

GUEST COMMENTARY

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Supreme Court ruling on Kansas murder case will determine future of insanity defense

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On Monday, the U.S. Supreme Court will begin its new term with a Kansas criminal law case: *Kahler v. Kansas*. It will determine the constitutionality of the insanity defense, which Kansas abolished in 1995. And the court's decision will have a wide-ranging impact on our criminal justice system.

Since 1995 under Kansas law, defendants in criminal cases can introduce evidence relating to their mental illness only insofar as it would negate the mens rea — the accused's knowledge that he or she is committing a criminal offense, such as the intent for murder. Other than this, mental illness does not qualify as a defense in the state.

The petitioner in the case, James Kahler, was found guilty of first-degree murder and sentenced to death by a jury after killing his wife Karen, his two daughters Emily and Lauren, and his grandmother-in-law Dorothy Wight in November 2009. Both the state and defense's experts agreed that Kahler was suffering from severe depression at the time of the crime.

The defense psychiatrist testified that Kahler was dissociated from reality, could not help but commit the crime, and did not understand that his actions were wrong. Defense lawyers focused on the wrongfulness of Kahler's actions, which is the exact issue that the insanity defense addresses. According to his lawyers, Kahler should have been able to argue that his mental illness caused him to be unable to appreciate he should not have taken those actions, and so he should not have been found guilty.

The mens rea approach used by Kansas is not an adequate substitute for the broader insanity defense, which completely absolves those who cannot appreciate the illegal nature of their acts from criminal liability. By focusing on mens rea alone, and not allowing for an insanity defense, Kansas sees increased prosecutions of people with mental illness, who would otherwise be excused under the insanity defense. These defendants cannot understand the impropriety of their crime but are nonetheless able to form the intent to commit murder. Once they have the intent to murder a human being, they will be punished.

Kahler is making two constitutional arguments: one based on the due process clause of the 14th Amendment, and one on the cruel and unusual punishment clause of the Eighth Amendment. Under the due process clause, certain principles that are deemed fundamental to our criminal justice system, such as the insanity defense, cannot be violated by the states. To assess whether a principle is fundamental, the Supreme Court must look at historical and contemporary practice. The insanity defense has been a fundamental principle of criminal law since before the beginning of the common law. Since ancient times, our legal systems have punished only those guilty of committing crimes, and the mentally ill have historically been given exception from punishment.

This history is supported by contemporary practice. Until 1979, all U.S. states had some form of the insanity defense, and since then only five states have opted to abolish it. In addition to the other 45 states, the Washington, D.C., federal and U.S. military justice systems all retain it.

Punishing the insane is considered cruel and unusual by these jurisdictions, as it has been for eons. Punishing the insane does not advance any justification for punishment. Retribution requires that we punish only those deserving of punishment. The mentally ill are simply not as blameworthy or culpable as those who do not suffer from a mental illness. Insanity acquittees do not pose a danger to society, as they will only be released from civil psychiatric confinement after proving they are no longer dangerous. And it is of course well proven that our incarceration system does not provide rehabilitation for the mentally ill.

While this case will not affect that many individuals in our criminal justice system, it does have a broader symbolic significance. If states are restricted from punishing those with severe mental illnesses, the Supreme Court will proclaim what our criminal justice system stands for. We should not punish those who do not understand their actions, and so are not to be blamed for them.

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