



The Right to Refuse Mental Health Treatment:

A Therapeutic Jurisprudence Analysis

Bruce J. Winick*

Introduction

The controversy concerning the recognition and definition of a right to refuse mental health treatment has largely ignored the question of whether such recognition would be therapeutically beneficial or detrimental to the patient. Would such recognition lead to refusal of needed treatment so that patients will "rot with their rights on," as some have suggested?¹ Will allowing offenders the choice whether to participate in correctional rehabilitation programs increase recidivism? Will patients forced to accept mental health treatment over objection improve and come, in time, to thank their doctor, retrospectively approving beneficial treatment they never would have accepted voluntarily?² On the

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Preliminary versions of this article were presented at meetings of the International Academy of Law and Mental Health and the American Psychology-Law Society, and I appreciate the comments of colleagues at these meetings. I also appreciate the research assistance of Inge Golden and Karen Kaminsky. This article, in a somewhat revised form, will appear as a chapter in my forthcoming book, *THE RIGHT TO REFUSE MENTAL HEALTH TREATMENT: A CONSTITUTIONAL AND THERAPEUTIC JURISPRUDENCE ANALYSIS*.

¹See, e.g., Appelbaum & Gutheil, *The Boston State Hospital Case: "Involuntary Mind Control," the Constitution, and the "Right to Rot,"* 137 AM. J. PSYCHIATRY 720 (1980); Gutheil, *In Search of True Freedom: Drug Refusal, Involuntary Medication, and "Rotting with Your Rights On,"* 137 AM. J. PSYCHIATRY 327 (1980) (editorial).

²See, e.g., A. STONE, *MENTAL HEALTH LAW: A SYSTEM IN TRANSITION* 69-70 (1975) (describing this reaction as the "thank-you" theory); D. WEXLER, *MENTAL HEALTH LAW* 45-48 (1981) (analyzing the "thank you" theory in context of narcotics abusers); Gove & Fain, *A Comparison of Voluntary and Committed Psychiatric Patients*, 34 ARCH. GEN. PSYCHIATRY 669, 673 (1977); Kane, Quirk, Rifkin, Wegner, Rosenberg & Borenstein, *Attitudinal Changes of Involuntarily Committed Patients Following Treatment*, 40 ARCH. GEN. PSYCHIATRY 374, 376 (1983); Schwartz, Vingiano & Beziganian-Perez, *Autonomy and the Right to Refuse Treatment: Patients' Attitudes After Involuntary Medication*, 39 HOSP. & COMMUNITY PSYCHIATRY 1049 (1988) (empirical study showing that medication refusers treated over objection, if rehospitalized, would assent to drug treatment); but see Beck & Golowka, *A Study of Enforced Treatment in Relation to Stone's "Thank You" Theory*, 6 BERKE. CAL. & L. 337, 392 (1988) (empirical study of involuntarily hospitalized patients showing no evidence to support "thank you" theory in 62% of cases).

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Katrin Zwirgmaier



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