

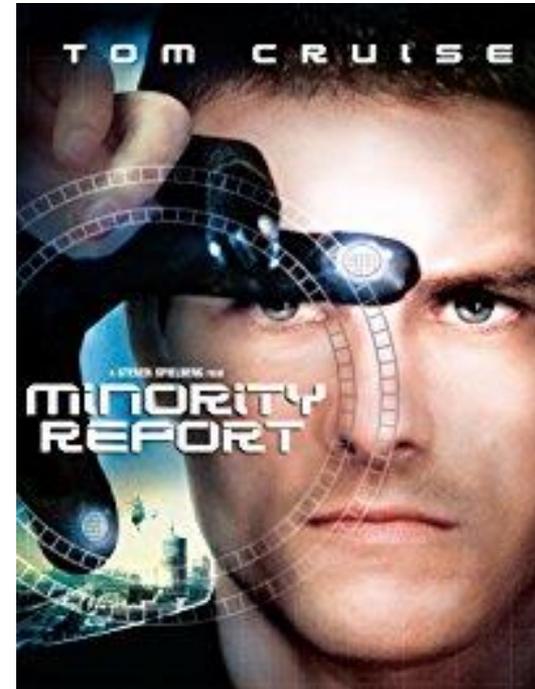
From Punishment to Protection Ethics of Risk Assessment

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From looking back to looking ahead

- ▶ During centuries criminal law meant quid pro quo, an eye for an eye, punishment and revenge of the law abiding folk for wrong doing of a bad individual
 - ▶ Combined with an amount of scaring off villains through general prevention by punishing publicly
 - ▶ Then incapacitation became more prominent
 - ▶ Today crime prevention (by incapacitation) is a top priority sanction within the penological system
 - ▶ Promising crime prevention is an easy way to boost a political career
 - ▶ Crime prevention implies forms of crime prediction
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Predicting Crime



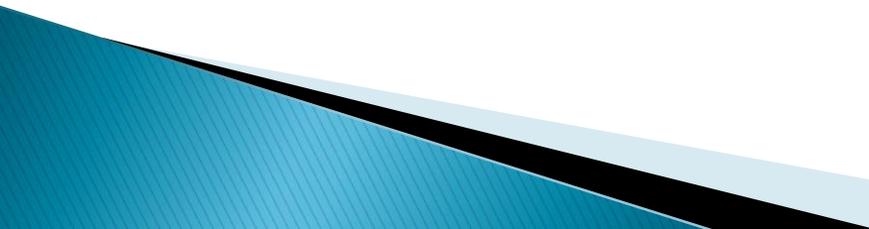
Emotionality

- ▶ Most people do not recognize behold accept a collective responsibility for crimes committed by others. This enables them to take in a hard line position.
- ▶ Switzerland (ca. 8 Mill. Inhabitants) registers approx. 350 fatal casualties per year as result of traffic accidents compared to approx. 50 lethal criminal offences. Recidivism rate for homicide is less than 3% meaning not more than 2 cases a year –
- ▶ But not all murderers get life time sentenced if one is set free and belongs to the 1–2 cases a year this will be called a failure of the authorities responsible
- ▶ Keep a close eye on criminals (Foucault Panoptism, 1978)

Unrealisable Expectations

- ▶ In the eyes of the public an person is good or bad so all we really need to do, is lock up the bad guys
 - ▶ Cesare Lombroso claimed to have found physical identification elements of the typical criminal in *l'uomo delinquente* published in 1876; but we have moved on because the theorie lacks factorial validity
 - ▶ Forensic psychiatry is able to make certain prognosis on human behaviour based on facts of his or her past behavior
 - ▶ **Is risk assessment leading in the wrong direction again?**
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History of Offender Risk Assessment

- ▶ Long tradition of prison sentencing
 - ▶ Forensic psychiatric expertise more or less restricted to declaration of guilt and liability disposition on grounds of (past) offender behaviour
 - ▶ During the nineties increased demand for legal prognosis
 - ▶ psychology and psychiatry cannot really predict human behaviour. Their findings on the character or mental health (illness) can only be used as the basis of an assessment analysing how a person is likely to react in a certain situation at a certain time in a certain place.
 - ▶ Estimating the chance of a certain situation and occurring is not a medical question .
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The Ethical Problem of Lack of Quality Control

- ▶ Risk Assessment allows false negatives: no recidivism predicted and new offence occurs
- ▶ Risk Assessment allows false positives: recidivism predicted, offender incapacitated and we shall never know what would have happened, had he been given time at risk

	Prognosis: Not dangerous	Prognosis: Dangerous
Reality: Not dangerous	Correct: No recidivism Evidence based after time at risk	Wrong: Kept in prison unnecessarily <i>Hypothetical</i> for lack of time at risk
Reality: Dangerous	Wrong: Recidivism Evidence based after time at risk	Correct: Kept in prison necessarily <i>Hypothetical</i> for lack of time at risk

Solving the quality control problem by bringing down the expectations while improving the quality

- ▶ Creating high numbers of false positives would be the easiest way to live up to the expectations
 - ▶ But at some point such a reaction in the name of «justice» will change to injustice for thousands of individuals
 - ▶ For justice to remain just – Risk Assessment must become as qualified as possible and there must always be a possibility of challenging the decision based on the risk assessment by means of judicial appeal
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Use of Offender Risk Assessment tools remain tools, not solutions

- PCL-R and PCL-SV (Hare Psychopathy Checklists)
 - HCR20 (Historical Clinical Risk)
 - VRAG (Violence Risk Appraisal Guide)
 - SORAG (Sex Offender Risk Appraisal Guide)
 - Static 99 and Static 2002
 - LSI-R (Level of Service Inventory-Revised)
 - OASys (Offender Assessment System)
 - Fotres (Swiss / Zürich)
 - Dittmann Criteria Catalogue (Swiss / Basel)
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Both sides must pay a price

If society takes out the right to inflict measures on individuals not as a punishment for what they have done (more or less consciously and with more or less guilt thus more or less personal responsibility) but for what they possibly will do in the near future.....
respect of human rights and respecting the rule of law
this society must invest resources into an adequate quality of the risk assessment before action is taken.

Nobody can definitely forecast human behaviour, but we are obliged to do our best and seriously analyse, and prepare when reintegrating criminals from prison back into our society.

By doing so we find ourselves between Skylla and Charibdis, creating false positives which are wrongly kept in detention or wrongly liberating prisoners, enabling their recidivism.



Thank you for your attention.