Forensic Child Psychology

Working in the Courts and Clinic

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Forensic Child Psychology Working in the Courts and Clinic

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Preface

The field of forensic psychology has grown slowly over the past century. From the early debates by Hugo Munsterberg and Sigmund Freud that psychology should play a larger role in the legal system, to the use of psychology in advocating the elimination of segregation in schools in the U.S. Supreme Court case *Brown v. Board of Education*, psychology has struggled to help legal decision makers be better informed. The past five decades have seen an exponential growth in the use of scientific research to answer important questions in forensics, from matters such as bystander inaction to the strengths and frailties of the memories of eyewitnesses. In the 1990s, psychology responded to a rash of well-publicized day-care child sexual abuse scandals, with a push for scientific understanding of children's allegations of sexual abuse. In just 25 years, the applied field of child sexual abuse assessment has come from an ad hoc and unstandardized approach to assessment, characterized by wild disagreements and untrained assessors, to a (mostly) highly controlled approach, which is informed by research with an aim to understand and reduce error. In our estimation, this is a very desirable outcome of mere decades. Psychology can work with the applied community and it can help to work toward better responses to real problems. Ultimately, this was the position of Munsterberg and Freud, though the field at the time was not ready to provide the necessary support.

College instructors today have an interesting problem: finding a text that supports the goals of their classes in forensic psychology. Unlike courses such as the typical general Introduction to Psychology experience (for which

available texts are plentiful and varied), undergraduate texts in forensic psychology are rare. Even worse, those with a focus on child issues are even more rare. Compound this with the fact that most available texts are written for students with strong backgrounds in psychology (or graduate students and professors in psychology) and what does an instructor do for a forensic psychology course filled with sophomores in social work, criminology, nursing, premed, and so on? These students need to understand some basic principles, because these principles affect an everyday working environment. However, many students do not have sufficient background in psychology to use an advanced forensic psychology text. Furthermore, they have little need of many of the specific topics discussed in those texts.

The overarching goal of this text is to provide an accessible and basic examination of psychology and law pertaining to children so that students who will enter into the workforce with need of this kind of information will be better prepared. We have focused on writing style and ease of use. Rather than a text that explores every permutation of every relevant concept, we focus on a clear and well-explained iteration of basic ideas. The goal is clarity and understanding, not comprehensive depth.

The first focus of the text is a basic review of some concepts in psychology that may be important to those who actually work in forensic environments, including (1) why psychology is a science and why that is important, (2) relevant social and learning psychology, (3) relevant psychopathology, and (4) basic concepts in memory as applied to forensics.

The second focus of the text is an examination of specific topics and concepts related to child forensics, including (1) an overview of child abuse and exploitation, (2) child abuse

in the modern technological world, (3) pedophilia and child molestation, (4) assessment of child sexual abuse, and (5) treatment of children who have been abused.

The third and final focus of this text is to provide a basic understanding of the legal world related to child forensics, including (1) basic concepts in law, (2) mandated reporting, (3) juvenile justice systems, and (4) the role of psychological expert witnesses in child abuse cases.

Ultimately, we hope that the text provides a sound framework for building new courses that are specifically designed for those who will be working directly with children. We are hoping to have built an accessible entry point into the field for some and an understandable set of working principles for others.

We welcome feedback about how to revise this text to help serve the needs of instructors and working professionals. We would also welcome inquiries from instructors hoping to create courses in forensic child psychology. The process may be easier than you think, and finding community resources to assist in the endeavor is often a productive way to engage a department in the public affairs of its own community. Our team has been able to enlist the support of (and directly include) powerful community agencies that can rally around a common goal: to make our professionals more effective and thus strengthen the fight against child abuse.

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Finally, we also wish to acknowledge the Sacramento Children's Receiving Home for the care and compassion they provide in helping victims of abuse and neglect.

Part I
Basic Principles

Chapter 1
Introduction to Forensic Psychology

Goals of this chapter:

1. To understand the basic definitions, development, and role of psychology as a *science*.
2. To explore the important social events that caused the focus on forensics in psychology.
3. To understand the broad range of activities a forensic psychologist might engage.

Within the past few decades the label *forensic psychology* has become more common than it might have been prior to the 1980s. Within the past decade, more researchers and practicing professionals may be using the more specific label *forensic child psychology*. A quick review of articles listed in *PsycInfo* revealed that articles containing the keywords “forensic psychology” increased from 156 during the 1960s to 8,117 during the 2000s. A similar review using the keywords “Child” (and) “Forensic Psychology” increased from 9 during the 1960s to 1,395 during the 2000s. But what exactly are these fields of study and practice? The most direct definition of **forensic psychology** is: the study of human behavior in legal settings or relevant legal environments. The most direct definition of **forensic child psychology** is: the study of the behavior of children in legal settings or relevant legal environments. However, there are many nuances to these studies.

Most people have probably heard these terms from their growing utilization in the entertainment media. From these experiences, many people may come to believe that forensic psychology is dedicated to understanding the causes of criminal behavior—and they would not be wrong. However, the field is much broader than this very narrow sliver of interest.

Even the word *forensic* has different implications in various fields. For example, in 1997 this author (Fanetti) was visiting with a law enforcement division that specialized in sex crimes against children. Upon meeting and exchanging introductions, one of the detectives presented a quizzical facial expression when he heard the specialty. After learning what we actually researched, he smiled and said he had thought that “forensic child psychology” meant that we tried to study the behavior of *dead* children. For them, forensics meant *post-mortem*.

Many of the students who use this text may not actually be psychology students. The goal of the text has always been to reach every frontline professional who interacts with children on a daily basis. This includes teachers, counselors, social workers, nurses, law enforcement officers, juvenile officers, direct therapists, court personnel, to name just a few. It is these people who become the first line of intervention when children become part of the legal (i.e., forensic) system. These children may be the victims of crime, witnesses to it, or even the perpetrators of the crime. In these scenarios, the way that professionals interact with children can make the difference between cases that are resolved well and justly, and those in which justice becomes confused or difficult to obtain. For example, when witnesses testify that they saw a specific person at a crime scene, but later details reveal that they were not sure until the person was pointed out by law enforcement, there is a legitimate question to be raised

about the accuracy of that identification. Clear and focused understanding of basic psychological principles related to forensic cases (e.g., in this case, memory research) can help professionals to be effective in preventing crimes against children, helping child victims, and creating environments in which children are less likely to become involved in crime.

The remainder of this chapter explores the principles and goals of psychology, the development of forensic psychology as a specific field of inquiry, the many duties of forensic psychologists, the training available to become a forensic psychologist, and some recent examples of cases where forensic child psychology became an important influence.

What Is Psychology—Really?

According to the American Psychological Association (APA, 2012), *psychology* is a "profession of scientific research designed to establish basic principles and theories of human behavior, and the subsequent application of those principles and theories to help individuals, organizations and communities." In this sense, psychology is concerned both with the careful and controlled scientific examination of behavior *and* with the use of this knowledge in a variety of applied, beneficial ways.

Modern psychology is a science originating from the same early roots as other sciences, such as physics, mathematics, biology, chemistry, and medicine. Those common roots can be found in the writing of ancient Greek, Persian, Chinese, and Egyptian philosophers. In fact, the evolution of thought from these early roots follows an understandable route. Each science has gradually moved from rational and thought-based explanations for common problems, to more empirical and observation-based answers, and finally to

specific methods designed to reduce or remove biases and errors from those systems. This more recent experimental/empirical orientation is considered superior because it requires that ideas (hypotheses) are actually tested against reality (data) to see if the initial ideas are correct. In this way, science is thought to have an error-identifying and error-correcting function (O'Donohue, 2013). All modern sciences can trace their lineages back to the same ancestors. It has only been within the past few centuries that the amount of accumulating knowledge has grown to the point that scientists have found benefit in specializing in one area or another and focusing their attentions on one field of study.

Epistemology

How do you know that something is true? Do you have a preferred way to answer this question or that? If you read about a murder trial in the newspaper or on the web or on television, how is it that you come to your own conclusions about whether the accused is guilty or innocent? We are all tempted to do it. Do you use logic to think through the most probable set of events? Do you rely—only—on such direct evidence as DNA, video, or fingerprints? What if the evidence is eyewitness testimony? Are you willing to rely on the accuracy, honesty, and certainty of others who say they saw a crime? We can use any and all of these methods to come to our own conclusions about the nature of the truth.

Epistemology is the study of *how* we know, or which methods we rely on to come to conclusions about the nature of the world—or the truth of a criminal case. There are many differing *epistemes* (i.e., ways of knowing), but a few are particularly important to the history of the development of the science of psychology. These are rationalism, authority, empiricism, and experimentalism.

Rationalism is the idea that we can gain knowledge from nothing more than thought-based exploration of concepts. Essentially, our sensory observations are thought to be flawed and difficult to interpret within the biases of our environments. Certainly we can at least agree that some concepts we accept every day are not actually observable. Each of us knows that lines, planes, and points exist—but what are they really. By definition, a plane must have two dimensions: two. This means it has *no* depth at all. How can we *observe* something that has *no depth*? What about a line? It is essentially one-dimensional. A point is zero-dimensional. Zero-dimensional? These are concepts that we can represent on paper (e.g., a pencil dot on a piece of paper is a three-dimensional illustration of a zero-dimensional object), but just a little thought makes it clear that they do not exist in *observable* reality. They are truths, but *rational* truths only. The quintessential rationalist, *Socrates*, believed that all knowledge can be derived by simple exploration of our mental faculties and ability to reason. We need not see the truth of nature, because we can reason it out in the absence of observation. Even so, rational explanations (i.e., those that rely on logic) still have a place in modern psychology. Forensic experts still must present their finding to the court in ways that seem to make sense, and are not illogical. Rational explanations have not been replaced, they have been supplemented.

Empiricism is the idea that we can gain knowledge from simple observation. Empiricists, such as *Aristotle*, believed that we are born with a blank slate (i.e., *tabula rasa*) on which our observable sensory experiences will write the truths of the world as we see them. Certainly, we can agree that each of us probably learned about ice and snow from our interactions with them. People may tell you what it means to be cold, but you will not understand the truth of it until you *feel* it. Can you think of a way to rationally explain

the experience of being cold to someone who has never felt it? At a concert in Reno (1998), the musical performer Yanni, who was from warm southern Greece, once explained to the audience about his education in “cold.” On moving to the United States, his first sensory experience was in Minnesota, in the winter. To him, the realization of what cold meant was shocking, though he had heard and thought about it many times. Simple empirical arguments still play a role in modern forensic settings. For example, many attorneys use reenactments as a way for jurors to feel as though they have experienced a plausible explanation. Seeing an explanation acted out and hearing the attorney's representation remains very important.

The constant companion to both empiricism and rationalism has always been authority. *Authority*, as an *episteme*, is the idea that we gain our own truths about the world from sources or people thought to have the knowledge to be correct, or *authoritative*. During the classical periods of Greek and Roman civilization, there was an accumulating body of knowledge gained through what we might call *early science*. However, a great many problems remained mysterious as they were not yet answerable by rational or empirical inquiry. Thus, powerful governmental and spiritual systems were available to answer questions. Why did a town suffer the plague? According to the ancient Greek philosopher and playwright, Sophocles, the cause for such suffering might be the sins of Oedipus that were illuminated by the Oracle of Delphi. Whether the authoritative source would someday be proven wrong was accepted, but at least an answer was available. Answers are things humans like to have, even if it is known to be just the best one available at that time. Certain witnesses are considered to speak with authority when in court, including expert witnesses. It is assumed that they have accumulated enough knowledge of the issues about

which they speak to be given more credence than others. In fact, we are very familiar with using authority as a way of knowing. The concept of textbooks is based on it—even this textbook.

During the medieval era, a new approach to empiricism was developing and formed the seeds of the Enlightenment. This new approach is often called *experimentalism*, an offshoot of empiricism. The problem with simple empiricism, is that while our sensory experiences tend to be vivid and believable, they can also be flawed and lead us to false conclusions. After all, when viewing a straw in a glass of water, your visual experience will tell you that the straw is bent. If you cannot move the straw, you may have trouble refuting that possibility. Experimentalism is the idea that, in order to gain better access to the truth, you must control the possible sources of *bias* in our observations—you must be able to move the straw around to critically evaluate your perceptions. We must be able to test our observations by making predictions about them that would only happen *if* our beliefs were correct. We can also endeavor to demonstrate that our beliefs are, in fact, *not true*—to give our explanations every opportunity to be wrong (perhaps hoping they will be not proven wrong). Sir Karl Popper (1959) believed that this constant striving for falsification of our theories was crucial. Those that could *not* be falsified were simply more *likely* to be true. If a theory failed a test, the choices would be to determine whether the observation was flawed or the theory was flawed. If the latter, then the researcher knows to move onto better explanations—not continue to hang onto untenable beliefs.

This is the *goal* of all modern scientific psychology: to develop explanations for observations that repeatedly withstand critical inquiry. It has been the development of the scientific method that has gradually increased our

ability to be systematic and controlled in the way we answer questions. This experimental method is the tool that differentiates a science from a philosophy, or from a mere belief system.

Consider This

Use any recent and well-publicized legal case to examine how rationalism, authority, empiricism, and experimentalism might play a role in how we come to our own personal conclusions.

The Early Scientific Method

Philosophers during medieval and early Enlightenment eras began to consider the ways that our observations (our empirical knowledge) could be incorrectly derived. They sought to explain the various ways that people make observational errors, in the hopes that these could be controlled. *Roger Bacon*, in his *Opus Majus* written in 1269, posited that there were four main causes of error:

1. An unjustified reliance on authority.
2. People become slaves to habit and tradition.
3. People respond quickly to currently popular prejudices.
4. People tend to be arrogant about their own perceived knowledge.

Rather than the correctness of our beliefs or the way that they guide our knowledge, these four tendencies represent a kind of intellectual laziness he believed we experience. Without critical appraisal of our beliefs, the ease that these four tendencies create will prevent the accumulation of

new knowledge or new answers. How many times has each of us been resistant to looking into new things or trying new solutions, simply because they were not how we had done things before?

Francis Bacon (no relation to Roger Bacon) would later provide his own criticism of authority and the overreliance on the "factual" nature of simple empirical observations. He believed scientists should view these sensory observations with moderate skepticism and he suggested four *Idols* or limitations of human thinking:

1. *Idols of the Tribe*: Humans are limited by their own sensory apparatus. Our senses can distort our observations, often in ways outside of our awareness. Our intelligence is great, compared to other animals, but not unlimited. That limit presents the boundary of the things we can understand. The tribe is, roughly, the species.
2. *Idols of the Cave*: Humans develop provincial thinking that represents their own culture, preferences, and prejudices. The cave is our immediate environment.
3. *Idols of the Marketplace*: The terms we use to describe ideas become important in that they begin to define those ideas. How many times do our own politicians race to be the first to label legislation the "(fill in the blank) Bill of Rights"? Once thus labeled, it becomes difficult to argue against the legislation, because it *sounds* like an argument against this or that *right*. No matter what the legislation contains, the label becomes the selling point —because we take these labels too seriously.
4. *Idols of the Theater*: The easiest, most vivid explanations seem to carry their own truth. This is the genesis of fads and faddism. Psychology is replete with examples of therapies that emerged as nothing more than a fad, even

> when it was potentially dangerous. Rebirthing therapy, thought-field therapy, facilitated communication, and adolescent boot-camps all emerged to some level of acceptance by practicing therapists—even when evidence of actual effectiveness was absent (Lilienfeld, 2007). After all, people had "seen" them working. Only later, when clear evidence emerged that they were ineffective and potentially harmful (Romanczyk, Arnstein, Soorya, & Gillis, 2003) did these practices begin to recede.

Other Biases/Errors in Thought and Observation

The human cognitive process is fraught with tendency toward error and bias. We must process a great deal of information every day and sometimes we create shortcuts, or *heuristics*, to facilitate the process of pragmatic understanding. Conversely, we can work to increase accuracy by using algorithms—comprehensive systems for gathering all important data and fully understanding our experiences. But algorithms are often lengthy and we usually do not have the time to use algorithms everything around us.

Consider the auto mechanic who sees a car being towed into his station as a "no start." He has two courses of action. First, he can pull out his list of every possible cause and slowly go through each until he finds the culprit. Second, he can access his shortcut list of things he has learned are the most-likely causes. When this author was young and naive and working on cars, I once spent an hour trying to diagnose a no-start. Trying this and that, the battery was beginning to suffer from the repeated attempts. After enough time had passed, a friend walked out (smiling) and asked if I had checked the fuel level. This story is done. Heuristics *can* save us time, but can also be flawed and can lead to errors in decision making. The

following are just a few well-known biases, heuristics, and cognitive errors. There are many more heuristics that are ready to be studied by eager students of psychology.

Confirmation bias. All undergraduates will at some point be asked to write a term paper for one class or another. What they might not know is that their professor is going to be on the lookout for confirmation bias. Nickerson (1998) describes confirmation as the tendency for humans to find (and pay significant attention to) evidence that tends to support the beliefs we already hold or the points we are trying to make. Conversely, the same bias allows us to easily discredit or find fault with evidence that does not support our positions. This is not to say that this tendency is intentional, but rather insidiously unintentional. When we discredit opposing points of views, we really do think they are flawed and we really do find them to be substandard and unconvincing. However, the same critical eye is not applied as easily to that which supports us.

Think about the way that we view evidence in cases we hear about in the media—especially that concerning celebrities or people we have some information about already. Even worse, think about news pertaining to the politicians we do or do not support. When we hear news or read things from spurious sources on the Internet, confirmation bias will play a large role in the degree to which we say, “Darn right!” or “Internet lies!” In fact, while once watching an ad for a politician (in full agreement), I caught myself abruptly changing my opinion of the information's veracity *when I learned he was from the other political party*. I quickly self-reflected and was privately chagrinned, but we are *all* human.

Are prosecuting attorneys or defense attorneys immune to this influence? The very nature of the adversarial legal system in the United States encourages each side to be

more inclusive and careful when they are at the point of making a case. Defense attorneys are likely to pay much more attention to details that confirm their argument that their client is not guilty. Prosecuting attorneys are much more likely to emphasize and focus on the evidence that supports their argument that the defendant is guilty—especially in a system that places the responsibility for highlighting *exculpatory* (i.e., suggesting no guilt) information on the defense attorney.

Availability heuristic. We often answer questions or make decisions based on information that is simply easier to recall (i.e., more available), rather than information based on accuracy. Kahneman, Slovik, and Tversky (1982) explained the availability heuristic as the tendency to estimate the likelihood of an occurrence based on the ease with which it is recalled. Even though airline traffic was and remains the safest way to travel long distances, many people developed anxieties about commercial flight just after the tragic events of September 11, 2001. So many of us watched the dreadful images of two planes flying into the World Trade Center towers—over and over—and it became difficult to *not* think of them. So, when asked if airline travel was safe, many may have tended to doubt. In fact, the Transportation Security Administration (TSA) was created to keep us safe, even though private security had not actually *failed* to do anything they were supposed to be doing.

Hindsight bias. When we examine our past beliefs about the way events will unfold, after they have unfolded, we have a tendency to believe we were more knowledgeable and more prescient than history probably would have recorded. In fact, we have an idiom that describes this very phenomenon, “hindsight is always 20/20.” Fischoff (1975) describes hindsight bias as the tendency to *retrospectively* overestimate our *previous* predictive abilities. Think about