Mind Wandering Content Differentially Translates From Lab to Daily Life, and Relates to Subjective Stress Experience' (Springer, 2019)

- Nancy Cartwright, 'Fundamentalism vs Patchwork of Laws' in *Proceedings of the Aristotelian Society* vol. 94 (Oxford University Press, 1994)
- American Psychological Association, 'Ethical Principles of Psychologists and Code of Conduct' (2017)
- American Psychiatric Association, 'The Principles of Medical Ethics with Annotations Especially Applicable to Psychiatry
- Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 U.S. 579 (1993)
- Lyric A. Jorgenson, 'The BRAIN Initiative: Developing Technology to Catalyse Neuroscience Discovery' (Philos Trans R. Soc Lond B Biol Sci, 2015)