

Justice, Mercy, and Mental Illness in Death Penalty Cases

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ABSTRACT

This paper examines how jurisprudential discourse shapes the constitutional and moral boundaries of capital punishment in cases involving mental illness and cognitive impairment. With a focus on the insanity defense and *Atkins v. Virginia*, it argues that the foundation of Western legal thought has long balanced retributive justice by distinguishing between culpable intent and diminished moral responsibility. Rather than eradicating criminal accountability, these doctrines limit punishment where a defendant's capacity for intent, judgment, or culpability is diminished by mental impairment. The paper contends that this legal framework mirrors an evolving understanding of human dignity within the death penalty system.

INTRODUCTION

Building upon biblical and legal historical foundations, Western law has grappled with the boundaries of human responsibility for centuries, especially when mental illness complicates judgment. Although the insanity defense is invoked rarely, it often provokes strong public reaction and remains an emotionally charged topic. Deeply rooted in Judeo-Christian ethics and Roman law, the insanity defense attempts to balance competing demands of justice, mercy, and intent.

In Exodus (21:12-14), the Book of the Covenant states:

“Anyone who strikes a person with a fatal blow is to be put to death. However, if it is not done intentionally, but God lets it happen, they are to flee to a place I will designate. But if anyone schemes and kills someone deliberately, that person is to be taken from my altar and put to death (New International Version, 2011, Exodus 21:12-14).”

The terms “intentionally” and “deliberately” in this passage refer to premeditated, willful killing as opposed to accidental harm. This distinction reflects the judicial practices of ancient Israelite courts, where assessing the perpetrator's mental state was crucial for assigning appropriate, proportional punishment. These jurisprudential principles are reinforced in the doctrine of *lex talionis*:

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“But if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot; burn for burn, wound for wound, bruise for bruise.” (New International Version, 2011, Exodus 21: 23-25)

While Exodus establishes a framework of proportional justice, the New Testament introduces an ethic that emphasizes the concept of mercy and forgiveness:

“You have heard that it is said, ‘Eye for eye, and tooth for tooth.’ But I tell you, do not resist an evil person. If anyone slaps you on the right cheek, turn to them the other cheek also” (New International Version, 2011, Matthew 5:38-39).

Together, these traditions establish a tension between retributive justice and mercy that continues to underlie much of Western legal thought, ultimately shaping modern understandings of crime, punishment, and mental illness.

The importance of distinguishing genuine incapacity from strategic behavior appears in the story of David (often misidentified as Saul), who feigns madness to avoid danger:

“So he pretended to be insane in their presence; and while he was in their hands he acted like a madman, making marks on the doors of the gate and letting saliva run down his beard.” (1 Samuel 21:13)

This example illustrates that abnormal behavior alone does not determine incapacity; intent remains central.

This historical example of insanity demonstrates that the assessment of intent and mental capacity has long been a concern in legal reasoning. The attempt to balance Old Testament justice and New Testament mercy has led to ongoing discussions about how the law should balance accountability, mercy, and human dignity. Modern law separates mental incapacity into distinct legal doctrines operating at different stages of a criminal case. The insanity defense evaluates culpability at the time of the offense, going back to whether the defendant possessed the capacity to form intent. In contrast, *Atkins v. Virginia* (2002) addresses eligibility for the death penalty, prohibiting execution for individuals with intellectual disabilities due to diminished moral culpability. These doctrines do not eliminate guilt but instead redefine the limits of punishment.

Considering this historical and legal backdrop, this paper asks: What role does jurisprudential discourse play in constructing frameworks that allow the Supreme Court to navigate tensions between retributive and rehabilitative justice in cases involving mental incapacity? Jurisprudential discourse plays a central role in shaping the constitutional and moral boundaries of the death penalty by balancing retributive justice with growing recognition of cognitive vulnerability.

BODY

The insanity defense is grounded in the principle that an individual must be punished only to the extent they had control over their actions. Early legal thought held that if one cannot form *mens rea*, or the “guilty mind,” punishment is morally unjustifiable, as the individual lacks the capacity to form criminal intent. Roman law measured personal accountability through intent, and Christian ethics consistently emphasized the role of free will in determining moral and legal guilt, which influenced the concept that free will and intentionality are preconditions for criminal responsibility. Under this concept, it makes moral sense to conclude that, in the absence of these preconditions, disciplinary action does no justice. Such foundational principles established that intent, rather than mere action, is central to determining one’s legal responsibility. This doctrine operates specifically at the time of the offense, distinguishing it from other forms of mental incapacity in criminal law. Its purpose is not to excuse all harmful acts, but to ensure that punishment corresponds to culpability rather than mere outcome.

Legal and philosophical thought has long recognized that individuals can be assessed not only on their past actions but also on their potential to commit harm. Michel Foucault’s *Abnormal* (2003) elaborates on the idea that one’s “dangerousness” is measured by one’s potential and capabilities to cause damage. The delinquent is not only perceived as the author of their act but also linked to a bundle of complex threads composed of instincts, character, and drives, all independent from their specific offense (Foucault, 2003). Maintaining the heavy focus on potentiality, modern courts rely on psychiatric opinion to assess not just the kind of offense that was committed, but what the delinquent is capable of doing. Through the technique of normalization, which is a set of practices such as diagnoses and risk assessments that determine the standards of “normal” behavior, delinquents are compared to an ideal model of the “normal” person and are punished, corrected, or treated when they deviate (Foucault, 2003). The psychiatric evaluation of the delinquent ranges from psychological immaturity, poorly structured personality, and susceptibility to affective disequilibrium (Foucault, 2003). By evaluating mental capacity, drive, and character, punishment encompasses not only the specific criminal act but the individual’s overall criminal nature. This structure is what underlies the logic of the insanity defense; it balances one’s tendencies with the actual offense, pursuing justice by ensuring that the punishment captures both the act and the mental capacities that underlie it.

While the philosophical and psychiatric underpinnings of mental incapacity complicate moral judgment and punishment, constitutional law determines the extent to which disabilities are formally recognized and applied in capital cases. The law formally declares that, though a defendant can be intellectually disabled, they are not exempt from the same criminal charges as someone with no impairments. They can be prosecuted, convicted, and found competent to stand trial, as mental disability does not automatically result in being declared legally insane. Rather, mental incapacity in capital cases shifts the focus away from guilt or innocence toward eligibility for execution. In other words, the law maintains criminal

responsibility while simultaneously restricting the state's power to impose the death penalty on someone with mental impairments.

Jurisprudential discourse mediates between retributive justice and concerns of cognitive vulnerability by redefining the moral limits of punishment rather than negating guilt altogether. The case of *Atkins v. Virginia* (2002) addresses a different legal question in contrast to the insanity defense: whether a defendant is eligible for the death penalty. Under 18 U.S.C. § 3592(a) (1994), as amended, intellectual disabilities are recognized as a mitigating factor, reinforcing the principle that mental disability constrains the extent of punishment without negating overall criminal responsibility.

The Eighth Amendment to the Constitution prohibits cruel and unusual punishment, consolidating the basis of the evaluation system and determining the eligibility of mentally impaired defendants for the death penalty. Its prohibition on cruel and unusual punishment is not static but interpreted through “evolving standards of decency.” This evolution is particularly significant in capital cases, given the irreversible nature of the death penalty that heightens moral scrutiny. This constitutional framework directly informed the judicial reasoning in landmark cases, where the court had to weigh diminished capacity against the state's interest in retribution.

A potential objection to this framework appears in Justice Scalia's dissent in *Atkins v. Virginia* (2002). Scalia argued that the Court has improperly relied on the evolving standards of decency and subjective moral judgment rather than fixed, established constitutional principles. Concerns regarding the reliability and variability of clinical definitions of intellectual disability have also been mentioned, suggesting that such standards could lead to inconsistent outcomes.

While this critique highlights legitimate concerns about judicial overreach, it does not undermine the core argument of this paper. The reliance on evolving standards reflects the Constitution's adaptability to new, updated understandings of human psychology. The incorporation of clinical expertise, despite its imperfections, allows the legal system to accurately assess culpability furthermore.

Jurisprudential discourse ultimately serves as the backbone of how our modern court system navigates its way through the complexity of justice, mercy, and mental illness. Considering that mercy and rehabilitation are not novel inventions, but have been embedded in our system from the start, this framework enables courts to more thoughtfully balance accountability with an awareness of diminished mental capacity. By distinguishing between culpability and punishment, and by adapting to evolving conceptions of human dignity, courts are able to navigate through the complex intersection of justice, mercy, and mental illness in capital cases.

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