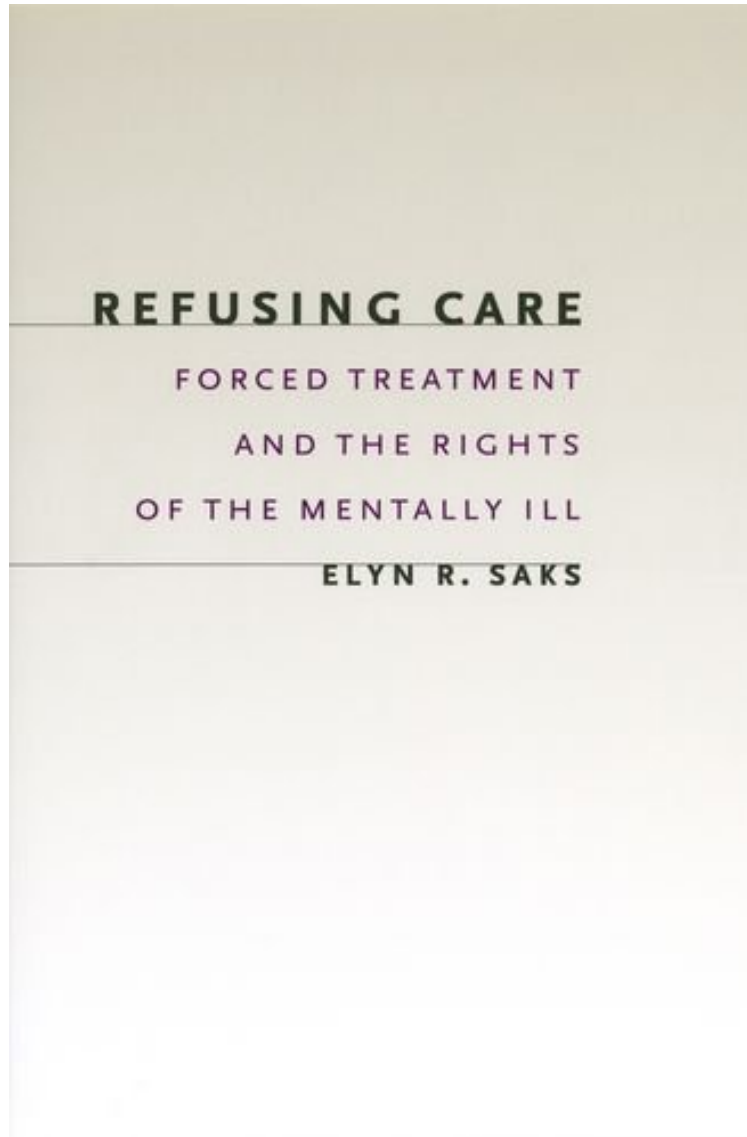


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Refusing Care: Forced Treatment and the Rights of the Mentally Ill

Elyn R. Saks

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It has been said that how a society treats its least well-off members speaks volumes about its humanity. If so, our treatment of the mentally ill suggests that American society is inhumane: swinging between overintervention and utter neglect, we sometimes force extreme treatments on those who do not want them, and at other times discharge mentally ill patients who do want treatment without providing adequate resources for their care in the community. Focusing on overinterventionist approaches, *Refusing Care* explores when, if ever, the mentally ill should be treated against their will. Basing her analysis on case and empirical studies, Elyn R. Saks explores dilemmas raised by forced treatment in three contexts: civil commitment (forced hospitalization for noncriminals), medication, and seclusion and restraints. Saks argues that the best way to solve each of these dilemmas is, paradoxically, to be both more protective of individual autonomy and more paternalistic than current law calls for. For instance, while Saks advocates relaxing the standards for first commitment after a psychotic episode, she also would prohibit extreme mechanical restraints (such as tying someone spread-eagled to a bed). Finally, because of the often extreme prejudice against the mentally ill in American society, Saks proposes standards that, as much as possible, should apply equally to non-mentally ill and mentally ill people alike. Mental health professionals, lawyers, disability rights activists, and anyone who wants to learn more about the way the mentally ill are treated and ought to be treated in the United States should read *Refusing Care*.

From *The New England Journal of Medicine* Modern scholarship about the relation between law and medicine is replete with impressive research and brilliant analyses, but wisdom, reflecting experience and compassion, is less common. In *Refusing Care: Forced Treatment and the Rights of the Mentally Ill*, Elyn R. Saks is a wise, literate, and sympathetic narrator whose voice is honed by a professional life spent in mental health law, "as a legal advocate for the mentally ill, as a volunteer at a psychiatric hospital, as a therapist, and as a teacher," she says. In these various roles she has thought clearly and deeply about the central questions in contemporary mental health care: whether and how to force treatment and confinement on those whose very illness impairs their ability to appreciate the possible burdens and benefits of care. In the allocation of decision-making authority in medicine, it is a given that competent adults can consent to or refuse care. But what if the disease affects the mind? How then to determine whether to follow individual directives or to impose treatment over refusal? Saks articulates a few postulates that unify her work. First, there are no valid absolutists, whether principled paternalists or autonomy protectors; all is a matter of balance in an individual case. Second, we need to distinguish among forced commitment, forced use of mechanical restraints, and forced use of medication, because this last item poses the greatest risk to a patient's health and is highly intrusive. Third, current interpretation of the law, both by lawyers and by physicians, is too rigid; many patients have their liberty restricted unnecessarily, and others are not confined when that intervention would clearly serve their best interests. And fourth, mentally ill persons must be treated in ways that do not derogate their humanity, especially because the term "mental illness" itself refers to a value-laden concept. In this book, complex case studies, as compelling as fiction, present recognizable realities, raise issues of possible interventions, and illustrate the consequences of various solutions. They demonstrate that lawyers and doctors are captives of the assumptions, learning, and behavior of their professions; harbor different fantasies; and value different end points. Scenarios emphasize the dangers in medicalizing human conflict, misery, unconventionality, and bad judgment. But, equally, the stories trigger questions about the validity of decisions made by family and strangers. Gradually, practice guidelines emerge, such as guidelines on the permissibility of imposed intervention when, for example, a psychotic episode, accompanied by impairment and transformation of personality, clearly destroys decisional capacity. Although this may sound like a cookbook for care of the mentally ill, it surely is not. Individual cases offer theoretical, nuanced approaches to the problems of disabled, impaired, or incompetent persons. But, the author argues, the real culprit is the overall failure of American society to present reasonably accessible and affordable care in the community for persons with mental illness. Unfortunately, this failure often preserves only one option: the forcing of care on those who come, finally and desperately, to need protection for themselves and others. Saks has written a book that is relevant to practice, to scholarship, and to the evolving world of federal jurisprudence. On June 16, 2003, the Supreme Court decided the case of *Charles Thomas Sell v. United States*. In this case, the Court struggled with this issue: When is the government permitted to administer antipsychotic drugs to a mentally ill criminal defendant against his or her will to render that defendant competent to stand trial? In its opinion, the Court relied on previous cases that had declared that there is a significant, constitutionally protected "liberty interest" in avoiding the unwanted administration of antipsychotic drugs. Reading the opinion makes clear that the analyses offered in this book could enrich legal scholarship and clarify the notion of

liberty that it espouses. Saks has combined the compassion of medicine with the rigor of the law, and both professions will be enriched by her work. Nancy Dubler, LL.B. Copyright 2003 Massachusetts Medical Society. All rights reserved. The New England Journal of Medicine is a registered trademark of the MMS. From the Inside Flap It has been said that how a society treats its least fortunate members speaks volumes about its humanity. If so, our treatment of the mentally ill may suggest that American society is in many senses inhumane: swinging between overintervention and utter neglect, we sometimes force extreme treatments on those who do not want them, and at other times discharge mentally ill patients who do want treatment without providing adequate resources for their care in the community. *Refusing Care* focuses on the former problem that of overintervention asking when, if ever, the mentally ill should be treated against their will. Basing her analysis on both compelling case histories and empirical studies, Elyn R. Saks brings together her experience in law and in psychiatry to explore the dilemmas raised by forced treatment in three contexts: civil commitment, or forced hospitalization for noncriminals; medication; and seclusion and restraints. Saks argues that the best way to solve each of these dilemmas is, paradoxically, to be both more protective of individual autonomy and more paternalistic than current law calls for. For instance, while Saks advocates relaxing the standards for first commitment after a psychotic episode, she would also prohibit extreme mechanical restraints, such as tying someone spread-eagled to a bed. Finally, because of the often extreme prejudice against the mentally ill in American society, Saks proposes standards that as much as possible, should apply equally to non-mentally ill and mentally ill people alike. Mental health professionals, lawyers, disability rights activists, and anyone who wants to learn more about the way the mentally ill are treated and ought to be treated in the United States should read *Refusing Care*.