

## Chemical Castration and the Violation of Sexual Rights

The most famous case of chemical castration is the punishment/treatment inflicted on Alan Turing by the British penal system in 1952. This injustice brings out the very worst aspects of the treatment: First, it was inflicted on someone for the crime of engaging in homosexual sex - something that Britain and almost all other developed countries now consider a legitimate and healthy lifestyle. Second, the chemical injections caused serious side-effects, most notably the derangement and depression that may have led to Turing's suicide. Finally, Turing was a war hero who had provided the Allies with intelligence that had significantly accelerated the end of World War II. For this reason, Turing's victimization in the hands of his own government seems particularly callous and outrageous - a deep breach of an obligation of gratitude owed to Turing by his countrymen and government.

This paper provides a philosophical analysis of the use of chemical castration as a treatment or punishment for aggravated sexual crimes. However, the analysis is limited in scope. I will simply be attempting to answer the question: Is the use of chemical castration on perpetrators of aggravated sexual crimes a violation of their moral rights?

### *Empirical Starting Points*

This paper does not provide a comprehensive account of the risks and benefits associated with the chemical used. I will mention here that chemical castration in the United States is typically performed with a high dose of the drug Medroxyprogesterone acetate, which is more commonly used in FDA approved smaller doses under the name Depo-Provera for the purpose of

pregnancy prevention in women of child-bearing age.<sup>1</sup> When these high doses are continued for an extended period, they have long-lasting side effects - most notably: irreversible bone degeneration.<sup>2</sup> For the purposes of this paper, I am going to bracket this serious health effect. For the time being, however, let us imagine that chemical castration could be performed in such a way that simply had the effect of temporarily reducing or eliminating a man or boy's ability to become physically, sexually aroused or to perform a sustained, penetrative, sexual act.

There are at least two other empirical questions relevant to this analysis. I am going to very briefly explain these issues, and explain the assumptions under which I'll be operating in this paper. First, is chemical castration actually effective in reducing recidivism among criminals convicted of sexual crimes? The answer seems to be: yes. Overall, when castration (surgical or chemical) has been inflicted on sexual criminals, either as a punishment or as a treatment offered as a condition of parole, recidivism is reduced.<sup>3</sup> However, there are very good reasons for thinking that sexual desire is not the best explanation for many perpetrators' sexual crimes. For instance, sometimes the best explanation for a sexual crime is not a perversion of sexual desire but, instead, psychopathy. For instance, if person X had a set of sexual desires such that he specifically desired non-consensual sex, and sometimes pursued it, despite knowing and perhaps even caring about it's harms to his victim - that would count as a sexual perversion. On the other hand, a psychopath or sociopath might have no specific desire for non-consensual sex, but sometimes pursue it because of his general desire for sex, paired with a complete disregard of the harm done to his victim, or of the rights of the victim that he violates. Note that even though

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<sup>1</sup> Pfizer, 2016. In the United Kingdom, chemical castration has been prescribed to offenders of sexual crimes using a different set of drugs.

<sup>2</sup> Saleh and Berlin, 2003

<sup>3</sup> Stinneford, (2006: 572-576)

chemical castration does not cure psychopathy, it nonetheless might remove the psychopath's desire and ability to perpetrate many of the worst sexual crimes.

I will assume for the sake of this paper that generally implementing chemical castration as a punishment/treatment for aggravated sexual crimes does reduce recidivism, even if the castration does not treat the medical or psychological problems responsible for the criminal behavior, and even if it is not the case that each particular use of chemical castration reduces recidivism.

Finally, we must ask: in what contexts and under what conditions is chemical castration being used as a punishment or treatment for sexual crimes? I will divide my analysis into three categories:

Category A: Chemical castration is part of a court-delivered sentence, used on the convicted perpetrators of aggravated sexual crimes.<sup>4</sup>

Category B: Chemical castration is a condition of parole, but implemented within a penal system wherein the convicted criminal would otherwise face unjust conditions in prison (e.g. lack of protection against sexual or physical assault).

Category C: Chemical castration is a condition of parole, but implemented within a penal system wherein the convicted criminal would otherwise face just conditions in prison (whatever those might be).

Uses of chemical castration that fall into Category C might not actually exist. Nonetheless, Category C is worthy of philosophical analysis.

There is one question that I will not ask in this paper: Is chemical castration a treatment or a punishment? I think there is no simple, correct, and comprehensive answer to this question. Insofar as an individual (perhaps a non-criminal) might choose chemical castration because he wants to focus on non-sexual pursuits with his life, and perhaps because he is psychologically

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<sup>4</sup> Stinneford; (2006: 574-576)

bothered and distracted to the point of being impaired by his fantasies about illegal sexual behavior, chemical castration might count as a treatment. However, the chemical castration of an unwilling individual, a convicted sex offender who will never be released from jail, is clearly something other than, or something in addition to, a treatment. Certainly, the fact that a major cause for criminal sexual offenses is psychopathy, and given that chemical castration does not treat psychopathy, there is a strong case to be made that chemical castration is not a medical treatment. Stinneford says,

The procedure is sometimes justified on the ground that some sex offenders are pedophiles who experience deviant (and often unwanted) sexual desire for children, and that for this group of offenders, chemical castration is a beneficial form of medical treatment. This argument fails, however, because the vast majority of sex offenders covered by the chemical castration laws do not have any sexual disorder, much less pedophilia. Many of these offenders may be incorrigibly bad, dangerous or antisocial people, but they do not suffer from a sexual sickness.<sup>5</sup>

I will put these questions aside, since the focus of this paper is: rights. Whether chemical castration violates the moral rights of individuals does not depend on whether it is a treatment or a punishment. After all, chopping off the gangrened hand of an unwilling adult would constitute a rights violation even if it was also a (life-saving) treatment.

I am trying to answer the question: does chemical castration violate the moral rights of individuals? If it does, then it does so in one of two ways: A. It violates the sexual/bodily rights of the individual. B. It violates the moral right to freedom of thought, or liberty of the consciousness. I will investigate these questions separately and conclude in both cases that there is no moral rights violation when used in response to aggravated sexual crimes. However, I will

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<sup>5</sup> Stinneford, (2006: 567)

go on to suggest that the moral permissibility of using chemical castration as a punishment of treatment is in no way determined by my conclusion regarding moral rights.

*On the Forfeitability of Sexual Rights:*

Surely, human adults (and probably human children) have a moral right against chemical castration. Yet, perhaps the perpetrators of sexual crimes have forfeited this right in the same way that, in the United States, they have forfeited their right to vote. If so, then the physical/pharmaceutical interference that would otherwise count as a rights violation does not here count as a rights violation.

Consider, the rights to vote, to assemble, to parent one's own children, to be free from bondage; these are all forfeitable moral rights. When someone commits a crime and is justly imprisoned, they are not the victims of moral rights-violations. This is because we take their crimes to have altered the moral circumstances. Usually someone must waive his bodily right against being touched (through consent) in order for anyone else to permissibly lay hands on him. However, individuals appointed by the state to manage criminals may permissibly touch their charges (in certain, sometimes violent ways) without consent, and do so without violating the moral rights of these criminals. Aquinas argued that criminals proved themselves to be as unwilling to cooperate in the human, social world as did animals – less so. He suggested that this gave the state a right to treat criminals as animals.<sup>6</sup> Other retributivists argue that the rights forfeited by a criminal correspond to the particular crime committed.

Performing some crimes forfeits a criminal's moral right temporarily if not permanently. Judith Thomson explains how, during an attack, an attacker forfeits his right to life against his

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<sup>6</sup> Aquinas, 1947 [1466]

victim. The victim does not violate the attacker's right to life by killing the attacker in self-defense.<sup>7</sup> Perhaps this does not mean that the attacker permanently forfeits his right to life. (This is no defense of a death penalty, for instance.) However, at least for the span of time in which the life of the attacker's victim is under threat, the attacker has no moral right against being killed by his victim.

Yet, it is widely believed that sexual rights are different from other important rights. Even Immanuel Kant, a staunch advocate of retributive justice, argued that we may not rape rapists or torture torturers.<sup>8</sup> The Eighth Amendment to the constitution of the United States is often interpreted as disallowing punishments that fail to treat criminals as persons (contrary to Aquinas' sentiments).<sup>9</sup> Perhaps this explains why we do not rape rapists as a means of punishing them – persons always retain their sexual rights. With these considerations in mind, the following argument can be made for the claim that chemical castration violates the moral rights of individuals.

Argument from Non-Forfeitability:

1. Everyone starts out with (or comes into adulthood with) a sexual right against chemical castration.
2. Sexual rights are non-forfeitable.
3. So, everyone, even the convict of aggravated sexual assault, has a sexual right against chemical castration.

Refer back to the categories of implementation described in the previous section. Now, imagine that this argument is sound and its conclusion is true. Insofar as the implementations of chemical castration in Category A are forced, they certainly stand in violation of the sexual rights, so

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<sup>7</sup> Thomson, 2011

<sup>8</sup> Kant, 1965 [1797]

<sup>9</sup> Stinneford, (2006: 567)

described. The implementations of chemical castration in Category B are coercive, given that the threat of what an inmate will experience in some prisons is grave and unjust (especially in the United States wherein sexual assault and battery in prisons are common). However, if the policy makers deciding on the implementation of chemical castration as an alternative to prison sentences do not have control over the state of the available prisons, then they are not coercing the criminals into accepting the castrating drug. Further, these policy makers have a duty to society to refrain from releasing a convicted sex offender without some means of protecting them from recurrent sexual violence – protections (potentially) afforded by the castration treatment. Even if policy-makers, ones who have no control over the conditions within the prison system, *are* justified in providing the chemical option, they might still infringe without violating the moral right of the convict. Judith Thomson characterizing rights violations as unjustified intrusions on rights, and infringements the justified intrusions on rights.<sup>10</sup> Other philosophers deny the latter category.

In Category C, it seems perfectly plausible that the right against chemical castration can be waived when the threat that motivates the choice is a justified threat. If the prison alternative is safe and humane, then the convict of the aggravated sexual crime loses nothing to which he is entitled by refusing to undergo the chemical castration. My application of the argument's conclusion to each of these three categories is contentious. However, this brief handling conveys the importance of determining whether all convicts have a right against chemical castration – though the constraints on punitive implementation that follow from this determination will vary.

However, I will argue that these distinctions probably do not matter, because the argument from Non-Forfeitbaility is not sound. At the very least, its second premise is not defensible using the philosophical intuitions and practices to which most authors and readers

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<sup>10</sup> Thomson, 1990

appeal. Sexual rights come in many forms, and some of them are probably forfeitable, even if others are not. For instance, take the sexual right to engage (or against being prevented from engaging) in a sexual act with a consenting partner. We tend to think that this is a right. For instance, most philosophers think that anti-sodomy laws from the United States' recent history were laws that violated the rights of individuals. However, in prison, we prevent inmates from engaging in consensual sex with each other, as well as with consenting partners who are not inmates. If this prevention is not a rights-violation or rights-infringement, then it is because the criminals have forfeited this particular sexual right.

One way that we might distinguish this sexual right from other, potentially non-forfeitable, sexual rights is: losing this right means that you can be permissibly prevented from engaging in sexual behavior of your choice. Perhaps non-forfeitable sexual rights are ones such that: losing those rights would mean being forced to engage in sexual acts, or being forced into unwanted sexual contact. However, we regularly administer open-cavity searches on prisoners. These open cavity searches subject prisoners to unwanted contact, including penetration, made to their sexual body parts. If these open-cavity searches do not involve the violation of a sexual right, then we must think that convicted criminals have forfeited their sexual right against unwanted contact made to their sexual parts.

We might want to make another distinction: some contact with sexual body parts is sexual contact, and some contact with sexual body parts is not sexual contact. For instance, a gynecological exam involves contact made to sex organs, but it is not sexual contact. Perhaps the right against unwanted sexual contact is non-forfeitable, but the right against unwanted contact with sexual body parts is forfeitable.

These two distinctions leave us with three categories.

I. Interference that prevents an individual from engaging in chosen sexual behavior or sexual contact.

II. Interference that forces an individual to engage in sexual behavior or submit to sexual contact

III. Interference that forces an individual to engage in behavior or submit to contact that involves sexual bodily parts.

It seems that only the interference of type II is the sort of sexual interference that we take to violate the rights of prisoners. This suggests that the only sexual rights that seem to be the most obvious candidates for non-forfeatability are sexual rights against being forced to engage in sexual behavior or to submit to sexual contact.

Insofar as people have a sexual right against being forced to ingest chemicals that affect their sexual body parts, interference with this right seems to fall into III - a potentially forfeitable sexual right. For this reason, we cannot reason from the non-forfeatability of certain sexual rights (like the right against forced sexual intercourse) that the right against chemical castration is non-forfeitable. Certainly, premise II of the Non-Forfeatability argument is not supported by either common philosophical intuition or by common practice.

*The Right Against Mind-Control*

Perhaps there are other rights that people have against chemical castration that are not sexual rights. For instance, chemical castration affects our desires. It could be that individuals have an important moral right against interference with our desires and the inner workings of the mind. Perhaps we may imprison people's bodies, but not their minds. John F. Stinneford makes an eloquent case against chemical castration on the grounds that punishment should be able to imprison the body but not the mind – freedom of thought is something essential for our autonomy and personhood.<sup>11</sup> Stinneford's argument is not itself an argument about moral rights – but about legal rights. However, it is clear that a similar case could be made for a moral right against mind-control.

1. Human beings have a right against others' interference with their thoughts and desires.
2. Chemical castration changes some of the desires of the individuals who use it.
3. So, unless an individual has consented (waived their right), the chemical castration of that individual violates his right against others' interference with his thoughts and desires.

I am going to inquire into the plausibility of the first premise. I will modify it to make it as plausible as possible, but ultimately give up on it. My first stab at the premise, as seen above, is clearly incorrect. We are regularly exposed to stimuli that changes our desires. For instance, when I am confronted with pictures on a billboard that present appetizing menu options at a local restaurant, these pictures might cause me to have a desire for this food, and perhaps a desire to pursue this food by going to the advertised restaurant. My desire might be the result of rational assessment of the information on the billboard. Perhaps this is what makes the billboard unproblematic – it instills a desire by giving me information that I process using my rational faculties. However, the image of the billboard might also bypass my rational faculties. The image might instill a desire that competes with my rational preferences about what and how

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<sup>11</sup> Stinneford, (2006: 567)

much I should eat. For instance, I might form a desire for a dessert item displayed on the billboard, pursue and eat the item, and all the while think that I had better not eat desserts. (Sarah Conly refers to the act of intentionally inducing a weakness of will in another person as *seduction*.)<sup>12</sup> Nevertheless, we do not think that the billboard violates any of my moral rights.

We could revise the premise: individuals have a right against internal, bodily manipulation that causes an alteration of desires. This seems plausible. After all, when individuals enter biomedical research studies, they sign consent forms that must contain information pertaining to any side effects that might alter their appetite and sexual proclivities. This suggests that individuals have rights against such bodily manipulation – rights that must be waived in order for it to be permissible for others to give them chemicals that produce such changes in their desires.

However, consent forms used in biomedical research in the United States must also contain information about matters that most certainly do not correspond to the moral rights of individuals. For instance, consent forms must contain information about the benefits, if any, that the research program might have for other individuals – those living now or in the future.<sup>13</sup> Individuals do not have moral rights against causing benefits (or not) to other individuals. We merely think that the individual has a right against participating in a research trial, and it is important to inform the potential research subject of any information that might make a difference as to whether or not they choose to participate. Perhaps information about the potential effects of a medicine on one's gustatory or sexual appetites is also an item on a consent form for this reason. We might not actually have a right against the internal, physical manipulation of our desires. However, this information might be relevant to whether or not we

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<sup>12</sup> Conly, 2011

<sup>13</sup> U.S. Department of Health and Human Services (acc. 2016)

choose to join a research trial, and waive the rights that we do have against the trial's interventions.

The manufacturers of popular food products regularly find combinations of ingredients – sometimes as basic as fat, sugar, and salt – in order to stimulate pleasurable experiences rarely achieved by eating natural foods that result in repeat-consumption and, some studies suggest, addiction.<sup>14</sup> Of course, individual consumers know that these foods contain these combinations of ingredients. However, they typically do not know that food manufacturers have tried (or succeeded) in combining the ingredients in a way that will produce addictive behaviors. Of course, many reasonable readers will have doubts about whether the practices of American food manufacturers really do violate the bodily rights of consumers. So, I will appeal to a set of familiar, but fictional cases instead.

Consider two events in Shakespeare plays:

Love Serum: In *A Midsummer Night's Dream*, the mischievous fairy, Puck, applies love serum to the sleeping eyes of four lovers and also unto his own fairy queen, Titania.<sup>15</sup> All recipients of the serum fall in love with the first individual they see after waking up. Puck later treats all recipients with an antidote (except for one lover, Demetrius, whose continued drugged-love is essential for the happy ending to this comedy).

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<sup>14</sup> Moss, 2013

<sup>15</sup> Shakespeare, *A Midsummer Night's Dream*

A Desire-Producing Song: Duke Orsino of *Twelfth Night* declares music to be “the food of love.”<sup>16</sup> He claims that it sustains his own love for Olivia and, though she won’t listen to them, he sends musicians to attempt to win the love of the Countess Olivia. Let us imagine, contrary to the events of the famous play, that the musical gifts sent by Orsino to Olivia *were* successful at inspiring loving desires in her. Perhaps the songs are very beautiful and romantic and make her desire him romantically, or the songs are sexy and they make her desire him sexually.

It seems that what Puck does to Titania is a rights-violation, and what Orsino does to Olivia is not. Though music might not often inspire love, it does regularly stimulate sexual and romantic desires (e.g. in dance clubs; in musical performances). It also is sometimes used to inspire competitive or violent desires. When we use music to invade another person’s consciousness and inspire desires, any success is the result of psychological facts and mechanisms within the human body and brain. The way music inspires feelings of love or lust is much like the way that a pleasant smell that someone associates with a particular once-lover might re-awaken a desire; or the way that the taste of a particular food might inspire a desire for something else (e.g. some say that the taste of alcohol produces in them a desire for a cigarette). When a smell, taste, or sound that I produce incites these desires in you, I do not violate your moral rights. Of course, if I use these psychological and emotional tools as a means of seducing or manipulating you, then I might very well engage in problematic behavior. However, a malignant intention cannot turn an action into a rights-infringement or violation that would otherwise be neither. If I walk out of your house with your cell phone instead of my own, it is a rights infringement whether I did this on purpose or by accident – even if I am blameless in the

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<sup>16</sup> Shakespeare, *Twelfth Night*

latter case.<sup>17</sup> Contrast this with a case in which I spread true but damaging rumors about you - perhaps about a romantic relationship you share with a young, attractive adult. Further, imagine that everyone else knows that you are married to someone else, but I do not know this and, so, do not know that my rumors do you harm or cause you embarrassment (but instead imagine that your relationship is a source of public pride to you). I might be displaying annoying or undesirable behavior by gossiping at all, but my gossip is nonetheless innocent. However, if I did know that you were married and I spread the gossip maliciously, then my behavior would not be innocent. However, this change of intention – the added maliciousness – would not turn the gossip into a rights violation or infringement. However much my action wrongs you, you have no moral right against me uttering true things (unless, perhaps, if I am bound by a promise of secrecy).

So, if Orsino presents Olivia with a song, if he believes that singing is “the food of love” to humans, and Olivia hears it and it indeed inspires in her a sexual or romantic desire for Orsino, then whether Orsino’s song violates or infringes her moral rights does not hinge on whether his intentions are manipulative or malignant. If he does it to seduce her, it might be morally problematic. However, it does not violate her rights.

On the other hand, Puck’s potion does seem to violate the moral rights of his victims. So what explains the difference between Orsino’s song and Puck’s potion (assuming they both are successful)? Like Puck’s method, Orsino’s method involves invasive stimuli that interfere with internal processes that predictably change the desire-set of the receiver to that preferred by the supplier. So, we do not have a right against the provision of invasive stimuli that interferes with our internal processes and changes our desire sets.

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<sup>17</sup> Thomson, 1990

Perhaps the difference is simply: one invasive stimuli is a substance, and the other is not. However, we would not think differently of our rights against Puck's interference if the magic was produced by a spell (cast with words) instead of with a substance. We would still think that Titania had a right against such bewitchment, whether it came through substance or spell.

Perhaps what seems to make the difference between Orsino's song and Puck's magic is that Orsino's song merely changes Olivia's desires through a physiologically continuous process compatible with her continued personal identity, whereas Puck's magic changes Titania in some more significant way. After all, magic has been used in fairy tales to swap personalities from one body to another, to change princes into frogs, and to turn persons into zombies. Of course, whether psychological continuity is either necessary or sufficient for personal identity is controversial. However, whatever the requirements on personal identity might be, Olivia clearly retains hers, and there's no telling what Puck's victims retain.

Perhaps it is for this reason – that chemicals, medicines, and drugs seem to us something magical – that we are tempted to put chemically castrating drugs into a camp with Puck's potion, and not with Orsino's song. When we take drugs we feel their effects without seeing their mechanism, or identifying an experience that stirred us. This makes them scary in the same way that Puck's magic is scary. How can we be sure that Titania is the same old Titania, just in love with Nick Bottom instead of her regal husband, Oberon? She might be someone else entirely. How can we be sure that a human man stripped of his sexual desire is still the same man? However, it is doubtless the case that *some* drugs can significantly change our desires without changing our personal identities. In fact, the burden of proof is surely on the shoulders of those who would argue that a drug does alter the identity of persons.

### *Conclusions and Further Questions:*

This paper has provided a very narrow examination of chemical castration: I've asked whether chemical castration violates the rights of those criminals for whom it might be used as a punishment or treatment. I have not discovered a compelling reason for thinking that the use of chemical castration in these circumstances is a rights violation. Certainly, the pertinent bodily rights do not belong to a category that is non-forfeitable – as might have been supposed, since chemical castration affects people sexually. Further, it is not easy to explain why the method by which chemical castration changes an individual's desires is more intrusive or morally problematic than the ways that many things (including people who are trying to influence us) might change our desires.

I have not argued that chemical castration *does not* violate a moral right. I have merely argued that the most obvious and probably the most compelling reasons for thinking that it violates individuals' rights are faulty reasons. If the treatment/punishment does not violate any moral rights (e.g. because the sexual right against chemical castration is forfeitable) then there are still reasons for opposing the treatment/punishment.

For instance, we might ask if chemical castration is a proportional punishment - is it permissible to do that much harm to a person, or that type of harm to a person, as a punishment for a sexual crime? It might be useful to think back to the bad side effects that I bracketed at the start of the paper. The harm of bone degeneration is significant. We might have to run a further analysis of corporal punishment to get an answer here. We might also ask whether chemical castration counts as a brutal or uncivilized punishment - one we should not inflict even if it is

within our rights to inflict it. For instance, Jefferey Reiman argues that we ought not inflict the death penalty, even if it is the case the murderers have forfeited their right to life.<sup>18</sup>

I believe that these are the most promising strategies to pursue for those who feel strongly that chemical castration is immoral, and want to give an explanation for why it is wrong. However, keep in mind that the practice might seem wrong because it involves sexuality, and because we tend to think that sexual rights are non-forfeitable. As I have shown, only a small class of sexual rights are traditionally considered non-forfeitable, and chemical castration does not belong to this class.

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<sup>18</sup> Reiman, 1985

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