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OPPOSING VIEWS

Is There a Better Way to Treat Criminals With Mental Health Issues?

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We have lately witnessed several high-profile criminal events for which insanity may or may not be a tempting explanation. To name only the most prominent, consider the spree killings in Aurora, Colorado and Oak Creek, Wisconsin; Anders Breivik's rampage in Norway; and the shooting of former representative Gabrielle Giffords and a group of her constituents. Giffords' shooter, Jared Lee Loughner, was medicated against his will for nearly a year and recently entered a guilty plea. Anders Breivik has denied the suggestion that he was mentally ill, insisting that he is of sound mind and motivated only by ideology.

At *Cato Unbound* this month, we're taking a close look at mental health and the law. American University's [Dr. Jeffrey A. Schaler](#) is skeptical that "insanity" is a good explanation for criminal—or any—behavior. Indeed, Schaler denies that "mental illness" is a valid category of disease. For that reason he is also one of the world's foremost exponents of consensual psychiatry, a branch of the discipline first comprehensively defended by Dr. Thomas Szasz: if a patient wishes to be treated, he should be allowed to seek treatment; if not, his behavior remains his own responsibility.

[Dr. Allen Frances](#), professor emeritus of psychiatry at Duke University, disagrees in part: while mental illness is unlike many other diseases, those who present a clear threat to others owing to mental illness should *not* be treated either as criminals or as harmless. They have a condition that needs to be treated in order for them to rejoin the rest of society.

Jacob Sullum, a journalist and author who has often written on mental health, therapy, and the law, points out that [psychiatry can't have things both ways](#)—either a criminal is responsible for his actions, in which case he should be punished; or the criminal is *not* responsible for his actions, in which case one

might argue for involuntary treatment. Yet current laws, particularly regarding sexually violent predators, often try to do both to the same person.

Amanda Pustilnik, an associate professor of law at the University of Maryland, argues that the [outrage about coercive psychiatry is misplaced](#): more mentally ill people inhabit our prison system than are to be found in our psychiatric hospitals. They get there not because they are more criminal, but because they are less cooperative with police, worse at defending themselves in court, and find it difficult to comply with the rules of prison life and parole. Many of these people would prefer to be in mental institutions, where they would receive the treatment they both need and want.

The conversation will remain open through the end of the month, so be sure to [subscribe via RSS](#) or [follow us on Twitter](#). We welcome readers' letters and may publish them at our option; send them to J Kuznicki (at) cato . org.