

死刑受刑能力 司法精神鑑定之倫理爭議

Ethical Issues in the Forensic Psychiatric
Examination of Competency for Execution

吳建昌 Kevin Chien-Chang Wu* 彭啟倫 Chi-Lun Peng**



摘要

截至2023年底，仍有55個國家持續執行死刑之法律規定，我國亦是其中之一。世界精神醫學會於2023年主張，死刑之判決與執行經常對於精神障礙者不公，呼籲精神科醫師在死刑事項上要積極參與保障精神障礙者權利之事務。我國憲法法庭113年憲判字第8號判決，強調精神障礙者之人權保障，揭示判斷受死刑論知者接受死刑執行能力之重要性，引發死刑受刑能力鑑定是否合乎倫理之爭議。本文首先回顧司法精神鑑

*臺灣大學醫學院附設醫院精神醫學部主治醫師（Attending Psychiatrist, Department of Psychiatry National Taiwan University Hospital）、臺灣大學醫學院醫學教育暨生醫倫理研究所副教授（Associate Professor, Department/Graduate Institute of Medical Education and Bioethics, College of Medicine, National Taiwan University）

**臺灣大學醫學院附設醫院精神醫學部主治醫師（Attending Psychiatrist, Department of Psychiatry National Taiwan University Hospital）

關鍵詞：人權（human right）、司法精神鑑定（forensic psychiatric assessment）、死刑（death penalty）、死刑受刑能力（competency for execution）、倫理（ethics）

DOI：10.53106/241553062024110097009

定之倫理原則與爭議，聚焦於死刑受刑能力鑑定合倫理性之正反論述，討論傳統醫學倫理與司法精神鑑定倫理之衝突與調和，此種鑑定之適格性、客觀性與科學性，以及人權保障之議題，以發現此種鑑定倫理爭議相關論述之內在關係與一致性。本文發現，在精緻定義死刑受刑能力鑑定之內涵後，世界精神醫學會與美國精神醫學會之立場有趨於附條件容許之傾向。在目前此種鑑定之倫理性仍無定論之際，本文期待法務部在檢討修正相關規定時，應同時考量該能力司法精神鑑定（可能包括司法心理鑑定）之倫理爭議，由司法精神醫學專家依據其真摯倫理判斷決定是否接受委託進行此種鑑定，也始能建構符合人權保障之刑事司法系統。

As of the end of 2023, 55 countries, including Taiwan, still upheld the death penalty. The World Psychiatric Association in 2023 argued that death penalty rulings and executions are often unfair to individuals with mental disorders, urging psychiatrists to actively protect their rights in such cases. Taiwan's Constitutional Court, in its 2024 Judgement No. 8, emphasized the protection of human rights for people with mental disabilities and highlighted the importance of assessing the condemned persons' competency for execution. This sparked ethical debates on the validity of such assessments. This article reviews the ethical principles and controversies surrounding forensic psychiatric evaluations, focusing on the ethicality of competency for execution assessments. It examines the conflict and reconciliation between traditional medical ethics and forensic psychiatric ethics, the objectivity and scientific rigor of such evaluations, and related human rights issues. The aim is to explore the underlying consistency in these ethical debates. The findings reveal

that, with a more refined definition of competency for execution assessments, both the World Psychiatric Association and the American Psychiatric Association show a tendency toward conditional acceptance. Given the ongoing ethical uncertainties, the article suggests that individual forensic psychiatric experts determine whether to accept the competency assessment task based on their sincere ethical belief. Only when the Ministry of Justice revises relevant regulations while considering the ethical concerns surrounding the competency assessment, can it ensure a criminal justice system that upholds human rights.

壹、介紹

根據國際特赦組織（Amnesty International）的統計，截至2023年底，全世界大約75%的國家在法律規定或實質上廢除死刑，但仍有55個國家持續執行死刑之法律規定，我國亦是其中之一¹。根據2023年世界精神醫學會之立場聲明，死刑之判決與執行經常對於精神障礙者不公，而刑事司法系統也經常無法依據身心障礙者權利公約（Convention on the Rights of Persons with Disabilities, CRPD）辨識出精神障礙者，無法在各種刑事司法程序中做出合理調整，故呼籲精神科醫師在死刑事項上要積極參與保障精神障礙者權利之事務²。

關於死刑之爭議，可以簡單分成二大類型：第一為是否廢

1 Amnesty International, *Death Sentences and Executions in 2023*, May 24, 2024, <https://www.amnesty.org/en/documents/act50/7952/2024/en/> (last visited Oct. 4, 2024).

2 World Psychiatric Association, *World Psychiatric Association Position Statement on Mental Health and the Death Penalty*, Sep. 30, 2023, https://www.wpanet.org/_files/ugd/842ec8_954aafaa000b4ce38c282309ef68b6f9.pdf (last visited Oct. 4, 2024).