

Rethinking Mental Health Laws

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Just Deserts for the “Mad Bomber”: A Coherent Approach to Sentencing People With Mental Illnesses.

Jamie Walvisch

In April 2008, Justin Dupuy was convicted of leaving explosives outside a police station in Victoria, Australia. Mr Dupuy had a long history of schizophrenia and post-traumatic stress disorder. As he was not psychotic when he committed the offence, the “insanity” defence was not available to him. It seemed, however, that his history of mental illness had contributed to his behaviour. The court therefore had to consider whether to take this history into account when sentencing him, and to what extent.

This paper uses the court’s decision to highlight the issues that must be addressed when sentencing people with mental illnesses who are convicted of serious crimes. These include the nature and cause of the offender’s illness, when and how an illness affects an offender’s culpability for his or her actions, and what impact an illness is likely to have on an offender’s experience of imprisonment. It argues that to address these issues in a coherent manner, close regard must be had to relevant sentencing principles (such as “just deserts”, rehabilitation or deterrence). Using “just deserts” theory, the paper sketches one possible way in which a principled approach to sentencing mentally ill offenders could be implemented.

Participants will learn:

- What issues need to be addressed when sentencing people with mental illnesses who are convicted of serious crimes; and
- How these issues can be addressed in a principled fashion.



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