

The Atlanta Neuroethics Consortium: Neuro-Interventions and the Law

Joshua Preston

Bioethics, Neuroethics, ANEC

Recently, I attended the Atlanta Neuroethics Consortium's (ANEC) conference on *Neuro-Interventions and the Law: Regulating Human Mental Capacity* (September 12-14). Hosted by Professor Dr. Nicole Vincent, it was my first foray into the "neurolaw" world. Most of the attendees and keynote speakers were pulled from the MacArthur Foundation's Law and Neuroscience Research Network, and because of this, I was impressed by the cross-disciplinary representation. The conference included experts in the biological sciences and psychiatry as well as legal scholars and practicing judges. Additionally, I must add, it was *free*, which is the best price.

The opening keynote from Vincent laid out the major topics that would be explored over the next three days. In it she outlined her taxonomy of the relationship between responsibility and mental capacity (i.e., how does an individual's cognitive abilities affect our expectations of them?). Each panel addressed a different component of this taxonomy and the following breakout sessions further expanded upon it. The panels followed an interesting format in that each member was asked the same question and then proceeded to answer it from the vantage point of their own discipline. I am summarizing only three of the four panels (the last of which was on "neuroenhancement"), and as is apparent, more questions were asked than answered. Sometimes, though, the mere recognition that questions exist is itself a valuable outcome.

An edited volume of conference papers will be submitted to Oxford University Press to be considered for a part of its *Neuroscience, Law, and Philosophy series*. Additionally, video recordings of the conference will be posted online soon. If you are interested in learning more, I suggest reaching out to Vincent through her [personal website](#).

Panel 1: "Should a neurointervention be a condition of release from prison for sex offenders?"

Most of the discussion focused on chemical castration and its ambiguous effects on recidivism. In some states, it is offered as a condition of early-release and several panel-members were skeptical about the illusion of "choice" it presented. Is it really a "choice" if the alternative is draconian? Justice David E. Nahmias of the Georgia Supreme Court raised an interesting point: The moral discomfort with most neurointerventions stems from its *intrusiveness* and unintended side-effects. Yet, the legal system already mandates *non*-intrusive neurointerventions such as anger-management classes and addiction treatment. In fact, as the brain is constantly rewiring itself in response to its circumstances, it is impossible to do otherwise. What if the same effect could be achieved with a medical procedure? Should the individual's consent matter (they have no choice to attend anger-management classes)?

Panel 2: “Can neurointervention restore an insane inmate’s competency for execution and, if so, should it?”

By raising an issue that, in my opinion, will be irrelevant when capital punishment is banned, this question forces one to address the philosophical questions on its peripheries. This was the most lively panel, I thought, and included a brilliant line-up: Vincent, Stephen J. Morse, Francis Shen, and Andre M. Davis, a senior judge on the US Court of Appeals (Fourth Circuit). Each was assertive in their opposition to capital punishment, but the conversation hovered around *why we punish*. How does an inmate’s incompetency tangle what, in lesser circumstances, seems straightforward?

By treating an individual’s illness merely to kill them, it is unclear how the intervention deters others and, because the inmate dies, how it rehabilitates. It seems solely to satisfy retributive desire. After all, it is only possible to give someone their “just deserts” if they are able to comprehend and appreciate the punishment directed toward them. As Morse said, if the individual is not competent, “You’re giving [the death penalty] to the wrong person and not the person convicted.” For example, no longer are you executing someone who in a calm, collected manner planned a heinous crime; instead, you are punishing someone who may have no grasp of where they are and why. In the worst cases, you may as well be executing a dog.

Panel 3: “What standards apply to dangerous, pre-trial detainees when it comes to involuntary neurointervention?”

This panel focused on the case of Jared Lee Loughner, the Arizona shooter who targeted U.S. Rep. Gabrielle Giffords. Following the 2011 shooting, Loughner was forcibly medicated with antipsychotics to restore his competency for trial. This set off a year-long legal battle that resulted in the courts ruling it was necessary to ensure his as well as others’ safety. As an extension of the previous panel, this raises questions relevant to the Insanity Defense: If someone is delusional when they commit a crime, what is the point in punishing the saner version of himself? Is it fair to blame someone when they are suffering from undue influence -- not a gun against their back but an illness that affects their very perceptual reality?

During the discussion, Vincent raised a valuable point, “Who *is* competent to participate in a trial?” Currently, we put an emphasis on eye-witness testimony, but contrary to our instincts, it is pretty unreliable. And what about those we expect to have insight into their own motivations (Introspection illusion)? “Maybe what we’re coming to,” added Vincent, “is the conclusion that there’s something uncomfortable about the idea of retribution.” I think so, and rather than satiating the desire of vengeance, the goal of the legal system must always be the prevention of crime and the reintegration of individuals into society.