

Social model of legal capacity for criminal responsibility and CRPD

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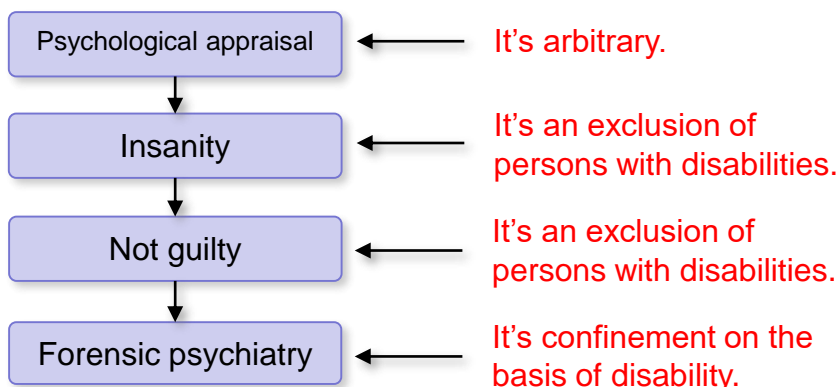
Awareness of issues discussed in this poster

In the negotiations for the drafting of General Comment No. 1 on article 12 of the Committee on the Rights of Persons with Disabilities (CRPD), the World Network of Users and Survivors of Psychiatry (WNUSP) insisted that legal capacity should include criminal responsibility and the insanity defense is an instance of inequality on the basis of disability. The CRPD, however, didn't agree to refer to criminal responsibility in the GC at all. Therefore, the points of article 12 became guardianship, which is an instance of inequality on the basis of disability in the legal capacity to act, and forced confinement allowed by the Mental Health Act, which is an instance of inequality on the basis of disability regarding medical consent. The reason WNUSP couldn't carry their point in the negotiations is that they couldn't adequately persuade the committee. The purpose of this poster is to analyze previous social models of criminal responsibility and to take the first step toward developing a better model.

Article 12 Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

Confusions in previous explanations of criminal responsibility



Tina Minkowitz describes a social model of criminal responsibility and asserts that the judicial system should focus more on restoring social relations in the community, because social situations create crime (Minkowitz 2014).

Point1: She rejects the insanity defense resulting in forensic psychiatry, and criticizes the insanity defense itself.
Point 2: She removes disability from the reasons for acquittal, shifts attribution of the cause of crime from individuals to society, and insists that damage caused by crime should be resolved by restoring society.

Discussion

Bases of the theory of the social model of criminal defense are:

- The image of human beings presumed in criminal law doesn't include persons with psychosocial disabilities.
- Legal determinations that persons with psychosocial disabilities are to be treated in order to bring them closer to the image of human beings presumed in criminal law are criticized and considered part of the "medical model."
- Questioning the present situation of criminal punishment in our society from its foundations.

In this sense, it is better to consider criminal responsibility a violation not of article 12.2 but of article 12.1 of the CRPD, and to criticize legal norms which do not include persons with disabilities in their image of human beings from the point of view of inequality with others. Future tasks are to find a reasonable role for the insanity defense in equality of criminal responsibility and to draw up blueprints for an actual redesign of the system.

Criticisms of limitations in the image of human beings presumed in criminal law



Paul Johann Anselm von Feuerbach, 1775-1833)

In Feuerbach's theory of criminal law he rejected authorities arbitrarily determining penalties without relation to the content of a crime, and developed the "nulla poena sine lege" doctrine. Nulla poena sine lege holds that written laws restrict judges, inform nations of the contents of crimes and their penalties, and bans committing a crime.

Point: The image of a human being in Feuerbach's theory is a rational person who voluntarily refrains from committing a crime when he or she knows of the existence of the penalty. This image doesn't include "mad people" who act without "profit-and-loss" arithmetic.



Ernst Ferdinand Klein (1744-1810)

Klein put forward a new theory of criminal law in which dealing with crimes already committed is not enough and criminal law needs to mandate "security measures" which confine a person and provide him or her with treatment and education in order to eliminate the risk of him or her committing a crime in the future.

Point: "Security measures" are an intervention to bring the person in question closer to the image of human beings presumed in criminal law. They are based on the idea that persons who do not fit this image should be changed.

It should be a basic idea of the social model of psychosocial disability to make the image of human beings presumed in criminal law include persons with psychosocial disabilities.

Variations in the method of inclusion

Osami Yoshida from Japan has asserted that penalties against persons without disabilities should be reduced like penalties against those who are insane or less sane (Yoshida 1983).

There are different ways of reassessing criminal responsibility. One is to retain the insanity defense and adapt persons without disabilities to persons with disabilities. Another is to abolish the insanity defense and adapt persons with disabilities to persons without disabilities.