

Advancing knowledge about criminal justice and mental health

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Researchers with expertise in criminal law, philosophy, psychiatry and psychology are combining their knowledge to explore how mental disorders are approached within criminal law and contribute to better legal and forensic practices

Current criminal justice systems are based on the premise that human beings are responsible agents that can be held accountable for their actions. However, most criminal justice systems have legal doctrines recognising that there are exceptions when an individual should not be considered criminally accountable.

A ubiquitous practice is that children under the minimum age of criminal responsibility are not subject to punishment. Similarly, most countries limit criminal responsibility for offenders with mental disorders and disabilities. However, the question of who should be held criminally accountable and who should not is highly controversial, and a subject of debate. The same applies to what role psychological and psychiatric experts should have in criminal proceedings.

In the research conducted by me and my team at the University of Bergen, we attempt to combine insights from legal research, mind sciences and philosophy to provide a much-needed knowledge base for researchers, decision-makers and practitioners concerned with the issue of criminal responsibility.

Mental disorders and criminal responsibility

Handling offenders with mental disorders is a key challenge for contemporary justice systems. Most countries have doctrines exempting offenders with mental disorders from punishment, often replacing imprisonment with compulsory treatment and confinement. Because of the influence of forensic psychiatry in legal practice, these doctrines are today commonly associated with psychiatric diagnosis and notions of severe mental disorders.

However, psychiatric notions are primarily developed to guide healthcare professionals in providing treatment to patients, not to decide questions of accountability in a criminal case. The practical relevance of mental disorders for criminal responsibility and punishment is unclear and constitute a persistent challenge for justice systems worldwide.

DIMENSIONS project

In the DIMENSIONS project, the aim is to explore how mental disorders matter to criminal accountability within the framework of Norwegian law, with a focus on the legal relevance of psychosis. We take on an interdisciplinary approach to explore how and why psychosis is relevant to legal rules and judgments about criminal unaccountability.

We will carry out empirical text analysis of legal judgments and examine how criminal unaccountability is associated with psychiatric notions of psychosis. Philosophical perspectives help us explore the ethical and conceptual foundations of this association. Mental health research is utilised to scrutinise legal assumptions about psychosis from a scientific point of view.

A more nuanced understanding

Together, this interdisciplinary approach enables us to advance our understanding of how the legal construct of criminal unaccountability relates to scientific evidence and normative justifications. By drawing on contemporary research in mental health, we can also evaluate how assumptions about the relevance of psychosis reflect current knowledge about mental disorders and their impact on behaviour. This work may ultimately inform legal decision-makers and lead to reforms of current legal practices.

Our project has so far shown that legal practices in this area involves assumptions that can be challenged from a scientific point of view. Our findings also suggest that to advance legal understanding of mental disorders, we need further research, including cross-country legal research. While the DIMENSIONS project is a basic research project, the hope is that the research can eventually contribute to more informed laws and legal practices.

Children's rights in the context of criminal justice

A special challenge is how to handle children above the minimum age of criminal responsibility who commit serious crimes. While these children can be subjected to punishment, it is still a premise that children differ from adults. Children's social and cognitive functions are not fully developed, which can affect the extent to which they should be held responsible for their actions. Some of these children also have mental disorders, raising special issues for the law.

Children in the justice system thus require different treatment than adults, and this is also a constitutional and human rights requirement. The challenge is that it is unclear how one should consider children's development in forensic and legal assessments. A further dilemma is that while the justice system should protect children's rights, it must at the same time take necessary precautions to prevent harm to society. This is a difficult balance.

CHILDCRIM project

In our CHILDCRIM project, we target more accurate assessments of accountability and risk of reoffending by understanding children's development and the risk factors that may lead to criminal behaviour. Our research aims to bring together a comprehensive understanding of child development, mental disorders, and risk factors to improve how the justice system handles cases involving children.

We have a focus on how legal and forensic assessments take children's development into account in evaluations about mental disorders, criminal unaccountability and violence risk. By applying and intergrating pshychological, psychiatric and legal perspectives, we will also seek to clarify how children's development matter to these evaluations. This integrated approach may eventually inform better legal guidelines for addressing children who commit serious crimes, ensuring that their development as being children is taken into account.

Cultural differences of accountability

Our research over the last years has in sum shown many points for needed improvements in the criminal justice system, and also a critical need for further research. A particular matter is to explore the legal understanding of mental disorders in a broader cross- country perspective.

We have done a smaller pilot project looking into the global south and other jurisdictions that are underexplored.

It seems like cultural views on mental disorders and children play a crucial role in shaping legal doctrines. However, there is still much work to be done in terms of understanding the differences across jurisdictions, and how these differences can influence how legal systems interpret their relevance to criminal accountability.

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