

**Essay Plan: 'The conflation of mental disorder with dangerousness in the medico-legal discourse provides legitimacy for the infringement of the human rights of those offenders said to be mentally disordered.'**

*Introduction – break question down*

- What are the connections drawn between mental illness and dangerousness?
  - How does the law treat the two topics?
  - Evidence to justify links?
- How does this impact on patients' rights?

*Body*

- Mental Health Act 1983 (as amended 2007)
  - Sections 2 – 6<sup>1</sup> provide for a patient to be detained for assessment and treatment if certain criteria are satisfied. Note consent is not required.
    - Sections 2 & 3 each require patient to be suffering from mental disorder serious enough to warrant assessment/treatment, and that it is in the interests of the patient's safety or the safety of others.
  - Section 41 provides for the possibility to restricting somebody indefinitely to hospital if it is, inter alia, 'necessary for the protection of the public from serious harm...'<sup>2</sup>

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<sup>1</sup> The Mental Health Act 1983

<sup>2</sup> Ibid., s. 41(1)

- Neither mental illness nor ‘dangerousness’ are sufficient alone for detention or forced treatment; suggestion that both qualities together are adequate to necessitate forced detention/treatment.
- The law attempts to address conflict between principle of no detention without trial and conviction against protection of the patient and others.
  - European Commission report – ‘A strict human rights approach accepts forced hospital admission only when a mentally ill person threatens to do harm to others or to him-/herself. This is the only criterion (“dangerousness criterion”) justifying or permitting someone to be paced involuntarily.’<sup>3</sup>
- Is there evidence to support connection between mental illness and dangerousness?
  - Varshney et. al.<sup>4</sup> – accepts statistical link between some mental illnesses and instances of violence, *however* only small minority of violence in society can actually be attributed to mentally unwell people.
    - People with mental illness are more likely to be victims than perpetrators of violence.
    - Cites Large et. al. study of patients with schizophrenia which concludes ‘a large proportion of patients classified as being at high risk will not, in fact, cause or suffer any harm.’<sup>5</sup>

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<sup>3</sup> Hans Joachim Salize et. al., ‘Compulsory Admission and Involuntary Treatment of Mentally Ill Patients – Legislation and Practice in EU-Member States’ (2002) *European Commission Research Project*, Grant Agreement No. S12.254882, 3

<sup>4</sup> Mohit Varshney et. al., ‘Violence and mental illness: what is the true story?’ (2016) 70(3) *Journal of Epidemiology and Community Health* 223

<sup>5</sup> M M Large et. al., ‘The predictive value of risk categorization in schizophrenia’ (2011) 19(1) *Harvard Review of Psychiatry* 25

- Elbogen et. al. suggest that correlation of violence with mental illness is largely due to other factors, for example addiction. ‘...understanding the link between violent acts and mental disorder requires consideration of its association with other variables such as substance abuse, environmental stressors, and history of violence.’<sup>6</sup>
  - Even where positive correlation between mental illness and violence, largely due to other factors associated with violence; mental illness not found to be causative.
- Issues arising out of the false link between mental illness and dangerousness.
  - Szasz – ‘There are no objective criteria for either “mental illness” or “dangerousness”.’ This raises concerns regarding the fair and consistent assessment of patients. Szasz suggests that the function of using such terms is in fact to ‘instruct the listener to assume a desired attitude toward the “patient”’ as opposed to their usefulness as concepts.<sup>7</sup>
    - Szasz further argues that the term “mental illness” implies dangerousness as a matter of course, permitting the state to ‘incarcerate [the patient] in a prison we call as “mental hospital”’.<sup>8</sup>
    - Szasz appeals to the fundamental principle of no detainment without charge and conviction (above) arguing that ‘having a propensity to break

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<sup>6</sup> Eric Elbogen et. al., ‘The Intricate Link Between Violence and Mental Disorder’ (2009) 66(2) *Archives of General Psychiatry* 152

<sup>7</sup> T Szasz, ‘Idiots, infants, and the insane: mental illness and legal incompetence’ (2005) 31 *Journal of Medical Ethics* 78, 79

<sup>8</sup> T Szasz, ‘Psychiatry and the control of dangerousness: on the apotropaic function of the term “mental illness”’ (2003) 29 *Journal of Medical Ethics* 227

the law is not a crime.’<sup>9</sup> The implied link between mental illness and dangerousness is used to permit the detention of people with mental illness on the assumption that they are more likely to be dangerous.

- Varshney agrees that the public perception which conflates mental illness with violence has informed arguments in favour of coerced detention and treatment of individuals with mental illness.<sup>10</sup>

- How can the coerced detention and treatment of patients continue to be justified if there is no, or only a weak, association between violence and mental illness?

Furthermore, such detention appears to be widespread:

- Sandford JJ (Forensic Psychiatrist) (1999) – ‘The preventive detention of those with untreatable mental disorders is already widely practised in England. Under the Mental Health Act (1983) people... [are] detained indefinitely in hospital regardless of response to treatment and on grounds of risk to self as well as others. Secure and open psychiatric hospitals are full of such patients.’<sup>11</sup>

- Legal impact for patients and human rights

- Bindman et. al. describe jurisprudence from the European Court of Human Rights in relation to mental health as setting a low standard for mental health services. They depict case law on coercive treatment as being ‘highly deferential to mental health authorities’, citing the allowance of force-feeding and prolonged physical restraint.

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<sup>9</sup> Ibid., 229

<sup>10</sup> Varshney, op. cit.

<sup>11</sup> J J Sandford, ‘Public health psychiatry and crime prevention’ [Letter] (1999) 318 *British Medical Journal* 1354

- ‘Some judgments may strike present-day clinicians not so much as protecting patients’ rights but as permitting undesirable practices.’<sup>12</sup>
- *Re C (Adult, refusal of treatment)*<sup>13</sup> concerns capacity to refuse treatment; patient had schizophrenia but was deemed competent to refuse life-saving amputation of a gangrenous leg. Patient would be potentially unable to refuse treatment for his mental illness if deemed a danger to himself, yet could refuse physical treatment regardless of danger to himself.
  - The decisive factor seems not to be danger but having a mental illness which determines the patient’s ability to refuse medical intervention. Does this not directly discriminate against those with a mental illness?

### Conclusion

- The link between mental illness and dangerousness needs to be addressed. In particular, if the evidence is tenuous then the connection ought to be dropped.
- The practice of coerced detention and treatment similarly needs to be reviewed. Why is the practice seemingly widespread even for patients who pose no risk? Is it still defensible at all if the justification of dangerousness is unsupported? Is the test for capacity (*Re C*) applicable equally to patients refusing treatment for mental illness?
- The conflation of mental disorder with dangerousness almost certainly provides legitimacy for the infringement of human rights for those with mental illnesses.

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<sup>12</sup> Jonathan Bindman et. al., ‘The Human Rights Act and mental health legislation’ (2003) 182 *The British Journal of Psychiatry* 91

<sup>13</sup> [1994] 1 All ER 819

Varshney et. al. (2016) – ‘Since current evidence is not adequate to suggest that severe mental illness can independently predict violent behaviour, public efforts are required to deal with the discriminatory attitude towards patients suffering from mental illness as potential violent offenders.’<sup>14</sup>

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<sup>14</sup> Ibid., 225

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