

**Prescribing Drugs to Make
Criminals Eligible for Punishment:
A Violation of Medical Ethics?**

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**Dr. Mossman has no financial
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Objective 1

Formulate two
examples that
illustrate how severe
mental symptoms can
render a criminal
defendant incompetent
to stand trial.

Objective 2

Create a clinical example in which proper treatment enables the state to impose criminal punishment.

Objective 3

Apply the principle of autonomy to the treatment context of restoring criminal defendants' competence to stand trial.

Case Discussion Disclaimer

- Sources = public records

Pre-Adjudication Competencies

- Waiving *Miranda* rights
- Pleading guilty
- Waiving counsel
- **Standing Trial**

Why do criminal defendants need to be competent to stand trial?

(Assume they have capable defense counsel)

Reasons

- Sixth Amendment:
 - confronting accuser and presenting evidence require mental presence
- Society's concerns:
 - fair, dignified legal proceedings
 - against a comprehending, rational defendant

Melton et al. (2007). *Psychological Evaluations for the Courts*, 3d ed.

Constitutional Requirements

Defendant needs

- "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding"
- "a rational as well as a factual understanding of the proceedings against him"

- *Dusky v. U.S.* (1960)

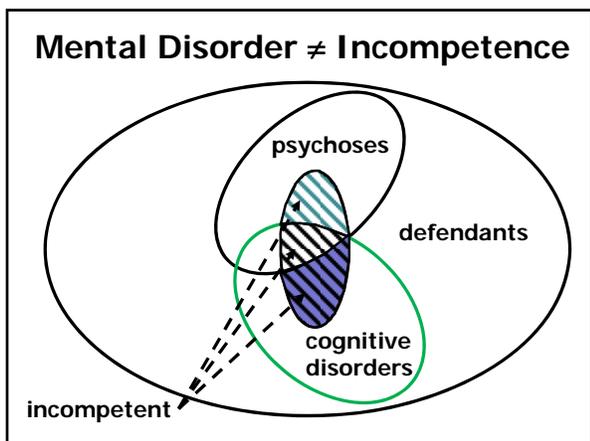
Scope of Issue

- Each year, \approx 60,000 U.S. defendants undergo examinations of their adjudicative competence
- 1/5 are found incompetent
- 4000 U.S. hospital beds occupied

Mossman et al., AAPL CST Guideline, JAAPL (2007)

Incompetence-Inducing Mental Disorders

- Psychotic Disorders
 - Schizophrenia
 - Affective disorders
- Cognitive Disorders
 - Dementia
 - Intellectual disability



Restoring Competence: *What do clinicians do?*

- Example: Incompetence induced by schizophrenia

Schizophrenia

- Cardinal Symptoms:
 - Hallucinations
 - Delusions
 - Disorganized thinking
- Legal Significance:
 - Misperceptions
 - Impaired Communication

Treatment Aims

- Specific to competence
- Increase rationality
 - Control irrationality
- Improve understanding
- Improve communication
 - Reduce disorganization

What if They Refuse?

- May a defendant be medicated involuntarily to achieve competence?

Sell Background

May 97: indicted for filing false claims
Jan 98: at bond revocation, screamed, racial epithets, spat in judge's face
Feb 99: Dx = delusional disorder
Apr 99: found incompetent

Sell v. U.S. (2003)

- Sell refused medication
- Should he be medicated involuntarily?

Sell v. U.S. (2003)

- Supreme Court:
Medication to restore competence to stand trial for serious offenses may be administered involuntarily under certain circumstances

Sell v. U.S. (2003)

- Medication must be ...
 - likely to restore competence
 - unlikely to have side effects that impair assisting counsel
 - “medically appropriate”

Joseph Fletcher
Morals and Medicine (1954)

- “The moralist’s interest in the ethics of medicine has to do with *the care of a patient*, not with the treatment of a disease. We are concerned with medical care rather than with medical treatment . . . [A] patient’s moral and ethical rights and interests must weigh as heavily in the medical scales as his physical needs and condition”

Russell Weston: Background

- Born 12/56, raised in IL
- Mid-80s: paranoid, grandiose
- 12/89: “paranoia, hostility, and difficulty assessing reality”
- Mid-90s: target of government plot

Russell Weston: Background

- 5/96, 10/96: psych hospitalizations
- Next 20 months: with parents in IL, off meds
- 23 July 98: left parents’ home with his father’s revolver, drove 755 miles to Washington DC.

U.S. v. Weston : Chronology

- Apr 99: incompetent to stand trial
- Sep 99: involuntary meds ordered
- Mar 2000: appeals court reverses:
 - necessary for competence ?
 - impact of meds on trial rights ?
 - might "medical ethics preclude ordering a patient medicated in a potential capital case" ?

Medical Testimony

DePrato, Johnson, Zonana, Daniel

- Weston is dangerous
- meds could restore competence
- benefits outweigh side effects
- side effects are manageable
- no ethical barrier to treatment

U.S. v. Weston : Chronology

- Mar 2001: District court authorizes involuntary medication
- July 2001: D.C. Circuit Court affirms
- Fall 2001: Cert. denied, got meds

Ethical Arguments Against Medication

- No danger to self or others in the hospital
- Drugs have known risks

Two possible outcomes of medication:

- It doesn't work
 - stays incompetent to stand trial
- It works
 - becomes competent, goes to trial

Results If Incompetent

- Long-term confinement
- Same as without medication

If Meds Lead to Competence

- 3 possible outcomes:
 - NGRI verdict → confinement (forever?)
 - Guilty verdict and a life sentence
 - Guilty verdict and a death sentence

Outcomes with medication are therefore as bad as without medication – or worse

World Medical Association's International Code of Ethics

- a physician must ...
- "act only in the patient's interest when providing medical care" that might weaken "the physical and mental condition of the patient"
 - "always bear in mind the obligation of preserving human life."

Alan Stone (2003)

- "Involuntary psychiatric treatment, like any other medical treatment, should be given only ... to restore the person's mental health ...
- "the needs of the criminal justice system and the strategies of lawyers should not be the basis of involuntary psychiatric treatment."

Hippocratic Ethics

- Beneficence: promote well-being
- Nonmaleficence: *primum non nocere* ("first, do no harm")

Beneficence - Nonmaleficence

- Medical ethics often makes these sound like they apply just to doctors
- But everybody is obligated to treat others well and not cause harm

How can punishment be morally acceptable?

Law enforcement poses a problem for any system of ethics.

Kant: Enforceable Rights

- "Original contract": civil society secures personal freedom thru a right to protection
- everyone agrees to lawful external coercion, including...
- rules that specify infliction of punishment for crimes

Punishment

- An obligation of civil society
- A just legal system assures respect for the rationality and autonomy of lawbreakers

Physician's Role

- Not to regard an accused criminal as similarly submitting himself to law would require me to treat him as less than my moral equal.

Competence Restoration

- Makes legal proceedings allowable
- Preserves the autonomy and humanity of accused criminals
- Is a benefit, even if the likely outcome of treatment is the defendant's conviction and punishment.

Competence Restoration

- Does not violate a psychiatrist's obligation to help and avoid harm, despite possible conviction and punishment
- Medically appropriate: lets the defendant be rational and vindicate autonomy

Not Administering Treatment

- Mere confinement of a psychotic individual robs him of the chance to appreciate what he has done
- Affront to defendant's personhood
- Clinicians would be treating the defendant-patient an object to control rather than as a responsible individual

Defendant's Consent to Treatment

- Part of consent to freedom under law
- Conscientious administration of competence-restoring treatment lets society treat us as human beings who may answer for wrongdoing, not as irrational, dangerous creatures who must be confined

In a Fair Criminal Justice System

- Competence-restoring treatment does not conflict with Hippocratic obligations of beneficence and nonmaleficence
- Defendants are entitled to psychiatric treatment that may permit prosecution

What About the Death Penalty?

- Do healthcare professionals have some special moral status that obligates them, when opportunities present themselves, to use or withhold their medical privileges and skills in ways that interfere with the workings of the criminal justice system?

"Special Status"

- would justify clinicians' opposition to treatment in *any* criminal case where potential legal outcomes seemed less desirable than remaining incompetent.

What If You Believe The Death Penalty Is Wrong?

- No physician should have to ignore what his conscience dictates
- Your principled objection to the death penalty does not imply that all mental health professionals should be barred from giving any capital defendant competence-restoring treatment
