Persons with Mental Disabilities and the United States Justice System: a Study of Injustice and Contradiction

Benjamin Brookstone
6 December 2010
David Eagleman, Professor
NEUR 525
Acknowledgements

I would like to acknowledge my friend Todd Mollan for reading this paper and providing some insight.
Abstract

This paper explores a short history of the mentally challenged in the legal system and makes comparisons between how the legal system treats subjects with borderline intellectual functioning and juveniles with normal intellectually functioning. The research contained in this paper amply proves the prevalence of nefarious consequences stemming from strict legal boundaries through two case study examples. The paper then proposes an experiment designed to prove that mentally challenged offenders do not meet the culpability standards set forth by the legal system. Conclusions drawn from the experiment are elaborated upon through their constitutional implications.

Keywords: Mentally Retarded. Borderline Mentally Retarded, Borderline Intellectual Functioning, Mentally Challenged, IQ, Executive Functioning, M’Naughten, Atkins v. Virginia
I. Introduction

The legal treatment of criminals with mental retardation and borderline mental retardation constitutes a dark and highly controversial issue in the legal system today. Capital punishment for the mentally retarded has only been banned for ten years in the United States. There are currently no legal provisions for criminals with borderline intellectual functioning. Such individuals face numerous challenges ranging from equal protection under the law to accessing civil services necessary to aid their mental disability. Strict boundaries in the legal system, meaning, in this case, a strict cut-off point to establish mental retardation, serve only as an obstacle for such individuals. A person with an IQ slightly above the threshold for mental retardation as classified by the Diagnostic Statistical Manual becomes ineligible for provisions for the mentally retarded spanning from special education to services for mentally retarded adults. There are inherent contradictions in place in the criminal justice system that allow for a mentally challenged individual with the mental age of a young child to be tried as an adult criminal despite the fact that a child with the same mental age would not be considered an adult offender. This paper argues that there should exist a categorical ban on capital punishment for both mentally retarded and borderline mentally retarded individuals. Such subjects simply lack the intellectual capability to understand the ramifications of their actions.

The remainder of this paper is divided into three sections. Section II, explores a short history of the mentally challenged in the legal system and makes comparisons between how the legal system treats mentally challenged subjects and normal intellectually functioning juveniles. This research describes the prevalence of unjust consequences resulting from strict legal boundaries through two case study examples. Section III proposes an experiment designed to suggest that mentally challenged offenders do not meet the culpability standards set forth by the
legal system. Conclusions are drawn from the experiment and are elaborated upon through their constitutional implications. Section IV, finally, contains a summary of the paper.

This paper argues (see especially Section III) that because mentally retarded individuals and mildly mentally retarded individuals lack the executive capacities of an average adult, there should exist a categorical ban on capital punishment for those individuals deemed unable to fully comprehend their actions due to mental disability. Furthermore, incarceration is not an effective means of rehabilitation even for individuals with mild mental retardation since they cannot understand the consequences of their actions. In order to provide a more utilitarian treatment for the borderline mentally retarded in the justice system, this paper explores the possibility of sentencing reform for the mentally challenged and discusses possible alternatives to incarceration for such individuals.

II. The Mentally Challenged in the Legal System

In Atkins v. Virginia, 2002, the Supreme Court, with a 6-3 ruling, instantiated that capital punishment for the mentally retarded violates the Eighth Amendment’s clause against cruel and unusual punishment. This overturned the court’s contrary 5-4 ruling in Penry v. Lanaugh, 1989, which upheld the constitutionality of capital punishment for the mentally retarded. Since 2002, of the current thirty-eight death penalty states, only eighteen have adopted categorical bans for executing the mentally retarded while the remaining states look to factors other than the IQ to determine if the defendant may be above the legal threshold for mental retardation. Atkins v. Virginia falls within a recent trend of incorporating neurological findings into the legal system. Improved research methods and techniques in neuroscience have enabled the criminal justice system to better account for neurological differences between individuals that may make some
less able to understand or determine the consequences of their actions than others. For example, neurological findings indicate that increased subcortial impulses and insufficient frontal lobe control, stemming from incomplete mylenation (neural insulation) and hormonal infusion during the growth process, renders minors less able to behave rationally than adults (French, p. 16). The mylenation process completes and the subcortical impulses subside generally when the growth process ends at age eighteen. This constitutes the reasoning behind *Roper v. Simmons* in 2005 which bans capital punishment for minors. Minors are less able to account for their actions than adults; therefore, the legal system must take that difference into account. By comparison, mentally retarded individuals do not even have the opportunity to reach the brain maturation of an adult. But how is mental retardation established?

II.1 Legal Definition of Mental Retardation

The Diagnostic Statistical Manual IV (DSM-IV) and the American Association on Mental Retardation (AAMR) both define mental retardation and borderline mental retardation as a deficiency that occurs before the age of eighteen.

According to the DSM-IV, an IQ below 70 on the Stanford-Binet scale generally classifies one as mentally retarded. Typically, this is the threshold adopted for mental retardation by death-penality states. An IQ below 70 falls two standard deviations below the national average of 100. About 68.26% of the US population’s IQ scores fall between 85 and 115 on the Stanford-Binet scale (Locurto, 1991, p. 5). People with an IQ below 70 generally are unable to live independently; they cannot, for example, do their own laundry or cook for themselves (Hassiotis, et al., 2008). Mildly mentally retarded individuals fall one standard deviation below the norm on the Stanford-Binet scale, having an IQ between 71 and 84 (American Psychiatric Association,
1994, p. 684). Although such individuals can generally live independently, they still significantly lack the executive decision making abilities of an adult with normal intellectual functioning. Individuals in this range of intelligence are currently eligible to receive the death penalty in those states allowing capital punishment. *Atkins v. Virginia* applies only to individuals with an IQ below 70 and even then only to those not deemed to have sufficient “mens rea” or a “guilty mind” in death-penalty states without a categorical ban on capital punishment for the mentally retarded.

The research undertaken for this paper, which will be explored at greater length in the subsequent sections, finds that individuals with mild mental retardation are less culpable than adults with normal intellectual functioning because they have a severely diminished capacity to make rational choices. In the original Stanford-Binet intelligence test of 1912, Lewis Terman notes how “one of the most important facts brought to light by the intelligence test is the frequent association of delinquency and mental deficiency.” Of course, the test was originally used to support the eugenics movement, which argued for the manual genetic modification of humans. Terman concurs with the reasoning behind the involuntary sterilization of the mentally retarded which the Supreme Court upheld in *Buck v. Bell* in 1926. At the time, twenty-three states permitted involuntary sterilization of the mentally retarded (French, p. 17). Although the Virginia statute at issue in that case was repealed in 1974, that case has never been overruled by the Supreme Court.¹ Such legislation was not addressed again by the Court until *Youngberg v. Romeo* in 1982 which granted mentally retarded criminals the same standards of liberty afforded to non-mentally retarded criminals.

Efforts to eliminate the mentally retarded from the general population have been likened to parallel efforts by the Nazis to “purify” the German race. Although the movement in the

¹ Taken from discussions with Todd Mollan
United States never reached the number of those affected by involuntary sterilization during the Nazi regime (over 300 thousand not to mention those simply exterminated), *Youngberg v. Romeo* did not solve the extent of the inequality between normal functioning and mentally retarded offenders. Because mildly individuals with mild mental retardation are eligible to receive the same punishments as individuals with a much greater capacity to determine “right from wrong,” the legal system tacitly implies that mildly retarded individuals conceive criminal behaviors in the same ways as those with average or higher intelligence. This constitutes a gross falsification of the capacities of borderline intellectually functioning individuals.

**II.2 Parallels between Cognitive Functioning in Juveniles and the Mentally Disabled**

Comparisons between juveniles and the mentally challenged in the justice system put the capabilities of the mentally challenged into perspective. Generally speaking, an individual under the age of eighteen is considered a “juvenile” in the legal system. There can be allowance for juveniles to be tried as “adults;” however, juveniles are not typically subject to the same punishments as adult criminals under the pretext that juvenile minds have a greater capacity for rehabilitation than adult minds. Comparisons can be made between juveniles with normal intellectual functioning and individuals with mental disabilities through an application of the intelligence quotient.

The intelligence quotient is commonly known to be the following:

$$\frac{\text{mental age}}{\text{chronological age}} \times 100 = \text{IQ}$$

Mental age usually refers to the “the chronological age for which the test performance is average” (Thurston, 1926, p. 268). Therefore, if the average thirteen year old has an IQ of 100,
his/her mental age is also 13. Although juveniles can be deemed to have the foresight of an adult criminal in the justice system, the process does not work in reverse. For example, California’s Proposition 21, voted into effect in 2000, requires juvenile offenders older than fourteen years of age to be tried as adult offenders (Taylor, 2002). However, this process does not work in reverse with respect to actual “mental age.” For instance, an 18 year old who commits capital murder in California will be tried as an adult. This offender will still be tried as an adult even if he/she has borderline intellectual functioning, an IQ of say 71, just above the threshold for mental retardation. If this individual has an IQ of 71, mathematically, the person has a mental age of 13, below the threshold for the average juvenile offender tried as an adult, even under the guidelines of proposition 21. This example illustrates the injustice of prosecuting borderline intellectual functioning individuals as adult criminals.

Juvenile court in the United States traces back to 1899 in Cook County, Illinois (Roberts, 1998, p. 126). The establishment of a juvenile court was seen as a developmental milestone for the American criminal justice system and was the result of cumulative efforts of renowned social work professionals, lawyers, and humanitarians (Roberts, 1998, p. 123). Some of the original guidelines from Illinois legislation for the establishment of a juvenile court include goals of understanding the motivation behind the juvenile’s action and the primary goal of rehabilitating children and youth (Roberts, 1998, p. 125). Even in 1899, the justice system understood how children lack the same capacity for mens rea as an adult. Juvenile court serves as a utilitarian alternative to the retributive approach of punishing those individuals with diminished mental capacity in the same way as adults with normal intellectual functioning. It should follow that mentally challenged individuals, with the mental capacity in the same range or lower than minors
ineligible to be tried as adults in our justice system, be granted the same rights to have their mental capacity taken into account when determining culpability.

II.3 Further Limitations for the Mentally Retarded and Borderline Mentally Retarded

“Borderline Intellectual Functioning” again corresponds to an IQ range between 71 and 84 on the Stanford-Binet Scale (American Psychiatric Association, 1994, p. 684). Hassiotis et. al, 2008, suggest that individuals that fall within this IQ range have unmet mental health needs. Due to the nature of strict cut-offs for specialized mental health services, borderline intellectual functioning individuals more often than not remain ineligible for intellectual deficiency (ID) services, including those that provide mental health services and specialist learning disability services (Hassiotis, et al., 2008, p. 105). As it is, cognitive disorders are overrepresented in the borderline to severely mentally deficient population. In borderline deficient subjects, there exists a high prevalence of phobias, depressive episodes, and personality disorders. Such personality disorders with demonstrated co-morbidity to mental retardation include antisocial, avoidant, borderline, dependent, and paranoid personality disorder. Mental retardation also exhibits documented co-morbidity with alcoholism and psychosis. Borderline mentally challenged individually are at risk for a vast array of disorders for which they lack the mental capacity to withstand, all else being equal in comparison to normal intellectual functioning adults. Such disorders as described above can occur over twice as frequently in borderline intellectual functioning individuals compared to normal intellectual functioning adults.

II.4 Case Studies

Perhaps the best way to understand the perils of strict boundaries for establishing intellectual capacity in the legal system is to examine a couple of case studies.
Consider first the case of Teresa Lewis. Teresa Lewis was convicted of capital murder and sentenced to death in 2002 for plotting the murder of her husband Julian C. Lewis Jr., 51, and her step-son, Charles J. Lewis, 25. Teresa Lewis, 33 at the time, began a relationship with her co-defendants to be, Matthew J. Shallenberger, 21, and his trailer-mate, Rodney L. Fuller, 20, in a line at Wal-Mart (Eckholm, 2010). Soon thereafter they began meeting and plotting the murder of her husband and step-son. She became particularly attached to Shallenberger but had a sexual relationship with both men; she even encouraged her daughter to have sexual relations with Fuller. On the night of October 30th, she left the door to her trailer open and went to sleep waiting for Shallenberger and Fuller (Eckholm, 2010). After the two arrived, they blasted multiple shotgun rounds at both victims as they slept. Teresa Lewis split the $300 in her husband’s wallet with Shallenberger and waited forty-five minutes before calling the police. Her husband reportedly moaned to the deputy when he arrived, “my wife knows who did this to me” (Eckholm, 2010).

Although Lewis pled guilty, her culpability comes into question beginning with the great remorse she seems to have expressed throughout her arrest, trial, conviction, and appeals. Lewis had an IQ of 72, two points above the cutoff for mental retardation in Virginia and thus two points from categorical exemption from the death penalty in the state of Virginia due to mental retardation (Sharp, 2008). Furthermore, Lewis was diagnosed with dependent personality disorder (DPD). A personality disorder generally inhibits one’s ability to perceive situations and relate to other people (Mayo Clinic Staff). DPD specifically includes excessive dependence, submissiveness, and tolerance of abusive treatment (Mayo Clinic Staff).

---

2 The case of Teresa Lewis is taken from how it appears in Brookstone 2010. See bibliography.
Although not at Lewis’ trial, multiple sources suggested that Shallenberger was the ringleader of the conspiracy. Notably, in a prison letter to a girlfriend post Lewis’ trial, Shallenberger admitted that he used Lewis in order to gain insurance money from her husband and step-son. His goal was to start a drug ring for which he needed startup money. His aspiration was to be a venerated mafia-style hit-man in New York. He figured that he could make $350k for the murder of Lewis’ husband through his life-insurance policy as opposed to only $20k for a murder in New York (Eckholm, 2010). Fuller also remarked that Shallenberger had complete control over Lewis. Lewis showered Shallenberger with gifts and withdrew $1,200 to buy the shotguns for the murder (Eckholm, 2010).

Lewis’ case highlights the limitations of strict boundaries in the legal system. Mental retardation is not a matter of IQ alone, but rather an assessment of IQ in conjunction with limitations in adaptive skills (e.g. self-care, social skills, etc.) and considerations concerning the developmental period during which the condition first appeared. Lewis’s death sentence challenges our legal system’s validity in assessing competency through strict categorizations. Lewis received the death penalty while her partners received life imprisonment. She was deemed to be the ringleader by two Virginia jurors despite mental illness, Shallenberger’s admissions, and her addiction to pain medication that possibly altered her already limited ability to assess the reasoning behind her actions. Despite two appeals to both the Supreme Court and Virginia Governor Bob McDonnell, she was put to death on September 23, 2010 by lethal injection, the first woman killed in Virginia since 1912.

Consider next the case of Earl Washington. Washington was convicted of the rape and murder of Rebecca Williams in 1982 and sentenced to death. He had an estimated IQ only slightly below that of a borderline intellectually functioning individual (Foerschner, 2010). Like
many with an IQ in this range, Washington was both highly susceptible to suggestion and eager to please others. As a result, he waived his right to remain silent and confessed to the crimes committed against Williams, a confession instrumental in his conviction and sentencing. Washington’s confession was full of factual errors but these did not protect him from the death penalty. Washington sat in prison for nineteen years until a series of DNA tests proved his innocence only a few days before his scheduled execution (Foerschner, 2010). In an interview of Washington following his exoneration, when asked why he confessed to the murder, his answer was simply, “I don’t know.” He also stated that he did not understand that he was being accused of murder or that his confession could lead to his conviction.

In light of such cases, it seems that individuals with borderline intellectual functioning have a highly questionable understanding of their actions. Nevertheless, at least thirty-five inmates with mental retardation have been executed since the reinstatement of the death penalty in the United States in 1977 (Foerschner, 2010). Furthermore, an additional estimated two-hundred to three-hundred current death row inmates in the United States classify as mentally retarded (Foerschner, 2010). This may even be an underestimation. The Flynn Effect, or the incremental raw score increase in IQ scores over time, contributes to the difficulty in attributing a diagnosis of mentally retarded or borderline mentally retarded. The Flynn effect notes approximately a nine point increase in raw IQ per generation, due to changing societal norms (McGrew, 2010). Therefore, IQ test norms may become obsolete within a generation and major intelligence test manufacturers are forced to re-norm their tests every 15 to 20 years in order for them to be accurate (Foerschner, 2010). Strict boundaries with regard to IQ in the legal system do not account for the existence of a margin of error in IQ testing. Such a measure could well have been
applied to Teresa Lewis which would have qualified her for exemption from the death penalty in Virginia.

III. Proposal For An Experiment

This section, which constitutes the thrust of the paper, proposes an experiment which is intended to empirically prove that mentally retarded and borderline mentally retarded criminals have a diminished capacity to understand the nature of their actions in comparison to adults with at least average intellectual functioning. The experiment is rooted in the research of Camille et. al (2004) as described in Sapolsky, 2004.

III.1 Background for the Experiment

The experiment suggests that borderline mentally retarded individuals fail to meet the culpability standards set forth by the M’Naughten rule. The rule requires that subjects be able to understand the difference between “right” and “wrong” in order to be culpable for a crime. M’Naughten has been criticized for failing to adequately take mental illnesses and impaired volition into account when determining culpability (Sapolsky, 2004, p. 1790). As a result, some states have expanded the rule in order to incorporate the issue of impaired volition (Sapolsky, 2004, p. 1790). Consider the implication of M’Naughten on Mental Retardation in comparison to Turrets Syndrome, a neurological disorder usually identified by the presence of a repetitive physical “tick” or convulsion. If a person arbitrarily punches someone due to a tick resulting from Turrets, the subject with Turrets has not committed a crime. It follows that someone with a mental illness such as mental retardation or borderline mental retardation should also not be considered equally guilty for a crime they might commit in comparison to an adult with normal
intellectual functioning. In *The Frontal Cortex and The Criminal Justice System*, Sapolsky notes how the frontal cortex is responsible for executive functioning or impulse control. It is the locus of our ability to do the “harder” rather than the “easier” thing even though the “harder” thing might not involve any immediate reward by comparison to the easier, quicker alternative (Sapolsky, 2004, p. 1790). The prefrontal cortex (PFC) initiates movements and behaviors, biasing us to choose one particular behavioral output over another (Sapolsky, 2004, p. 1792).

The executive areas of the brain are of particular relevance and import to mental retardation through the consideration of neural pathways. For example, one projection in the PFC originates in the ventral tegmentum, courses through the nucleus accumbens, and continues into the PFC (Sapolsky, 2004, p. 1792). This projection mediates between pleasure and reward and uses the neurotransmitter dopamine, implicated in both. Mentally challenged individuals demonstrate a diminished capacity for executive function (Adams & Oliver, 2010, p. 394). Mentally retarded individuals demonstrate a reduced capacity to mediate and understand the consequences of their actions. Sapolsky deduces that it is possible to notice the difference between “right” and “wrong” but still lack volitional control due to organic cognitive impairment, one of the characteristics of mental and borderline-mental retardation according to the DSM-IV (Sapolsky, 2004, p. 1794).

**III.2 Experiment Design and Description**

The basis of the experiment rests in a gambling task which assesses the reasoning abilities of subjects. There are two tasks which comprise the experiment. Brain imaging technologies are to be used on subjects during the entire course of the experiment. Sapolsky verifies the feasibility of such a procedure (Sapolsky, 2004, p. 1791). That citation may be examined for the clarity of the
procedures described below as adapted for testing the rationality of mentally retarded and borderline-mentally retarded individuals.

In task 1, subjects spin a wheel which produces a “punishing” or a “rewarding” outcome. The outcomes stand for variables which must be instantiated as concrete items for the subject. For instance, a rewarding outcome might be instantiated as a monetary award for the subject and the punishing outcome might be instantiated as a monetary loss. Each subject should be given a certain monetary amount at the beginning of each task, say ten dollars. The subject can then either increase or lose this allowance based upon their performance in each task. The subjects will be given the opportunity to either lose this money or to increase the amount to one-hundred dollars, say, through the course of the experiment. Subjects will be given the starting amount prior to their participation in each task. Losing the starting monetary award during the first task does not bar a subject’s participation in the second task.

In Task 1, the subjects will view the outcome of their spin with the knowledge that either a punishing or rewarding outcome is possible depending upon the chance results of their spin. In Task 2, the subjects will spin two wheels, both of which will again produce either a “punishing” or “rewarding” outcome. In Task 2, the subjects will elect to receive the outcome of one of the two spin wheels before spinning the wheels but will nevertheless spin both wheels and observe both outcomes.

Two groups of subjects will complete the experiment selected through a random sampling of subjects who meet the stipulated criteria for the experiment. Group one, the control group, must consist of normal intellectually functioning adults with an IQ between 90 and 110, representative of the middle 50% of the United States population. The scans of this group will be
compared to two experimental groups\(^3\). The first experimental group will consist of borderline mentally deficient individuals with an IQ between 70 and 84. The second experimental group will consist of mentally retarded individuals with an IQ below 70, the threshold for mental retardation according to the DSM-IV.

III.3 Hypotheses

The experiment described above establishes grounds for several predictions. Normal subjects are expected to demonstrate “disappointment” during the first task if they receive the punishing outcome. Normal subjects who receive the punishing outcome during the second task are expected to demonstrate disappointment and “regret” at not selecting the other spin wheel option, evidenced by brain imaging and corroboration from the subjects after the experiment. In contrast, both of the experimental groups are expected to display outcomes demonstrating their limited capacity to understand the consequences of the experiment. Both experimental groups are expected to display diminished disappointment during both tasks and the absence of regret in the second task because this research predicts that the experimental groups lack mental capacity to understand the results of the experiment and executive functioning necessary to evaluate the significance of their decisions on outcomes during the experiment.

The experiment is designed to demonstrate that individuals with mental retardation and borderline mental retardation should be less culpable in the criminal justice system than adults with normal intellectual functioning. The subjects of both experimental groups in the experiment lack the evaluative judgment necessary to understand the nature of their actions. This paper

\(^3\) All IQ determinations will be made according to the Stanford-Binet Scale
predicts the experimental subjects will demonstrate cognitive behavior that suggests that they have a diminished capacity for mens rea as a result of their organic cognitive dysfunction.

III.4 Conclusions from the Experiment and their Constitutional Implications

The research this paper investigates has numerous constitutional implications, specifically for the Eighth and Fourteenth Amendments. In the former, the reference is to its clause prohibiting cruel and unusual punishment and in the latter, the reference concerns the equal protection clause granting all people liberty under the constitution. Consider City of Cleburne v. Cleburne Living Center (1985). As a result of this case, the Supreme Court established that mental retardation in itself does not determine a “quasi-suspect” class and therefore does not warrant special rights for the mentally challenged under the equal protection clause of the Fourteenth Amendment (French, p. 18). This ruling results from a change in the classification of mental retardation in the Diagnostic Statistical Manual. Mental retardation moved to an “Axis II” clinical syndrome from an “Axis I” major clinical syndrome beginning in the 1987 DSM-III-R (French, p. 18). The legal system currently only grants Axis I clinical syndromes, such as Schizophrenia, substantial license regarding mitigating circumstances (French, p. 18). In the DSM-IV, mental retardation remains as an Axis II disorder while eating disorders and sexual and gender identity disorders are classified as Axis I clinical disorders. Technically, according to the legal definition, an eating disorder has more mitigation power than mental retardation for criminal offences.

This ruling from Cleburne is widely considered to be an unfortunate consequence of the decision, especially considering that the original purpose of the case was to resolve a zoning dispute for the location of group homes. Both mental and borderline-mental retardation question
whether individuals with the deficiency are competent in a legal sense to stand trial and appreciate the gravity of such a situation. There exist four tests in United States legal system which determine whether a defendant suffered from a mental disease at the time they committed the crime. If the tests determine the presence of a mental disease, then the defendants are not criminally liable for their actions. The first, the *M’Naghten test*, is the origin of the others, the Durham test, the American Law Institute (ALI) test, and the Insanity Defense Reform Act. As taken from an unpublished resource by Dr. David Eagleman at the Baylor College of Medicine, which refers to Seligman, Walker, and Rosenhan, 2001, each of the four tests ask a slightly different question in order to determine whether the defendant suffered from a mental disease at the time of the crime. The *M’Naughten* test asks, “Did the accused know right from wrong?” The Durham test asks, “Was the crime a product of mental disease?” The ALI test, “Could the accused both appreciate the law and conform to it?” The Insanity Defense Reform Act, “Could the accused appreciate the law?” Mentally retarded and borderline mentally retarded subjects have a severely limited capacity to appreciate the law, conform to it, and understand the consequences of their actions. Based upon the core questions of the tests, mentally retarded subjects fall within the scope of “mental disease” as defined by the legal system.

The legal system typically lags behind current psychiatric or psychological research when defining insanity. The legal system conflates mental illness, mental insanity, and mental disability into one general deficiency.\(^4\) However, there are differences between those that are unable to tell “right from wrong” and those that cannot control their behavior. The legal definitions for sanity need to be modified so that they account for the diminished capacities of

\(^4\) Taken from discussions with Todd Mollan
criminals with borderline intellectual functioning. Furthermore, the legal system must better account for the differences between subjects with different types of mental disability.

IV. Summary

The research of this paper implores the justice system to enact sentencing reform for mentally retarded and borderline mentally retarded criminals. These individuals are overrepresented in prison while prison does not serve as an adequate means of rehabilitation for such subjects due to their organic cognitive dysfunction. A categorical ban on capital punishment must be instantiated for the mentally retarded and the borderline mentally retarded. Subjects with borderline intellectual functioning demonstrate a lack of reasoning ability that warrants the blanket extension of the provision granted by Atkins v. Virginia to such subjects. The current population covered by Atkins v. Virginia does not fairly account for subjects with severely diminished cognitive capacities, specifically executive functioning. Furthermore, this research recommends that the Diagnostics Statistical Manual re-classify mental retardation as an “Axis I” major clinical syndrome. Such a classification has significant influence over legal provisions for the mentally challenged and such a change would more accurately reflect the capacities of mentally retarded and borderline mentally retarded individuals than the current classification in the DSM-IV. The inherent assumptions and contradictions in the legal system regarding mentally challenged subjects represent an historically retributive approach towards mentally challenged criminals. That approach, however, grossly mischaracterizes the nature of such offenders. Reform with respect to the recommendations of this paper would constitute progressive improvement to the legal system, supported by current research in cognitive psychology.
Bibliography


