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Online Mental Disability Law Education, a Disability Rights Tribunal, and the Creation of an Asian Disability Law Database: Their Impact on Research, Training and Teaching of Law, Criminology Criminal Justice in Asia

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Online Mental Disability Law Education, a Disability Rights Tribunal and the Creation of an Asian Disability Law Database: Their Impact on Research, Training and Teaching of Law, Criminology and Criminal Justice in Asia

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Abstract

Two professors at New York Law School (NYLS) and the director of the Tokyo Advocacy Law Office are engaged in initiatives with the potential to have major influences on the study of law, criminology and criminal justice: the creation of a Disability Rights Tribunal for Asia and the Pacific (DRTAP) and expansion of NYLS's online mental disability law programme (OMDLP) to include numerous Asian venues.

DRTAP seeks to create a sub-regional body (a Commission and eventually a Court) to hear violations of the UN's Convention on the Rights of Persons with Disabilities. This will explicitly inspire scholarship about issues such as treatment of forensic patients, relationships between mental disability enforcement and criminal law enforcement, and connections between mental disability and criminal procedure.

NYLS's OMDLP offers thirteen valuable courses to criminologists and criminal justice scholars and will host DRICAP (Disability Rights Information Center for Asia and the Pacific), providing Internet access to important disability rights developments from ten nations in the Asia/Pacific region. This partnership offers unrivalled knowledge in criminal justice and mental disability law.

Our article will detail and explain how these programmes train, teach and foster new research, distinctively benefiting Asia's legal/advocacy/criminology/criminal justice communities.

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Introduction

The authors of this article are currently involved in two initiatives that, they believe, have the potential to have a major impact on the study of criminology and the study and practice of criminal justice in Asia. We—two professors at New York Law School (NYLS) (MLP and HEC) and the director of the Tokyo Advocacy Law Office (YI)—are engaged in (1) the creation of DRTAP and (2) the expansion of NYLS's online, distance learning mental disability law programme to add multiple Asian venues. We believe that, together, these initiatives will have a significant influence on legal education throughout Asia.

The DRTAP project seeks to create a sub-regional body (first as a Commission, and eventually as a Court) to hear cases involving violations of the UN's Convention on the Rights of Persons with Disabilities (CRPD), a task that will explicitly involve questions of significance to criminology/criminal justice scholars: the treatment of forensic patients, the relationship between mental disability and enforcement of the criminal law, the connection between mental disability and criminal procedure.

The NYLS online programme offers 13 courses in mental disability law and sections of two courses have been taught in Japan and new partnerships are being planned in China and other Asian nations in the future. These courses are of great value to law students, lawyers, advocates, criminologists and criminal justice scholars and researchers worldwide.

NYLS is now hosting the DRICAP, a project that makes available on the Internet important disability rights developments (case law, statutes, regulations, research, academic papers) from 14 nations in the Asia/Pacific region. This project connects DRTAP and NYLS's mental disability law programme and is, we believe, also of great value to those whose work involves the relationship between criminal justice and mental disability law. Our article will first discuss the development of distance learning, online legal education in this context. It will next describe the NYLS courses and the DRTAP project and will then explain their significance to the Asian legal advocacy/criminology/criminal justice communities and will ultimately show how these ventures can foster new research, training and teaching initiatives in this area.

Why Distance Learning in Mental Disability Law

Introduction

Through the technology of the Internet-based education, one of the authors (MLP, a full-time professor at NYLS)¹ has created a programme of online mental disability law courses for attorneys, activists, advocates, important stakeholder groups (consisting of consumers and users of psychiatric services, sometimes referred to as 'survivor groups'), mental health professionals and governmental officials in an effort to both teach participants the bases of mental disability law and to encourage and support the creation and expansion of grass-roots advocacy movements that may optimally lead to lasting, progressive change in this area. Another author (HEC) is an adjunct professor in this programme who teaches

¹ The full online mental disability law programme was developed at the suggestion and urging of former Dean Richard A. Matasar, an early visionary in computer-based legal education. See e.g. Richard A. & Rosemary Shiels, *Electronic Law Students: Repercussions on Legal Education*, 29 VALAPARAISSO L. REV. 909 (1995); Richard A. Matasar, *Private Publics, Public Privates: An Essay on Convergence in Higher Education*, 10 U. FLA. J. L. & PUB. POL'Y 5 (1998); Richard A. Matasar, *Legal Education Skills and Values Education: Debate about the Continuum Continues*, 46 N.Y.L.SCH. L. REV. 395 (2002–2003).

Criminal Law and Mental Disability and two other courses and who has also contributed lectures and simulations to a number of other courses. The other author (YI) partnered with NYLS in 2002 and 2004 and through that partnership, NYLS taught two sections of its courses—one of *Survey of Mental Disability Law* and one of *The Americans with Disabilities Act*—to a cohort of lawyers, mental health professionals, academics, governmental officials and journalists in Japan. We believe that the creation and expansion of this programme is especially timely in light of recent research demonstrating how the Internet has already become an important provider of advocacy services and advocacy information to many persons with disabilities² and how inaccessible most current websites are to many persons with disabilities.

*Distance Learning in Law Schools*³

Distance learning is generally defined as ‘communication which connects instructors and students who are separated by geography and, often, by time,’ or as ‘the electronic connection of multiple classrooms.’⁴ Distance learning courses enable students to share different perspectives and provide a new environment for teaching law students to collaborate with other types of professionals,⁵ a characteristic ‘increasingly essential to the effective practice of law.’⁶ Distance learning—the use of computers, telecommunications and digital networking to permit learning outside the boundaries of the classroom—

holds the potential to expand the availability of cross-listed courses by reducing these barriers ... [and] can provide professors of cross-listed courses with pedagogical tools for enhancing interdisciplinary communication and collaboration and circumventing some of the problems inherent in teaching students from different disciplines.⁷

This is a pivotal development in the history of American legal education and it is essential that it be acknowledged by those committed to social change (especially in the context of the relationship between the methodologies of legal education and the substance of what is being taught). It is mandatory that we look at new means for providing legal education—in economic, efficient and interdisciplinary ways—to our students in innovative ways that demonstrate the linkage between education and social change.

Self-evidently, distance learning has great implications for international legal education as well as for domestic legal education. A report in the Fletcher Forum of World Affairs concluded: ‘[T]here is no doubt that ICTs [Information and Communication Technologies], if properly adopted and implemented,

² See e.g. Peter Blanck et al., *Technology for Independence: A Community-Based Resource Center*, 21 BEHAV. SCI. & L. 51 (2003); Heather Ritchie & Peter Blanck, *The Promise of the Internet for Disability: A Study of On-Line Services and Web-Site Accessibility at Centers for Independent Living*, 23 BEHAV. SCI. & L. 5 (2003).

³ See generally, Michael L. Perlin, *Online, Distance Legal Education as an Agent of Social Change*, 24 PACIFIC MCGEORGE GLOBAL BUSINESS & DEVEL. L.J. 95 (2011); Michael L. Perlin, ‘They Keep it all Hid’: *The Ghettoization of Mental Disability Law and its Implications for Legal Education*, 54 ST.L.U.L.J. 857 (2010) (Perlin, ‘Keep It All Hid’).

⁴ Helen Leskovac, *Distance Learning in Legal Education: Implications of Frame Relay Videoconferencing*, 8 ALB. L. J. SCI. & TECHNOL. 305, 309 (1998).

⁵ Paula Berg, *Using Distance Learning to Enhance Cross-Listed Interdisciplinary Law School Courses*, 29 RUTGERS U. COMPUT. & TECHNOL. L.J. 33 (2003).

⁶ *Id.* at 34.

⁷ *Id.* at 36.

can bring economic and cultural opportunities to developing countries. Education facilities may be greatly improved through distance learning and Internet access.⁸

The special implications of distance learning education for persons with disabilities⁹

One of the specific challenges in creating a distance learning pedagogy in mental disability law is the need to provide a programme that can also be meaningfully accessed by persons with disabilities. By way of example, a recent study by the UK-based Disability Rights Commission showed that 81 per cent of British websites are inaccessible to persons with disabilities.¹⁰ Scholars have begun to explore how the Internet can provide individuals with disabilities the tools to enable them to live independently and 'to gain greater independence and social integration,'¹¹ and have thus begun to call for a coordinated programme of study to examine the extent to which Internet sites are accessible to persons with disabilities.¹² A study of 200 websites affiliated with Centers for Independent Living concluded:

Accessible technology for persons with disabilities has the potential to enhance independence in life. Its future development holds promise for a wide range of persons with disability...

The commitment to digital equality as a civil right must be founded in policy that incorporates accessibility and universal design in public and private programmes providing technological access to all.¹³

The courses offered

NYLS created the first Internet-based mental disability law courses in an attempt to disseminate the core universal principles of mental disability law to the full range of activists, advocates, professionals and stakeholders described above.¹⁴ The pedagogy includes these elements:

- 14 hours of video¹⁵
- weekly reading assignments

⁸ Peter Cukor & Lee McKnight, *Knowledge, Networks, the Internet, and Development*, 35 FLETCHER F. WORLD AFFS. 43, 47 (2001).

⁹ This section is largely adapted from Michael L. Perlin, *An Internet-based Mental Disability Law Program: Implications for Social Change in Nations with Developing Economies*, 40 FORDHAM INT'L L.J. 435 (2007).

¹⁰ See <http://www.drc-gb.org/newsroom/newsdetails.asp?id=805§ion=4>

See also, Axel Schmetzke, *Online Distance Education—'Anytime, Anywhere' but not for Everyone*, manuscript at 12, available at <http://www.rit.edu/~easi/itd/itdv07n2/axel.htm> (in a study of the 24 most highly ranked schools of library and information science, only 59% of main campus library web pages were accessible).

¹¹ H. Stephen Kaye, Ph.D., *Computer and Internet use among Persons with Disabilities*, 2000 Disability Stat. Rep. 13, 13, available at dsc.ucsf.edu/pdf/report13.pdf; Robert F. Rich, Christopher T. Erb, and Rebecca A. Rich., *Critical Legal and Policy Issues for People with Disabilities*, 6 DEPAUL J. HEALTH CARE L. 1 (2002).

¹² See generally, Peter D. Blanck & Leonard A. Sandler, *ADA Title III and the Internet: Technology and Civil Rights*, 24 MENTAL & PHYSICAL DISABILITY L. REP. 855, 857 (2000).

¹³ Ritchie & Blanck, *supra* note 2, at 24. See Peter Blanck & Helen Schartz, *Towards Reaching a National Employment Policy for Persons with Disabilities*, in *Emerging Workforce Issues: W.L.A., Ticket to Work, and Partnerships 1* (R. McConnell ed. 2001), available at <http://eric.ed.gov/>; Heidi Berven & Peter D. Blanck, *Assistive Technology Patenting Trends and the Americans with Disabilities Act*, 17 BEHAV. SCI. & L. 47 (1999).

¹⁴ See Joseph A. Rosenberg, *Confronting Clichés in Online Instruction: Using a Hybrid Model to Teach Lawyering Skills*, 12 SMU SCI. & TECHNOL. L. REV. 19, 23 n. 13 (2008), discussing the NYLS's programme's 'transformative success'.

¹⁵ These are mostly 'talking heads' and powerpoints, but there are also several simulated trials, simulated interviewing and counseling exercises and roundtable discussions.

- detailed web pages, including learning objectives and directed study questions
- on-going, threaded, online asynchronous discussion boards
- a weekly, moderated online chat room
- two live day-long seminars, one soon after the course begins and one at the course's conclusion.¹⁶

One of us (MLP) has written as clearly as possible about his view of this teaching methodology: 'I believe that the single most important pedagogic development since I entered law school (nearly 40 years ago) has been the creation of online distance learning programmes as part of the law school curriculum.'¹⁷

We currently offer 13 courses:

- *Survey of Mental Disability Law*
- *The Americans with Disabilities Act: Law, Policy and Practice*
- *International Human Rights Law and Mental Disability Law*
- *Advocacy Skills in Cases Involving Persons with Mental Disabilities: The Role of Lawyers and Expert Witnesses*
- *Mental Health Issues in Jails and Prisons*
- *Custody Evaluations, Juvenile and Family Law and Mental Disability*
- *Criminal Law and Mental Disability*
- *Sex Offenders*
- *Race, Gender, Class, Culture and Mental Disability*
- *Mental Illness, Dangerousness, Risk Assessment and the Police Power*
- *Therapeutic Jurisprudence and*
- *Trauma and Mental Disability Law.*¹⁸

The masters and advanced certificate programmes

In January 2009, NYLS created the first masters in mental disability law studies to be offered at any US-based law school. To qualify for the degree, students must successfully complete nine of the online, distance learning programme's courses and write a significant paper. Students may also apply for the Advanced Certificate Programme that requires five courses. Those enrolled include lawyers, psychologists, psychiatrists, advocates, a judge and community health workers.¹⁹ Many of the psychologists have backgrounds in criminal justice or work in a criminal justice setting.

¹⁶ See Michael L. Perlin, 'Ain't No Goin' Back': *Teaching Mental Disability Law Courses Online*, 51 N.Y.L. SCH. L. REV. 991, 996 (2006).

¹⁷ *Id.* at 992.

¹⁸ *Id.* See also, Perlin, *supra* note 9; www.nyls.edu/mdl

¹⁹ The first six students to earn an MA degree include a social worker, an educational psychologist, a patient's advocate with an MBA degree, a forensic psychiatrist, a disability rights attorney and a forensic psychologist. Since then, the degree has been awarded to a housing court advocate for persons with mental disabilities, a state-level judge and several more forensic psychologists. A law school dean from the Pacific region is currently enrolled in this programme.

Courses related to criminal justice and criminology

Introduction

Mental disability law cannot be fully understood without the consideration and understanding of the intersection of the criminal justice system and the mental health system. This intersection not only has an impact on the areas of law that have traditionally been highlighted in criminal law such as death penalty eligibility, insanity pleas and incompetency to stand trial status, but is also a crucial aspect of pretrial and arrest procedures such as rights at initial arrest, waiving 'Miranda' rights, plea bargaining, self-incrimination, self-representation, competency to waive jury trials, competency to waive counsel, forensic civil commitment, involuntary medication in pre-trial phases and in prison settings, conditions of confinement, sentencing, parole and probation.²⁰

At least five of the courses offered in the NYLS programme are of special interest to professionals in criminal justice and criminology: Mental Health Issues in Jails and Prisons; Forensic Reports, the Role of Experts, and Forensic Ethics; Mental Illness, Dangerousness, Risk Assessment and the Police Power, Sex Offenders and Criminal Law and Mental Disability.

1. The *Criminal Law and Mental Disability* course

In this article, we will discuss only the course in *Criminal Law and Mental Disability*. This course addresses the various 'hidden' stages of criminal law²¹ in order to give students a complete understanding of the impact of mental disability in each and every phase of the criminal process and an understanding of the 'blurring' that often occurs at the borderline between the two.²² In order to achieve these goals, the course provides students with a comprehensive overview of criminal law procedure and details how each step affects individuals suffering from mental disabilities. Additionally, the course seeks to give students both substantive knowledge of these issues and actual advocacy tools so that future litigators will develop effective strategies in court, have the skills to recognize and address these complex issues and institute compassion when representing clients thus instilling in them the importance of the equal access to justice regardless of the individual's mental health or criminal act.²³

Another important aspect of this course is teaching students about the importance of the access and barriers to justice for individuals with mental disabilities and how these barriers are heightened when a mentally ill individual is involved in the criminal law process. The Sixth Amendment right to counsel is an especially critical right for individuals in this area and the consequences of inadequate counsel can be dire and irreversible. Unfortunately, obtaining qualified counsel with the extensive

²⁰ See generally, 4 MICHAEL L. PERLIN, MENTAL DISABILITY LAW: CIVIL AND CRIMINAL (2d ed. 2002); MICHAEL L. PERLIN & HEATHER ELLIS CUCOLO, MENTAL DISABILITY LAW: CIVIL AND CRIMINAL (2012 Cum. Supp) (discussing each of these topics).

²¹ On the ways that so much of mental disability law remains hidden from view, see MICHAEL L. PERLIN, THE HIDDEN PREJUDICE: MENTAL DISABILITY ON TRIAL (2000).

²² See Michael L. Perlin & Deborah A. Dorfman, 'On Desolation Row': *The Blurring of the Borders Between Civil and Criminal Mental Disability Law, and What it Means for all of us* (manuscript in process); Jana McCreary, *Not Guilty ... Until Recommitment: The Misuse of Evidence of the Underlying Crime in NGRI Recommitment Hearings*, UTAH L. REV. 1253, 1255-56 (2009).

²³ On the need to integrate lawyering skills with substantive mental disability law knowledge, see MICHAEL L. PERLIN ET AL., LAWYERING SKILLS IN THE REPRESENTATION OF PERSONS WITH MENTAL DISABILITIES: CASES AND MATERIALS (2006).

knowledge necessary to effectively represent persons with mental illness charged with crime is often difficult and the result can be misrepresentation, misidentification of the issues and—inevitably—ineffective assistance of counsel.²⁴ This ineffectiveness²⁵—combined with reluctance to take on representation of individuals with mental disabilities because of stigma and sanism,²⁶ among other related issues²⁷ such as political pressures, fear of media repercussions, insufficient financial gain, complexity of issues and amount of time spent on ‘one’ case—contributes to the undermining of Sixth Amendment protections.

Society’s belief that ‘mad and bad’²⁸ go hand in hand add an additional barrier that practitioners must overcome. The course focuses on the preconceived opinions of the judicial system as well as how political and social pressures can affect the outcome of cases. Pretextuality²⁹ can run rampant in this emotionally-charged area of the law. It infiltrates the entire judicial system. Neither judges, juries or attorneys are immune.³⁰ Controversial public opinion regarding incompetency to stand trial, insanity pleas and death penalty-eligible crimes have contributed to the myth that the criminal defendant is ‘getting a lighter sentence’ or not receiving due punishment for the crime committed.³¹

When the decks, already stacked against individuals with mental disabilities seeking justice, are further compounded by society’s disgust and abhorrence at the commission of a criminal act, the results can be mistreatment by the system, further deterioration in a correctional setting or a potential violation

²⁴ On questions related to competency of counsel in insanity defense cases, see 4 PERLIN, *supra* note 20, § 9A-7, at 235–41; PERLIN & CUCOLO, *supra* note 20, § 9A-7, at 91–93.

²⁵ See Michael L. Perlin, ‘I Might Need a Good Lawyer, Could be Your Funeral, My Trial’: A Global Perspective on the Right to Counsel in Civil Commitment Cases, and Its Implications for Clinical Legal Education, 28 WASH. U. J. L. & SOC’L POL’Y 241 (2008).

²⁶ One of us (MLP) defines ‘sanism’ as an irrational prejudice of the same quality and character as other irrational prejudices that cause and are reflected in prevailing social attitudes of racism, sexism, homophobia and ethnic bigotry that permeates all aspects of mental disability law and affects all participants in the mental disability law system: litigants, fact finders, counsel and expert and lay witnesses. The word ‘sanism’ was, to the best of our knowledge, coined by Dr. Morton Birnbaum. See Morton Birnbaum, *The Right to Treatment: Some Comments on its Development*, in MEDICAL, MORAL AND LEGAL ISSUES IN HEALTH CARE 97, 105 (Frank Ayd ed., 1974); see also *Koe v. Califano*, 573 F.2d 761, 764 n.12 (2d Cir. 1978). I have relied on it constantly for the past twenty years to explain the roots of our attitudes towards persons with mental disabilities. See e.g. Michael L. Perlin, ‘Half-Wracked Prejudice Leaped Forth’: Sanism, Pretextuality, and Why and How Mental Disability Law Developed As It Did, 10 J. CONTEMP. LEG. ISS. 3(1999) (Perlin, *Half-Wracked*); Michael L. Perlin, *On Sanism*, 46 SMU L. REV. 373 (1992).

²⁷ See Michael L. Perlin, ‘You Have Discussed Lepers and Crooks’: Sanism in Clinical Teaching, 9 CLINICAL L. REV. 683 (2003).

²⁸ George Gerbner, *George Images that Hurt: Mental Illness in the Mass Media*, 4 J. CAL. ALLIANCE FOR THE MENTALLY ILL 17 (1993); Peter Margulies, *The ‘Pandemonium Between the Mad and the Bad’: Procedures for the Commitment and Release of Insanity Acquittes After Jones v. United States*, 36 RUTGERS L. REV. 793 (1984). The phrase in question is found in *Benham v. Edwards*, 501 F. Supp. 1050, 1076 (D. Ga. 1980). For a consideration of how this is construed in modern popular culture, see R.M. Gans & C. Wardle, *Mad or Bad? Negotiating the Boundaries of Mental Illness on Law & Order*, (paper presented at the annual meeting of the International Communication Association), available at http://www.allacademic.com/meta/p112159_index.html

²⁹ ‘Pretextuality’ means that courts accept (either implicitly or explicitly) testimonial dishonesty and engage similarly in dishonest (frequently meretricious) decision-making, specifically where witnesses, especially expert witnesses, show a ‘high propensity to purposely distort their testimony in order to achieve desired ends’. This pretextuality is poisonous; it infects all participants in the judicial system, breeds cynicism and disrespect for the law, demeans participants and reinforces shoddy lawyering, blasé judging and, at times, perjurious and/or corrupt testifying. See PERLIN, *supra* note 21, at 59–75.

³⁰ E.g. Perlin, ‘Half-Wracked’, *supra* note 26.

³¹ On myths in the insanity defense process, see MICHAEL L. PERLIN, *THE JURISPRUDENCE OF THE INSANITY DEFENSE* (1995); Michael L. Perlin, ‘The Borderline which Separates you from me’: *The Insanity Defense, the Authoritarian Spirit, the Fear of Faking, and the Culture of Punishment*, 82 IOWA L. REV. 1375, 1410 (1997).

of the Eighth Amendment protection against cruel and unusual punishment when the ultimate punishment of death is carried out.³²

Topics covered in the criminal law and mental disability course

The *Criminal Law and Mental Disability* class covers a comprehensive array of topics. Following an introductory overview class, students are introduced to all aspects of the criminal incompetency status including: trial, plea, counsel waiver, other pre-trial, trial and post-trial stages, the insanity defense; institutionalization and release policies governing individuals found permanently incompetent to stand trial and those found not guilty by reason of insanity, the right of forensic patients to refuse antipsychotic medications, the role of mental disability evidence in other aspects of criminal trial and pre-trial proceedings (including confessions and privilege against self-incrimination matters), sentencing and the death penalty. The students are taught an overview of sanism and pretextuality and are introduced to issues that surround questions of adequacy of counsel. Specifically, the first five weeks of the course focus on criminal incompetency questions—substantive and procedural standards; the interplay with the Americans with Disabilities Act; treatment and confinement during an incompetency to stand trial period; competency issues involving the ability to plead guilty and waive counsel; and the repercussions and significance of each stage in the process where incompetency may be raised and needs to be considered.

The class then considers substantive issues related to the insanity defense, looking at the defense's historical roots and recent alternatives to the defense such as the Guilty but Mentally Ill verdict. A subsequent class is devoted to procedural issues, with an emphasis on the major social and behavioural myths that underlie insanity defense jurisprudence and consequently lead to legislative developments. Areas of study specifically include burden of proof, informing jurors of the consequence of an insanity acquittal, the right to an expert, a defendant's right to refuse to plead insanity and the role of counsel. An important focus of this section within the course, is the ability to recognize the major social and behavioural myths that commonly underlie insanity defense jurisprudence and understand how such myths have informed (or, better, 'misinformed') legislative developments.

The course continues with a practical focus by incorporating simulated examples of client interviewing and counselling. Students are introduced to the concept of therapeutic jurisprudence and how it can play a role in the representation of incompetency and insanity cases. An entire lecture is devoted to the right to refuse medication in the forensic context and how that right changes depending on the litigational status of the subject's case (is he awaiting trial, has he been found to be incompetent, is he proffering an insanity defense, is he an incarcerated prisoner?). Trial and sentencing matters are fleshed out, focusing primarily on the defense attorney's obligations and role in advising clients throughout the trial process, preserving issues and rights, and mastering trial strategies. The sentencing class lays out the Federal Sentencing Guidelines, mitigation concepts and how to overcome myths, sanism and general misconceptions during the sentencing phase.

The remainder of the course covers mentally disabled defendants facing death penalty and how competency to be executed has been dealt with in the courts. Core concepts of expert testimony,

³² For one of the most notorious cases, see *Rector v. Bryant*, 501 U.S. 1239, 1240 (1991) (Marshall, J., dissenting from denial of certiorari), discussed in, inter alia, Christopher Seeds, *The Afterlife of Ford and Panetti: Execution Competence and the Capacity to Assist Counsel*, 53 ST. LOUIS U. L.J. 309, 326–27 (2009); see generally, MICHAEL L. PERLIN, *MENTAL DISABILITY AND THE DEATH PENALTY: THE SHAME OF THE CRIMINAL JUSTICE SYSTEM* (2013).

mitigation factors and counsel's proficiency in this area are strongly emphasized. A mock trial, covering the most salient aspects of the course, is viewed in the course's penultimate week. The final class is devoted entirely to the issue of adequacy of counsel, emphasizing the need for counsel to be skilled and sensitive when representing individuals with mental disabilities throughout every stage in the criminal trial process.

*The Disability Rights Tribunal for Asia and the Pacific*³³

Introduction

Asia and the Pacific is the only area of the world that does not have a regional human rights court or commission. Europe established a European Court of Human Rights in 1956 that was renewed in 1998. The Inter-American Court of Human Rights was established in 1980. Africa established The African Court of Human Rights and People's Rights in 2006.³⁴ It is well known that the European Court has been at the forefront of regional human rights protection; its precedents are relied on regularly as a basis for the interpretation of international human rights law.³⁵ The Inter-American Court of Human Rights has played a similar role for its region and international society. Its greatest contribution to the inter-American system has been in de-legitimizing nondemocratic governments by means of the monitoring conducted during its on-site visits and as a result of the presentation of its country reports to the OAS political organs and to hemispheric public opinion in general.³⁶ These country reports are presented to the political organs and have dominated the agendas of the OAS General Assemblies for many years. The documentation presented by an intergovernmental organization of human rights violations committed by states against their own populations has a credibility not achieved by reports issued by

³³ See generally, e.g. Michael L. Perlin, *Promoting Social Change in Asia and the Pacific: The Need for a Disability Rights Tribunal to Give Life to the UN Convention on the Rights of Persons with Disabilities*, 44 GEO. WASH. INT'L L. REV. 1 (2012) (Perlin, *Promoting*); Michael L. Perlin, *The Convention on the Rights of Persons with Disabilities, the Disability Rights Tribunal for Asia and the Pacific, and the Future of Online Legal Education in Chinese Schools as a Means of Training Lawyers to Represent Persons with Disabilities* (NYLS Legal Studies Research Paper No. 10/11 #16, Year) available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1743730; Michael L. Perlin & Yoshikazu Ikehara, *Creation of a Disability Rights Tribunal for Asia and the Pacific: Its Impact on China?* (NYLS Legal Studies Research Paper No. 10/11 #19, Year) available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744196; Yoshikazu Ikehara, *What is DRTAP and its Future?* (Paper presented to the International Conference on Disability Rights Tribunal in Asia & the Pacific, Oct. 22, 2010), *powerpoint slides available at* http://tokyo-advocacy.com/drtapeng/conference_bangkok.html (discussing all statutes); Michael L. Perlin, *Why a Regional Tribunal is Needed to Implement the CRPD* (NYLS Legal Studies Research Paper No. 10/11 #18, January 20, 2011) available at SSRN: <http://ssrn.com/abstract=1744157>

³⁴ MICHAEL L. PERLIN ET AL., INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: CASES AND MATERIALS 249–83 (2006). See generally, Olufemi Amao, *The African Regional Human Rights System*, in INTERNATIONAL HUMAN RIGHTS LAW: SIX DECADES AFTER THE UDHR AND BEYOND 235 (Mashood A. Baderin & Manisuli Ssenyojo, eds, 2010) (SIX DECADES).

³⁵ Lawrence R. Helfer, *Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime*, 19 EUR. J. INT'L L. 125 (2008); Lawrence R. Helfer & Erik Voeten, *Do European Court of Human Rights Judgments Promote Legal and Policy Change?* available at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3025&context=faculty_scholarship. See generally, Alastair Mowbray, *The European Convention on Human Rights*, in SIX DECADES, *supra* note 34, at 271.

³⁶ See Christina Cerna, *The Inter-American System for the Protection of Human Rights*, 16 FLA. J. INT'L L. 195, 201 (2004). See generally, Jo M. Pasqualucci, *The Inter-American Regional Human Rights System*, in SIX DECADES, *supra* note 34, at 253.

nongovernmental organizations and every state will fight not to be censured by its peers.³⁷ In summary, Prof. Goldman has concluded that, ‘The Inter-American system has contributed significantly to the development of human rights in the region as well as to broader democratic values.’³⁸

The United Nations has adopted many human rights treaties so far,³⁹ the most important of which (for the purposes of persons with disabilities) is the Convention on the Rights of Persons with Disabilities.⁴⁰ Those treaties are expected to have a great influence on national/domestic law and policies of member states. However without a regional judiciary, it is far more likely that these treaties will not have a sufficient impact on member states. It is more likely that an arbitrary interpretation of human rights treaties by a member state would be corrected only by a regional human rights mechanism. Such a tribunal/court is an indispensable mechanism to effectuate international human rights treaties among member states in Asia and the Pacific. The DRTAP aims at opening the door to the world that ‘recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family’.⁴¹

What is DRTAP?

DRTAP will be a quasi-judicial body that adjudicates individual cases involved with disability rights and is composed of persons with disabilities, lawyers and representatives of the general public. First, it is not a conventional court but a tribunal to better ensure the presence of persons with disabilities (who will likely be more familiar with the underlying issues than many judges).⁴² Second, it deals with just disability rights issues. It does not deal with human rights issues at large. Third, a person with disabilities must be a core member of its mechanism to give life to the slogan—‘Nothing about us without us’—that motivated advocates to seek ratification of the CRPD.⁴³ Fourth, because of the

³⁷ Cerna, *supra* note 36, at 201. *See also*, Alexandra Huneus, *Courts Resisting Courts: Lessons from the Inter-American Court’s Struggle to Enforce Human Rights*, 44 CORNELL INT’L L.J. (2011) (in press), accessible at <http://ssrn.com/abstract=1911383>; Lea Shaver, *The Inter-American Human Rights System: An Effective Institution for Regional Rights Protection?* 9 WASH. U. GLOBAL STUD. L. REV. 639 (2010); Diego-García-Sayán, *The Inter-American Court and Constitutionalism in Latin-America*, 89 TEX. L. REV. 1835 (2011).

³⁸ Robert K. Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 HUM. RTS. Q. 856, 882 (2009).

³⁹ *See* MICHAEL L. PERLIN, *INTERNATIONAL HUMAN RIGHTS AND MENTAL DISABILITY LAW: WHEN THE SILENCED ARE HEARD* (2011); MICHAEL L. PERLIN ET AL., *INTERNATIONAL HUMAN RIGHTS LAW AND COMPARATIVE MENTAL DISABILITY LAW: DOCUMENTS SUPPLEMENT* (2006).

⁴⁰ *See* Michael L. Perlin & Eva Szeli, *Mental Health Law and Human Rights: Evolution, Challenges and the Promise of the New Convention*, in UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES: MULTIDISCIPLINARY PERSPECTIVES 241 (Jukka Kumpuvuori & Martin Scheninen eds, 2010); Michael L. Perlin & Eva Szeli, *Mental Health Law and Human Rights: Evolution and Contemporary Challenges*, in MENTAL HEALTH AND HUMAN RIGHTS: Vision, Praxis, and Courage 98 (Michael Dudley, Derrick Silove and Fran Gale, eds 2012).

⁴¹ Convention on the Rights of Persons with Disabilities (CRPD), preamble, para. (a).

⁴² Professor Terry Carney and his colleagues have pointed out that a conventional court is more conservative than a tribunal, comparing court decisions with tribunal one in terms of hospitalization for persons with mental disabilities. TERRY CARNEY ET AL., *ADULT GUARDIANSHIP TRIBUNALS* (1997).

⁴³ *See e.g.* Rosemary Kayess & Phillip French, *Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities*, 8 HUM. RTS. L. REV. 1, 4 n.15 (2008):

See, for example, Statement by Hon Ruth Dyson, Minister for Disability Issues, New Zealand Mission to the UN, for Formal Ceremony at the Signing of the Convention on the Rights of Persons with Disability, 30 March 2007: ‘Just as the Convention

geographic vastness of the Asia/Pacific area, it will be necessary to launch the DRTAP as a sub-regional body, but optimally, it will eventually extend to all nations in the region. Its initial functions will be investigation and adjudication and when the necessary regional treaty is signed, there will then be a regional judiciary with binding power.⁴⁴

Why do we need a DRTAP?

The United Nations expects member states to establish a three-layered system for protection and promotion of human rights. A domestic judiciary and a national human rights committee are required at the national level. The Human Rights Council operates at an international level, as do the optional protocols that accompany the human rights treaties. And a regional judiciary is required at the regional level.⁴⁵ All regions except for Asia and the Pacific fulfill this three-layered system.⁴⁶

Currently-existing UN Human Rights mechanisms are not always useful for persons with disabilities and domestic human rights mechanisms have severe limitations.⁴⁷

Thus there is grave missing-link in human rights mechanisms in Asia and the Pacific, making it very difficult for people in this region to correct a domestic legal system and policies that do not accord with international human rights norms and robbing them of the enjoyment of human rights protection under the international rule of law. The DRTAP project is an attempt to complete the link in human rights mechanisms in this region.

Progress of TAP and its future

The Toyota Foundation granted an initial subsidy to organize the DRTAP project in 2008. Local meetings to discuss DRTAP were held in Tokyo, Bangkok, Seoul and Melbourne from 2009 to 2010, as well as a 'side-event' as a luncheon session of Social Development Committee at UNESCAP in 2010. The concluding international conference for the project's first stage was held in Bangkok in 2010.⁴⁸

itself is the product of a remarkable partnership between governments and civil society, effective implementation will require a continuation of that partnership.' The negotiating slogan 'Nothing about us without us' was adopted by the International Disability Caucus, available at http://www.un.org/esa/socdev/enable/documents/Stat_Conv/nzam.doc

⁴⁴ See Perlin, *Promoting*, supra note 33.

⁴⁵ This frame is shown in 'VIENNA DECLARATION AND PROGRAMME OF ACTION (1993)', that is, 'The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.' (Ipara85).

⁴⁶ Although it is true that people in Asia and the Pacific can use some international human rights instruments, such as universal periodical review, special procedure, a report by a state party and its consideration (see CRPD, Arts.35 & 36), those systems have their limitations. By way of example, there were only 1,812 applications to individual communication of optional protocol under ICCPR from 1976 to 2008. There were 57,100 applications to ECHR in 2009 alone.

⁴⁷ Although persons with disabilities can demand that their lawmakers support legislation in accordance with CRPD, the fact that this will be a minority position advanced by a relatively politically-powerless cohort makes it less likely these demands will be met. Affirmative litigation is always an option, but the judiciaries of this region generally take a strong 'judicial self-restraint' stand and are reluctant to embrace relatively new legal concepts/right such as disability rights/discrimination. Domestic judges are also usually indifferent toward international human rights. In some nations, National Human Rights Commissions serve an important role in this context, but not all countries have such Commissions and their functions vary across nations.

⁴⁸ See, <http://tokyo-advocacy.com/drtapeng/>

UNESCO has expressed interest in DRTAP, pointing out the necessity of a regional human rights mechanism in its 'Report of the Committee on Social Development on its second session 2010'.⁴⁹

The Project is at its second stage now. DRICAP has been established and is being housed at New York Law School,⁵⁰ and more organizational meetings have been scheduled: a side-event during the 'High-level Intergovernmental Meeting on the Final Review of the Implementation of the Asian and Pacific Decade on Disabled Persons, 2003–2012,' sponsored by UN ESCAP, to be held in Incheon, South Korea, in October 2012, sub-regional conferences with DPOs, human rights NGOs and national human rights commissions and then a concluding international conference will be held in 2013 when the new decade for persons with disabilities in AP starts.

It is our hope and expectation that member states of UNESCO will adopt DRTAP project as one of main projects for the new decade and we expect that DRTAP will be established until the end of the new decade for persons with disabilities in AP.

The creation of DRTAP will open the way to establish a regional general human rights judiciary in AP, in large part because it will be easier to build a consensus to establish a regional disability rights judiciary than a general human rights one, as disability issues are often far less 'political' than other human rights issues. Persons with disabilities will play a great role in this effort and we hope that this will lead to such individuals being, finally, regarded as indispensable members of society.

The Significance of the Underlying Criminal Justice Issues to Asia and to Asian Legal/Criminology/Criminal Justice Scholars

Introduction

'The issues surrounding the legal responsibility of caring for and maintaining a person with a mental illness goes back almost 2500 years.'⁵¹ Similarly, we have the concept of criminal justice and its intersection with mental illness.

Mental disability and criminal justice issues are universal, spanning every nation, region and area of the world. Although, each society deals with these issues differently, depending on the needs and culture of the community, the commonalities are vast. In order to study, analyze and progress in this area, it is necessary to obtain knowledge that encompasses rigorous collaboration of research and studies while taking into account the unique nature of each community identified.

Advancement in technology and science, specifically with regard to the use of psychotropic medications as a modality of treatment of persons with serious mental disabilities, as well as the scrutiny

⁴⁹ One non-governmental organization has highlighted the need for the regional disability rights mechanism to underpin more effective implementation of the Convention on the Rights of Persons with Disabilities at the national level.

⁵⁰ One of the co-authors of this paper (HEC) will be the director of this project at NYLS.

⁵¹ Jennifer Fischer, *A Comparative Look at the Right to Refuse Treatment for Involuntarily Hospitalized Persons with a Mental Illness*, 29 HASTINGS INT'L & COMP. L. REV. 153, (2006):

The Romans asked questions that reverberate today: 'What was the legal status of a mentally disabled person during his lucid moments? Was he still under the protection of a guardian? If not, was it necessary to name a new guardian each time the illness returned?'

and consideration of the treatment of persons with mental illness in prisons and hospitals has been the source of legal and scholarly debate. Within the past few decades, this debate had been confined mostly to North America and Western Europe but more recently has been spotlighted in Asia and the Pacific as well.⁵² ‘Statistics released by the Chinese Center for Disease Control and Prevention in 2009 showed that over 100 million people affected by mental illness, with 16 million listed as severely ill, in China.’⁵³

One example explores the differences between forensic psychiatry in the People’s Republic of China (PRC) and the United States. In the United States, psychiatrists and psychologists often work at the interface between mental health and criminal, civil, family, correctional and law enforcement matters. In China, forensic roles have only recently expanded from the criminal law context. Forensic psychiatrists are almost always government agents/employees and evaluations usually address only criminal responsibility.⁵⁴

Below, we shall briefly identify events in certain Asian/Pacific regions that highlight issues of mental illness and criminal justice, in order to further illuminate the significance of these issues, thus furthering our mission to educate and inform scholars, practitioners and legal advocates in this area of law.

China

Interest in both criminal law and mental disability law in China has exploded in both the legislature and media in recent years. In the 1980s, China proposed a mental health law that purported to increase the rights for individuals subjected to mental health screenings. The legislative process for the proposed law was launched in 1985, lasted 26 years and has undergone 10 revisions. This unusual long period of time was due to the inconsistency of views among various advocates who were unable to establish a legal basis for the medical treatment and protection of rights for mentally challenged people.⁵⁵ The law detailed that in certain circumstances, a hospital could be subject to criminal penalties if its employees diagnose someone with a mental illness against his or her will or committed a person who is in fact found to be sane.⁵⁶ China’s draft of the Mental Health Law of China seeks to outlaw compulsory mental health checkups, requiring instead that checkups be performed at the request of the patient or guardian. It also states that it is the responsibility of civil affairs authorities to send homeless people, suspected of suffering from mental disorders to mental health institutions. On paper, at least, the draft law significantly provides the rights of mental health patients, including the right to education, work, medical insurance, privacy and social assistance.⁵⁷ Yet this legislation has been scrutinized and debates have developed surrounding certain legal areas such as the right of China’s police to forcibly send people to psychiatric wards against

⁵² *Id.* at 153 (discussing concerns about how patients were treated in mental hospitals, along with the serious side effects that came with the use of the new medications, led advocates for persons with mental illnesses to raise questions about involuntary hospitalization and treatment. Who should be involuntarily hospitalized? Once hospitalized, should these persons have a right to consent or refuse to take medications?)

⁵³ *English.news.cn* 6/10/2011 (discussing how China is poised to outlaw compulsory mental health checkups); X. Wang et al., *Reassessing the Aftercare Treatment of Individuals Found Not Guilty Due to a Mental Disability in Hunan, China: Supplemental Study into the Disposition of Mentally Ill Offenders After Forensic Psychiatric Assessment*, 41 *Aust. & NZ J. Psychiatry* 337 (2007).

⁵⁴ See http://www.chinadaily.com.cn/opinion/2011-09/21/content_13745891.htm. Several new forensic concepts have been applied to Kangning Hospital in the coastal city of Shenzhen. Many of those concepts have changed forensic procedures in the Guangdong region and are spreading more broadly in China.

⁵⁵ *Id.*

⁵⁶ Fischer, *supra* note 51, at 160.

⁵⁷ *Id.*, n. 3.

their will. Documented cases have highlighted concerns that Chinese authorities are using mental asylums as a way to silence dissent by claiming that an individual is ‘endangering public security’ or ‘disturbing public order’.⁵⁸ A recent article by an American expert on Chinese law warns that the new code could be used as a vehicle to legalize ‘residential surveillance’ that could be used as a tool against political dissidents.⁵⁹

Recently, a high profile criminal case in China stirred public concerns for the mental health of their country’s elderly population. An elderly woman suffering from depression, leading to intermittent hospital stays and ongoing psychotropic medications, confessed to the murder of her granddaughter. Psychiatrist’s reviewing the case confirmed an increase of violent attacks by elderly citizens.⁶⁰ It is suggested that economic backgrounds and a transformation in the traditional family structure, along with a lack of care from children and reduced communication with the outside world, are to blame for the mental health issues currently facing senior citizens.⁶¹

Chinese legislation has recognized that someone unable to acknowledge or control his misconduct requires the exemption from criminal responsibility and warrants the reduction of punishment in cases of partial mental capacity. Recently, a fairly high-profile case came to light involving mental illness and the death penalty. A British businessman, Akmal Shaikh, was convicted and executed in China after he was found with heroin in his luggage. A Chinese organization argued on his behalf (and against his wishes) claiming that he suffered from mental illness and should not be subject to the death penalty. The Court refused to allow an evaluation of mental illness because past records did not exist to document a history of mental illness and sentenced Shaikh to be executed. Yet the Supreme People’s Court has not always ruled in this manner and has allowed for the investigation and admission of psychiatric examinations. Several years ago in Beijing, an American killed his Chinese wife because of the delusion that she was poisoning him. The trial court called for a thorough examination by experts at a local mental hospital and the man was diagnosed as a person with paranoid-schizophrenia. The Court bypassed a verdict of not guilty by reason of insanity but reduced what would otherwise have been a death sentence, to a prison term of 15 years.⁶²

These issues, cases, advocacy of rights and rights concerns are not unique when compared with the rest of the world. The study of China’s approach and legal struggles in dealing with persons with mental illness (and the concomitant concerns about issues of civil rights and liberties) will give other nations the

⁵⁸ He Bolin, *Mental Health Law Requires Details*, Available at chinadaily.com.cn 9/21/2001. Law professor Dai Qingkang from China’s Southeast University says the proposed law is vague and could be abused:

For example, the risk of endangering public security or disturbing public order is enough reason to force someone to psychiatric care. We think that the term ‘public order’ is unclear, and many experts believe this cannot be a reason to forcibly admit someone. The decision should be made by a qualified psychiatrist.

⁵⁹ Leonard Orland, *Chinese Law and Political Oppression*, NAT’L L.J. (Oct. 10, 2011), See http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202518304132&Chinese_law_and_political_oppression&slreturn=20130909072555 (last accessed, October 8, 2013).

⁶⁰ See *Infanticide Tragedy Highlights Elderly Mental Health Care Issues*, English.news.cn (July 24, 2011).

⁶¹ *Id.* ‘The mental health issues surrounding the elderly population need to be addressed not only by senior citizens and their families, but also through comprehensive measures put in place by the government and society,’ (comment made by Yang Fangru, a psychology professor at Central South University of China).

⁶² Jerome Cohen, *Mental Illness and Criminal Justice in China*, *China Times (Taiwan)* (Dec. 24, 2009) (additionally questioning whether these types of cases will spur criminal justice reform in China).

ability to apply these concepts to an analysis of their own laws (or lack thereof) dealing with the treatment of such individuals.⁶³

India

Recent high profile cases and questions regarding the constitutionality of persons with mental disabilities have not spared India. As in China, India has also debated the ethics of executing someone who is mentally incompetent. In the 2011 trial of a Khalistan Liberation Front (KLF) operative, attorneys and advocates against executing persons with mental disabilities claim that the defendant's mental state 'renders him unfit for execution and the death sentence should be commuted to a life term'. Citing constitutional safeguards, the representing attorney declared, 'His execution will be unconstitutional and in-executable, according to the jurisprudence of humanism.' According to settled laws in India, if a death convict's mental state is certified as unsound by a competent medical authority then he cannot be executed.⁶⁴

Issues involving India's criminal justice laws in relation to mental illness were recently brought to light by the Delhi High Court and India's mental health advocates. In response to a high number of cases and concerns, the Delhi High Court requested a review of the Indian Penal Code (IPC) that prescribes punishment for those who attempt suicide.⁶⁵ The 42nd Law Commission report conclusively determined that provisions of Section 309 were harsh and unjustified and must be repealed. 'Individuals who attempt suicide need to be helped. Imprisonment makes their condition grave and worse. As part of its endeavour to promote and achieve effective prevention,' the petition stated, adding that the present section was vague and undefined as it failed to appreciate the sensitivity and compassion that was required to deal with individuals who have already suffered much trauma in life and have to undergo another round of suffering.⁶⁶

Japan

Japan has undergone a number of mental health law reforms since the 1980s. Those reforms have been the subject of extensive debate as to the extent to which they afford its citizens full civil and forensic rights. The legislature has addressed the intersection between mental illness and serious crimes as well as protection of the general mentally ill population. New forensic units have been legislatively mandated

⁶³ L. Jeevanandam *Perspectives of Intellectual Disability in Asia: Epidemiology, Policy, and Services for Children and Adults*, 22 CURR. OPIN. PSYCHIATRY 462 (2009);

The prevalence of intellectual disability across Asia appears to be consistent with western estimates at 0.06–1.3%, with the exception being China at 6.68%. In the only two studies of mental health conducted in Asia, the prevalence ranged from 4.4 to 48.3%. Some of the common physical health problems among Singaporean adults with intellectual disability are obesity, high blood pressure, and high blood cholesterol. All Asian countries/territories have at least one law or policy that promotes the wellbeing of persons with disabilities, with Japan being the only country that has a law specifically enacted for persons with intellectual disability. Although there is an array of services being offered for children and adults with intellectual disability across south-east Asia, there is also a variation in the proportion of countries that offer these services.

⁶⁴ Abhishek Sharan, *Lawyer Pleads Leniency for Bhullar on Medical Grounds*, HINDUSTAN TIMES (New Delhi), (June 7, 2011).

⁶⁵ *Delhi High Court Queries Govt on India's Anti-Suicide Law*, DAILY NEWS & ANALYSIS (May 12, 2011). The International Association for Suicide Prevention has said that approximately one million people have died by committing suicide so far during this millennium.

⁶⁶ *Id.*

to house individuals with mental disabilities charged with crime. Scrutiny and scholarly attention has focused on and considered ways to prevent warehousing mentally ill offenders in jails, recommend effective and culturally sensitive techniques through which to deal with low-risk populations and suggest policies to avoid the improper placement of juveniles, violent patients and the developmentally handicapped. Continued efforts seek to make sure that the appropriate individuals are placed in the new forensic units established by the legislation.⁶⁷

Even with these advancements, two legal scholars astutely identify that ‘it is only through contemplating unintended outcomes of the legislation that the Japanese government will be able to avoid the ongoing stigmatization and prolonged institutionalization of mentally ill populations’.⁶⁸

Yet in 2009, Amnesty International voiced concerns that Japan was still executing mentally ill prisoners. Although Japan has embraced international standards that prohibit the death penalty for those with a serious mental illness, questions exist as to whether those standards are being upheld. Not unlike other nations who house inmates for extended periods of time on death row, inmates in Japan are also at risk of developing a serious mental illness while on death row.⁶⁹

Despite apparent cultural differences, the international community seeking to uphold human rights and require the necessary safeguards to protect them, must continue to vigorously study, debate and question the authoritative powers on both sides of the coin. This scrutiny must exist in the forensic context, as well as throughout the mental health system at large.⁷⁰ This can only be accomplished through the collaboration and sharing of knowledge across borders, nations and cultural divides.

Conclusion

In a recent article, one of us (MLP) discusses the ‘ghettoization’ of mental disability law and the way that this topic is absent in traditional courses in civil rights law, federal courts law, criminal procedure and constitutional law. Mental disability law has been ghettoized in good part because of socially-acceptable unthinking (perhaps, at times, unconscious) sanism. This sanism renders invisible both its subject matter and the individuals who are the subject of its case-law. Because of this ghettoization, many law schools offer no course in this subject matter, or offer one sporadically by an occasional adjunct. As a result, our biases and prejudices about persons with mental disabilities (and those so perceived) remain hidden in the academy.⁷¹

New York Law School created its online mental disability law programme, in significant part, because of this gap in legal education. Its robust curriculum and its global reach were designed, in large part, to help ameliorate this situation.

The work being done to create a DRTAP (including the creation of an internet-based information centre) makes the expansion of this sort of programme even more time-urgent. Recent criminal justice/

⁶⁷ David N. Weisstub & Terry Carney, *Forensic Mental Health Law Reform in Japan: From Criminal Warehousing to Broad-Spectrum Specialist Services?* 29 INT’L J.L. & PSYCHIATRY 86 (2006).

⁶⁸ *Id.*, n. 11.

⁶⁹ Amnesty International, *Japan Continues to Execute Mentally Ill Prisoners*, (September 10, 2009), See <http://www.amnesty.org/en/news-and-updates/report/japan-continues-execute-mentally-ill-prisoners-20090910> (last accessed, October 8, 2013).

⁷⁰ Weisstub & Carney, *supra* note 67, at n. 16.

⁷¹ Perlin, *Keep It All Hid*, *supra* note 3, at 860–61, 876.

mental disability law developments in Asia heighten this urgency. We believe that, by teaching the concepts in the NYLS programme through this specific pedagogical approach, we will reach a greater audience and have a better chance of producing informed, compassionate and knowledgeable advocates dedicated to furthering the rights of persons with mental disabilities throughout every phase of the legal system.

