

Non compos Mentis within the Judicial System: The importance of evolving the Insanity Defense in Criminal Sentencing

Ellia Tchamitchian & Joud Safa

Edited By: Selina Riachi

11/05/2026



Should a defendant who is of non compos mentis, that is, not of sane mind, be held fully responsible for their criminal actions? The legal system recognizes those who lack sanity, often due to having a severe mental illness, as reflected by the incorporation of the insanity defense among others. This particular defense is used when the individual is negating criminal intent; one admits to the physical act but argues that their lack of mens reus, or “guilty mind”, exonerates them from responsibility (Asokan, 2016). Some scholars argue that all criminals must be treated equally, even those who plead insane, as the outcome of the crime remains the same and equivalent punishment would be just. Such researchers believe that the judicial system should aim to promote and establish public safety by imprisoning mentally ill individuals instead of prioritizing compassion over accountability (Bagaric, 2016). However, others argue for the necessity of the insanity plea as a way of recognizing and fairly addressing those of non compos mentis. Scholars have even emphasized the need to reevaluate the law as concerns about legal implication, including the rigidity of the defense, have been propelled (Wajid & Nasir, 2023). Thus, the insanity defense and the treatment of the mentally ill remain among the most debated aspects of the judicial system. Hence propelling the research question: “To what extent should a state of non compos mentis, including having mental deficiencies, be a mitigating factor in criminal sentencing?”. This paper argues that non compos mentis individuals should be treated differently within criminal sentencing and the insanity defense should be reformed. By addressing the morally unjust nature of current laws, the failure to account for biological differences, the legal system’s prioritization of the rational, and the importance of rehabilitation, justice for the mentally ill can be achieved.

Criminal responsibility is a central element within the legal system. As defined by researchers Zejneli and Arifi (2022), it “refers to a person’s ability to understand his actions at the time the crime is committed” (p.120). In other words, to be criminally responsible, one must be able to comprehend

their behaviors and remain in control of their thoughts. This includes thoughts that occurred during the crime, which suggest intent, and thoughts about the expected outcome, suggesting awareness of the consequences. Moreover, in establishing criminal responsibility, the two fundamental elements that shape crime must be considered and should coincide for a conviction. These elements are *actus rea* and *mens rea*. The former refers to the physical nature of the crime, be it the voluntary act or omission, while the latter is defined by the offender's mental state during the crime (Zejneli & Arifi, 2022). Specifically, *mens rea* highlights the importance of addressing the moral intention and knowledge held by the offender, aside from addressing the crime itself. Hence why, an individual who is decided morally incompetent would not fulfill the necessary requirements for criminal responsibility or criminal liability due to the limited *mens rea*. Notably, responsibility is part of a larger framework: the moral principle of guilt. This demonstrates that guilt serves as a "concrete subjective" element "of criminal offense" and moral culpability cannot be separated from the action (Zejneli & Arifi, 2022, p.123). This is highly relevant when dealing with an individual of non compos mentis; those who are not of sane mind may commit a crime, meeting *acts reus*, and yet, fail to register their wrongdoings due to their mental state. Zejneli and Arifi (2022) further explain that these individuals do not possess the capacity to form intent, maintain an accurate grasp on reality and experience control. Thus, with an abnormal mental state come various challenges in assigning guilt and justifying criminal responsibility. Through a moral lens, non compos mentis defendants should not be punished similarly to those who experience guilt, as this would contradict the principle of guilt that serves as a foundation to the judicial system. It is also perceived somewhat inhumane and cruel to hold such individuals fully accountable when genuine blameworthiness is absent. The situation becomes more complicated than the nature of the crime itself, as such defendants had been prevented from making meaningful choices due to their cognitive deficiencies. To further explain, those with a mental illness may lack a coherent

consciousness leading to confusion and may have issues with impulsivity. This results in acting without full rational deliberation. A prominent example is a case of Conduct Disorder; people suffering from this illness have difficulty resisting urges and impulsive behaviors, which is a predictor of criminal behavior (Mathias et al., 2008). Therefore, justifying equal punishment is no longer an issue of the law, but also an ethical dilemma that demands a solution for the purpose of justice. This is why the insanity defense becomes crucial and must be further strengthened through modifications. The aim remains differentiating between criminal intent and crimes committed unknowingly as moral justice requires *mens rea*. Overall, lacking a sane mind should play a role in criminal sentencing and allocated punishment on the basis of morality.

A further disadvantage accentuating the unfair treatment of non compos mentis individuals within the law is the lack of acknowledging scientific and biological differences. As mentioned, one factor that remains essential within the evaluation of defendants is the intent or *mens rea*. Intentions originate from mental processes in the brain; however, once an individual's cognition is impaired, their intentions become unreliable and are no longer within their control. The current insanity defense does not take these cognitive deficits into account, which is morally unjust to mentally ill defendants as these deficits may be the primary reason explaining the crime committed. For example, individuals who suffer from dementia, schizophrenia, attention-deficient hyperactivity disorder, depression, or bipolar disorder all experience unusual activity in the brain, impairing their decision making and cognitive skills. It is for this reason that many researchers have conducted studies to investigate the relationship between criminal behavior and human biology. Their aim is to bring forth scientific evidence to the judicial system that explains how people with mental disabilities have cognitive impairments that can affect their behavior. An article composed by Andrea L. Glenn and Adrian Raine (2014) argues that many criminal behaviors occur as a result of brain and neurological abnormalities.

They focused on two major brain structures: the frontal lobe and the amygdala. The frontal lobe, in particular, is responsible for decision-making, voluntary movement, personality, and emotions. The researchers found a correlation between a decrease in the frontal lobe's function and violent behavior, outlining that one's brain abnormalities can hinder their behavior in an uncontrollable and violent manner. Glenn and Raine (2014) also mentioned that such brain abnormalities can be a result of environmental influences, and not just a result of genetics. They note that "neurological patients who had suffered from an accidental head injury to the ventral prefrontal cortex show poor decision making, reduced autonomic reactivity to socially meaningful stimuli and psychopathic-like behavior" (Glenn & Raine, 2014, p.56). This means that those who aren't even born with brain defects can suffer from head injuries to the extent that their cognition is impaired, potentially resulting in psychopathic intentions. With this in mind, and to maintain fairness and humanity, the judicial system must consider these cognitive dysfunctions as a factor contributing to an individual's lack of responsibility, especially since such brain abnormalities occur outside the individual's control. In addition, similar correlations were found with the amygdala, a brain structure responsible for processing emotions and responding to stress. "Patients with damage to the amygdala have a reduced sense of danger, are less fearful and have deficits in the recognition of fearful facial expressions (a process involved in experiencing empathy)" (Glenn & Raine, 2014, p.56). This highlights how minor changes in the brain can influence an individual's consciousness which reinforces the notion that biological factors must be considered in the insanity defense as they have a great impact on an individual. Also, personality disorders, intermittent explosive disorder, and Kluver-Bucy syndrome relate to abnormalities in the amygdala. This illustrates how defendants who suffer from mental illnesses are not "normal" and should not be judged on the same terms as a defendant of sane mind because their decisions and actions are not equal in nature. Glenn and Raine (2014) also investigate

other biological factors that are associated with aggressive disorders, which in turn could potentially lead to crimes. Low levels of the neurotransmitter serotonin make individuals more aggressive and impulsive. This is because low serotonin causes the orbitofrontal cortex to function inefficiently. If this cortex does not function properly, then a person is incapable of stopping themselves from intrusive or impulsive actions. These findings highlight how non compos mentis individuals are biologically different to “normal” people, with such differences playing a role in their actions. Therefore, the insanity defense and the judicial system must take that into account and recognize the apparent deficiencies. Notably, these observations serve as evidence that individuals with mental illnesses should be treated differently because they are biologically predisposed to think and act uniquely.

Another reason why the current treatment of non compos mentis in the judicial system is unjust is the negative outcome such individuals receive when sentenced to prison. Imprisonment is a very common and well-used measure in the judicial system. It is a punishment used to confine an individual who is convicted of a crime or offense. For people living with a mental illness or who are not sane, there is still considerable debate on whether imprisoning such individuals is just or beneficial to the individual and the society. Canada et al. (2022) explore this by studying the impact of imprisonment on mentally ill individuals. The researchers had conducted an experiment where 43 mentally ill individuals, previously incarcerated, were asked about their experience. The researchers found that prison environments not only worsen physical health, but also one’s mental health as mental illness rates were reportedly 48% more than the general population. They discovered that participants had been dealing with an increased risk in suicide, chronic illness, and victimization. Instead, mentally ill prisoners were being held captive for long periods of time with limited access to medical care. Consequently, their condition had only deteriorated, making them more dangerous and

harder to treat in the future. As such, treating them in this manner is oppressive and unethical. Moreover, the participants claimed that any issue related to health was delayed or ignored. Health emergencies and cases of near death were the only situations in which action was taken by the institution, thus forcing the prisoners to wait and “watch” as their condition worsened (Canada et al., 2022, p.2). These alarming findings shed light on the brutal and borderline inhumane experience that mentally ill individuals face while being incarcerated. This problem further mirrors the poor quality of care as reported by the participants. Likewise, medical imaging was overlooked due to its limited accessibility and high cost; long-term medications are never given on time, risking the patients' lives. All these experienced issues are a result of limited support from society and the belief that prisons are indeed qualified to treat such prisoners. Canada et al. (2022) also found that due to the limited privacy in prisons, mentally ill convicts are treated in public instead of private rooms. When treated in public, the convict is labelled as “mentally ill” and prone to bullying, abuse, and victimization by other prisoners. As a result, many prisoners avoid taking treatment on purpose, leading to greater risks to their mental health. This study shows that the law must be readdressed to ensure it is supporting and caring when dealing with mentally ill individuals. Another insight concerning the issue at hand is that “Mentally ill individuals lack rational control, so punishment and deterrence doesn't logically apply” (OpenAI, 2026). The reason why criminals are sent to prisons in the first place is to be punished for the actions they chose to commit; the legal system assumes that the criminal is in control of their behavior. However, this does not apply to individuals whose cognitive abilities are impaired. It is irrational and ineffective to punish an individual who lacks rational thought while committing a certain crime. Ultimately, prisons serve no logical purpose in cases where defendants suffer from diminished cognitive abilities, which further stresses the need to shift current forms of punishments towards more protective and supportive measures. Canada et al. (2022) proposed many improvements that can be

done to tackle this main issue. Some include governments that must work on new funding and initiatives to better improve prisons so that individuals' mental and even physical health is treated. Second, separate institutions similar to psych wards that ensure the individual is receiving all necessary care. All in all, Canada et al. (2022) supports the notion that legislations concerning non compos mentis must be reevaluated to ensure justice among mentally ill defendants.

A further aspect revealing the need to reevaluate legal punishment, laws, and treatment of those with non compos mentis is the disconnect between mental health and the legal system. Specifically, the law places those with mental disabilities at a disadvantage due to the prioritization of the sane (Harris, 2022) and the stark gap between law and science (Wajid & Nasir, 2023). Primarily, there exists a legal bias towards sanity. Harris (2022) mentions that “a defendant is presumed by law to be sane and accountable for his actions unless the contrary is proved” (para.1). This implies that the system is structured around the ‘normal’ and those who aren’t ‘normal’ must fight to rebut such an assumption. Having understood this, it becomes apparent that mental illness is marginalized and treated as an exceptional case allowing exemption, or a lighter sentence, only if proof is provided. Unfortunately, the necessary elements, or proof required, is highly specific, extensive, and narrowly circumscribed. For example, the M’Naghten rules, developed as a test for insanity, relies solely on thinking and cognitive awareness; defendants must legally satisfy the conditions of having a “defect of reason”, “disease of mind” and incapability of registering their action’s consequences (Harris, 2022, para.2). In this way, such rules exempt only those who do not retain awareness of wrongdoing. The rules do not properly consider defendants who experience loss of control, irregularities in emotions, or even impulsivity, which are all symptoms of mental disorders as previously seen with the example of conduct disorder. Therefore, this framework is extremely lacking and difficult to qualify for, which results in many non compos mentis individuals being unfairly sentenced. It is because of this outcome

that the limitations of the legal system must be addressed with no further delay. Moreover, Wajid and Nasir (2023) agree with Harris (2022) adding that the rules are outdated, given they were established in 1843. The authors reveal the gap between the legal implications and modern psychiatric understanding; experiencing non compos mentis and mental illness exists on a spectrum and is not merely a case of cognitive incapacity. They further critique the system's lack of integrating new psychiatric and neuroscience research, thus allowing the gap to remain and failing to uphold the legal standards of justice and fairness (Wajid and Nasir, 2023). In the same vein, Asokan (2016) identifies the gap by highlighting that psychiatric diagnosis is merely treated as a testimony and is not a decisive factor; it is one aspect of the legal process and may not effectively convince the jury or judge. This shows how expert opinion on a defendant's mental state is not viewed as importantly as it should be. Instead, a diagnosis is taken as a form of evidence that will be interpreted by the jury and can be easily discredited. Both Asokan (2016) and Harris (2022) give examples in which the judge decides to treat a clinically impaired individual as sane. Harris (2022), for instance, refers to the trial of Jonathan Keal, where Keal suffered from severe schizophrenia and delusions, as validated by four psychiatrists. Although his mental issues played a large role in his actions and he was not particularly sane, he was still found guilty, and the insanity defense was overruled as the defendant could not meet the particular legal threshold. This exposes both the existing gap and the restrictions of the insanity defense. It is to be noted that mental health is no longer a stigmatized possibility; instead, it is a worldwide experience and should not be treated differently. Benefits would arise if the legal system were more understanding and willing to work against its failure in accommodating the complexities of psychological dysfunction. Otherwise, unethical treatment will continue, and the system will not achieve its purpose.

On the other hand, some scholars heavily disagree with the implementation of the insanity defense and would argue against the efforts of making the defense less rigid. The dilemma surrounding

the treatment of those with non compos mentis and mental disorders within the law exists because many believe that the consideration of their mental state is actually unfair and dangerous. Bagaric (2016) discusses the fact that “people are no less dead if mentally unwell offenders kill them rather than offenders who are mentally sound” (p.1). This statement reveals the tension within the debate; the perception of many individuals and the justice system itself place a primary emphasis on the crime and outcome rather than the mental state of the offender. Henceforth, when a crime is committed and, as per the example, a death occurs, the focus is mainly on the inflicted harm. This approach highlights that crimes severely impact the victim, their family, and society in physical, emotional, and psychological ways. These consequences remain regardless of the offender’s mental wellbeing and must be addressed adequately. Bagaric (2016) is in support of this stance as he adds that “the reduced mental functioning of offenders does not diminish the harm caused to victims” (p.1). Therefore, from this perspective, it can be seen as unfair and counterintuitive to reduce legal responsibility of non compos mentis or mentally inhibited criminals. This is because doing so would not provide the victim their justice. This standpoint also touches on the danger that is posed to society by such offenders and that imprisoning them is seen as a way to keep society safe. Bagaric (2016) mentions the law’s prioritization and need “to protect the public” in a fitting manner, hence why punishment is necessary (p.16). Additionally, because of the direct impact on the victim, one might argue that the power of consequence must be given to the victim and their family instead of the legal system; they are the ones affected and should have a voice and perspective. Therefore, the focus should be shifted from making the insanity defense more lenient to incorporating the victim and the family’s preference. This is especially since some families wish for a harsher sentencing on the criminal while others prioritize forgiveness and a more lenient outcome. Finally, some scholars argue that being of non compos mentis should not act as a major factor within a legal case as there is potential for defendants to fake

their mental condition. To further explain, within psychiatric diagnosing, there is a large awareness surrounding the possibility of malingering. Malingering occurs when an individual fakes symptoms of a mental disorder for personal gain, including avoiding criminal punishment (Alozai & McPherson, 2024). This is very relevant as the availability of the insanity defense may encourage some criminals to be deceitful and take advantage of the system. To add, even those who do suffer from any mental impairment may over exaggerate the extremities of their illness in order to win favor of the judges and jury. This reasoning is why some argue that making the insanity defense even more accessible is not a good decision. Overall, this debate's counter argument accentuates the idea that "the criminal law aims to prohibit and punish conduct that harms the interests of others- it is focused not merely on bad intentions or thoughts." (Bagaric, 2016, p.37).

As established, some view criminals as dangerous individuals no matter their state of mind and argue that they must be held fully responsible. However, others rebut this ideology and believe it is unreasonable to punish these offenders when they have limited control over their behaviors. Such scholars identify the various problems the insanity defense currently possesses with the aim of raising awareness on the necessity of fixing such issues. One of the main issues with the current defense is prioritizing the crime over the individual's mental state. When the judicial system prioritizes the crime over the mental state of the individual, they are dehumanizing and depersonalizing the defendant. While the defendant should indeed be held accountable for their actions; they must not be stripped of their dignity. It is wrong to ignore their mental state when it could be the root cause of committing a crime. Looking down on such individuals and making them feel inferior will only worsen or even be the start of new mental disorders. When all is said and done, these people who are committing crimes are human and do not deserve to be looked at as outcasts. The second counterargument, claiming mentally ill individuals are a danger to society and must be contained, may appear convincing at first.

However, it ignores relevant evidence that challenges it. Even though imprisonment is a way to maintain society's safety, prisons, as previously supported by Canada et al., worsen an individual's mental state. For this reason, placing these individuals in mental institutions and psychiatric wards is more effective. This is because the defendants' mental health will not be put at risk, all the while ensuring that society's safety is not jeopardized. In addition, these psychiatric institutions will decrease the likelihood of mentally ill individuals recommitting any illegal behavior when rejoining society because they are being properly treated while incarcerated. Another point discussed was how the insanity defense could be misused, where one could fabricate a mental illness to avoid any consequences. However, this circumstance is rarely achieved because of the effective and reliable tests used, built on experimental and scientific findings, that assess cognitive abilities. Hence, the judicial system can utilize these tests to prevent any form of malingering. Furthermore, as previously discussed by Asokan (2016), the insanity defense is not used often and is very strict when implemented in court. These two points ensure that individuals are restricted from carrying out any form of deception or dishonesty. To rebut the last counterargument, the person who determines the convict's verdict should not be the victim's family members or friends. While loved ones are the people who majorly suffer from the prisoner's behavior, they are currently in a state of shock and grief, and so, are not in the right state of mind to choose the convict's punishment. It is unfair to leave such decisions in the hands of families, as the result depends on their motive in seeking retribution or forgiveness. One family could seek revenge while the other acceptance, making this system unreliable and unjust to both the defendant and victim's relatives. All in all, these counterarguments fail to disprove both the need to imprison mentally ill individuals and the justification of maintaining the insanity defense.

To elucidate, the discussion on the treatment of those described as non compos mentis or those with mental illness remains open-ended. While some scholars argue that non compos mentis

individuals should be held fully responsible for their actions, others have explored the narrative that such individuals, along with their mental capacity, deserve to be understood and accounted for. As discussed in detail, this essay maintains the view that people of non compos mentis should be treated differently within criminal sentencing, and their mental state should be considered a mitigating factor. The stance is supported by various defending arguments that explore how those of non compos mentis experience biological impairments, affecting their behavior, and so, holding them to the same legal standard is deemed morally unjust. It is further argued that imprisonment is not the optimal punishment for such criminals as their mental state would drastically worsen. Instead, rehabilitation would be a better option since it keeps the criminal away from society while also aiming to improve the individual's mental state. Furthermore, when discussing legal implications, it has been made clear that the insanity defense is extremely rigid, resulting in a lack of proper or fair treatment to those in serious suffering. This is one of the many mentioned reasons advocating for the modification of the insanity defense. Remarkably, the importance remains in the way that the law judges criminal liability; fair judgment is crucial for justice and morality as this is an integral part of human rights. People who suffer mentally deserve recognition and appropriate sentencing. It is encouraged that the legal system revises the laws and regulations with an aim to improve future legal implications, especially considering that certain laws have been maintained unchanged for centuries. For instance, the law may eventually adapt to a continuum model; criminals may be labeled as "partially guilty" instead of certainly guilty or not guilty. Also, future advancements suggest that more precise methods of mental testing will be created, with the assistance of technology and artificial intelligence, that will help facilitate nuances within sentencing. Overall, advocating for a heightened focus on psychological and biological differences, the rigid legal standards and the inhumane treatments of those mentally deficient will reveal the limitations in the law and help rest the debate.

References

- Alozai, U. U., & McPherson, P. K. (2023). Malingering. In *StatPearls*. StatPearls Publishing.
<https://www.ncbi.nlm.nih.gov/books/NBK507837/>
- Asokan, T. V. (2016). The insanity defense: Related issues. *Indian Journal of Psychiatry*, *58*(Suppl 2), S191–S198. <https://doi.org/10.4103/0019-5545.196832>
- Bagaric, M. (2016). A rational (unapologetically pragmatic) approach to dealing with the irrational: The sentencing of offenders with mental disorders. *Harvard Human Rights Journal*, *29*, 1–56.
<https://journals.law.harvard.edu/hrj/wp-content/uploads/sites/83/2016/09/Bararic-Sentencing-Offenders-with-Mental-Disorders.pdf>
- Berryessa C. M. (2022). A tale of "second chances": an experimental examination of popular support for early release mechanisms that reconsider long-term prison sentences. *Journal of experimental criminology*, *18*(4), 783–824. <https://doi.org/10.1007/s11292-021-09466-x>.
- Canada, K., Barrenger, S., Bohrman, C., Banks, A., & Peketi, P. (2022). Multi-level barriers to prison mental health and physical health care for individuals with mental illnesses. *Frontiers in Psychiatry*, *13*, 777124. <https://doi.org/10.3389/fpsy.2022.777124>
- Glenn, A. L., & Raine, A. (2014). Neurocriminology: Implications for the punishment, prediction, and prevention of criminal behavior. *Nature Reviews Neuroscience*, *15*(1), 54–63.
<https://doi.org/10.1038/nrn3640>
- Harris, I. (2022, August 1). *M'Naghten rules – defence of insanity*. Exchange Chambers.
<https://www.exchangechambers.co.uk/ian-harris-mnaghten-rules/>

- Mathias, C. W., Marsh-Richard, D. M., & Dougherty, D. M. (2008). Behavioral measures of impulsivity and the law. *Behavioral sciences & the law*, 26(6), 691–707. <https://doi.org/10.1002/bsl.841>
- OpenAI. (2026). *ChatGPT* (April 15 version) [Large language model]. <https://chat.openai.com>
- Wajid, A., & Nasir, S. (2023). *Mental illness and legal insanity: Rethinking criminal responsibility in modern law*. *ResearchGate*. <https://doi.org/10.13140/RG.2.2.11796.56966>
- Zejneli, R., & Arifi, B. (2022). Criminal responsibility (insanity defense). *SEEU Review*, 17(2). <https://doi.org/10.2478/secur-2022-0092>