Determination of Competency to Stand Trial (Fitness to Plead): An Exploratory Study in Hong Kong

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Competency to stand trial (CST) is related to the defendant's capacity to engage in a satisfactory level of participation in the court process. While the extant studies focus mainly on assessment-related issues such as assessment methods, guidelines for competency evaluations, and quality of competency evaluations, another area of considerable interest is the indicators of CST as well as legal decision-making relating to CST. This study canvasses some proposed indicators of CST from the literature and examines whether these psycho-legal abilities are relevant to finding a defendant incompetent to stand trial. Secondly, the study investigates factors likely to influence legal decision-making in competency determination. Using a cross-sectional survey and a self-report methodology, 197 participants from a legal Juris Doctoral course responded to measures of CST, punitiveness, and legal authoritarianism, anti-authoritarianism and egalitarianism. The results show that the majority of the items canvassed from the literature are considered relevant in finding the defendant incompetent to stand trial. With respect to factors influencing competent decision-making, females are more likely to regard defendants as incompetent. Additionally, participants with strong punishment-oriented attitudes (i.e. legal authoritarianism and punitiveness) are significantly more likely to find the defendant competent to stand trial, as opposed to those high in non-punishment-oriented attitudes (i.e. anti-authoritarianism and egalitarianism). The study concludes that biased legal decision-making can occur regardless of the background of the decision-makers, in this case participants undergoing legal training. The findings are discussed and implications of the study are proposed.

Key words: adjudicative competency; competency to stand trial; fitness to plead; fitness to stand trial; Hong Kong.

Introduction

Competency to stand trial (CST, also known as fitness to stand trial, fitness to plead, and adjudicative competency) is a fundamental legal concept derived from old English common law (White, Meares, & Batchelor, 2013). It is a concept of jurisprudence and a criminal procedural requirement that is instituted to uphold and maintain rights to due process, procedural fairness and judicial

integrity (Heilbrunner & Frumkin, 2003; Zapf, Roesch, & Pirelli, 2014). The essence of trial competency is summarized by Lord Edmund-Davies in *R v Podola* (1960) in Britain: 'no man may be brought to trial upon any criminal charge unless and until he is mentally capable of fairly standing trial'. CST is inherently a binary construct, where a declaration that the defendant is either competent or incompetent is made (Rogers,

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Blackwood, Farnham, Pickup, & Watts, 2008). There exists no room for degrees of competency.

Whenever an issue as to competency is raised at any stage of the criminal adjudication process, medical evaluations or psychological evaluations are usually requested to assist the trier of fact and/or law in decision-making. Although there is a paucity of data on the frequency of competency evaluation requests in Hong Kong, such requests are frequently and substantially made more often than for insanity evaluations. In the United States, for instance, some analysts estimated that about 60,000 competency evaluations are requested annually (Bonnie, & Grisso, 2000), with an estimated \$US300 million annual expenditure (Zapf et al., 2014). Notwithstanding the steady increase in referrals for competency evaluations (Sakdalan & Egan, 2014), it was estimated as long ago as 1999 that approximately 20% of referred defendants are found incompetent to stand trial (Roesch, Zapf, Golding, & Skeem, 1999). A more recent meta-analytic review reports an incompetency base rate of about 27.5% of those referred for assessment (Pirelli, Gottdiener, & Zapf, 2011). Although research into CST has been mounting over the years (Fogel, Schiffman, Mumley, Tillbrook, & Grisso, 2013; Pirelli et al., 2011), studies have focused mainly on assessment-related issues (e.g. assessment methods, guidelines for competency evaluations, and quality of competency evaluations; for details, see Fogel et al., 2013). However, another area of considerable interest – and the focus of the present study – lies in the indicators for legal decision-making relating to CST (Costanzo & Krauss, 2012; Melton et al., 2007; Zapf et al., 2014).

One notable foundation that has carried out extensive research on trial competency for different categories of offenders (e.g. juvenile offenders) is the MacArthur Foundation in the United States. The Foundation has helped leading scientific and legal researchers to develop competency assessment measures that are used to examine defendants referred

for competency evaluations. One example is the MacArthur Competency Assessment Tool – Fitness to Plead (MacCAT-FP; Akinkunmi, 2002), developed in England and Wales as a variant of the MacArthur Competency Assessment Tool – Criminal Adjudication (MacCat-CA), which was crafted for the United States. However, empirical studies are limited or non-existent in Hong Kong in relation to competency decision-making. This preliminary study attempts to fill this gap and extend previous empirical efforts by examining the psycho-legal indicators of CST as well as some factors that are likely to affect decision-making in competency determination in Hong Kong.

Competency to Stand Trial Standards across Different Jurisdictions

Generally, every jurisdiction has its own legislation for determining whether a defendant is competent or incompetent to stand trial. In the United States, this involves the Supreme Court decision in *Dusky v US* (1960). According to the *Dusky* standard, a defendant's orientation to time and place and the ability to recollect some events is not enough; instead, (1) the defendant must have sufficient present ability to consult with defence counsel with a reasonable degree of rational understanding and (2) a rational as well as factual understanding of the proceedings against him or her. The *Dusky* standard has raised a number of questions relating to, for instance, the meaning of 'sufficient present ability', and how to determine whether a defendant 'has a rational as well as factual understanding' (see Zapf et al., 2014). Concerns have also been raised about whether CST, competence to waive counsel, and competence to plead guilty are the same. The Supreme Court in *Godinez v Moran* (1993) responded by ruling that all competencies are the same (Rogers et al., 2008; Zapf et al., 2014). Yet, in *Indian v Edwards* (2008), the Supreme Court held that CST is different from competency to represent oneself. The Canadian CST

requirements include the abilities to (a) understand the nature or object of the proceedings, (b) understand the possible consequences of the proceedings, and (c) communicate with counsel (Criminal Code of Canada, s.2, 1992).

In England and Wales, CST is determined on the basis of the *Pritchard* criteria (1836): (1) ability to plead; (2) ability to understand evidence; (3) ability to understand court proceedings; (4) ability to instruct a lawyer; and (5) knowing that a juror can be challenged (Rogers et al., 2008). As with the *Dusky* standard, some concerns have been raised about the *Pritchard* criteria, particularly regarding the utility of *knowing that a juror can be challenged*, and whether the criteria amounts to a comprehensive construct that allows fair trials. It has been recommended that the former be substituted with a defendant's ability to give evidence on his or her own behalf, since that would ensure fair trial (Gray, O'Connor, Williams, Short, & MacCulloch, 2001). With regard to the latter, empirical studies of criminal barristers have revealed that the *Pritchard* criteria are not comprehensive enough and do not protect the interests of mentally disordered offenders who are tried unfairly, a situation necessitating a reformulation of the criteria (Rogers, Blackwood, Farnham, Pickup, & Watts, 2009). However, not all individuals support proposals to reformulate the existing competency legislation (see Mudathikundan, Chao, & Forrester, 2014).

In Australia, CST is determined on the basis of the *Presser* criteria, which comprise the following:

- (1) ability to understand the charge; (2) ability to plead to the charge and exercise the right to challenge; (3) understanding of the basic nature of the proceedings; (4) ability to follow the course of the proceedings in broad terms; (5) ability to understand the substantial effect of any evidence and be able to make a defence or answer to the charge, including the ability to instruct counsel; and (6) have sufficient capacity to

be able to decide what defence strategy will be relied upon and make this known to the court and counsel (White, Batchelor, Pulman, & Howard, 2012, p. 102).

Competency to Stand Trial in Hong Kong

Hong Kong ceased to be a British colony in 1997 when the city was handed over to the People's Republic of China under the 'one country two systems' framework (for details, see Hui & Lo, 2014). Given the historical ties, the legislation and the judicial practices in Hong Kong are primarily influenced by British enactments and practices (Jackson, 2003).

Hong Kong's legal provision concerning CST is encased in section 75(1) of the Criminal Procedure Ordinance. Accordingly, a defendant is not competent to stand trial if he labours 'under any disability such that apart from this Ordinance it would constitute a bar to his being tried'. A more elaborate description is given in *R v Leung Tak-Choi* (1995), wherein the court specifically refers to 'under disability' as the defendant's lack of ability to understand the charges, instruct defence counsel, challenge jurors, understand the evidence against him or her, and give evidence in defence. It should be noted, however, that these CST indicators are quite similar to the *Pritchard* criteria in England and Wales, the *Dusky* standard in the United States, the *Presser* criteria in Australia, and the Canadian CST indicators, as previously discussed.

From the review, notwithstanding the differences in the wordings, CST has the same or similar meaning and interpretation across different jurisdictions. Thus, CST can be construed as being universally related to the defendant's level of capacity in order to allow a satisfactory level of participation in the court process (White et al., 2013). In the United States a group for the advancement of psychiatry (see Melton et al., 2007) has proposed certain discrete court-related functions as indicators of CST (Table 1). Interestingly, when examined closely, it is evident that the proposed indicators are consistent with the

Table 1. Discrete court-related abilities indicative of competency to stand trial.

Ability to understand the arrest process
Ability to make decisions after receiving advice
Ability to understand the current legal situation
Ability to maintain a collaborative relationship with counsel and help plan legal strategy
Ability to understand the charges, both in nature and severity
Ability to understand relevant facts
Ability to follow testimony for contradictions or errors
Ability to understand the legal issues and procedures
Ability to testify relevantly and be cross-examined if necessary
Ability to understand potential legal defences
Ability to challenge prosecution witnesses
Ability to understand the possible dispositions, pleas, and penalties
Ability to tolerate stress at trial and while awaiting trial
Ability to appraise the likely outcome
Ability to refrain from irrational and unmanageable behaviour during trial
Ability to appraise the roles of the defence counsel, prosecutor, judge, jury, witnesses, and defendant
Ability to disclose pertinent facts surrounding the alleged offence
Ability to protect oneself and utilize legal safeguards available
Ability to identify witnesses
Ability to appraise the likely outcome of the case
Ability to relate to counsel in a trusting and communicative fashion
Ability to comprehend instructions and advice

competency requirements in England and Wales Australia, Canada, and Hong Kong (e.g. *R v Leung Tak-Choi*, 1995). This further illustrates the international commonality in indicators of CST. As a result, these indicators constitute the majority of the competency items used in the present study (Table 2).

In Hong Kong, competency issues are predominantly raised when there are indications that the defendant is suffering from a mental disorder (Jackson, 2003). This is also the case in several jurisdictions, including the United States (see Zapf et al., 2014), England and Wales (see Roger et al., 2008),

Australia (White et al., 2012), and Ghana (Adjorlolo, Chan, & Agboli, 2016). Yet, across jurisdictions, there are also indications that not all mental conditions are suggestive of incompetency. For instance, in Hong Kong the fact that a defendant is suffering from senile dementia may not be a strong enough basis to warrant a judgement of incompetency to stand trial (see *R v Chiu Te-ken*, 1993; for a similar case in the United States, see Zapf et al., 2014). Issues concerning competency can be raised by the prosecution, the defence or the trial judge. However, the judge intervenes only if there is a substantial question as to the defendant's trial competency (*R v Keung Sai-chung*, 1986). The judge is not obliged to raise the issue of competency in instances of mere possibility of incompetency (*R v Keung Sai-chung*, 1986). This places a heavy burden and responsibility on legal representatives – especially those for the defence – to make known the suspicious behaviours of defendants that might suggest incompetency. Unfortunately, many lawyers may not have the training in and knowledge of mental illness and its (subtle) influences on behaviour, including on courtroom behaviour, that is needed to make a helpful assessment. Equally important is the fact that the detection of a potentially incompetent defendant is a major challenge in the quest to ensure fair trials. This is largely due to the absence of routine and mandatory screening of defendants appearing in court (Rogers et al., 2008). Thus, many incompetent defendants may have been found competent to stand trial and consequently processed through the criminal justice system without their competency issues being addressed (Grubin, 1991). Another issue, in addition to the indicators of CST, is the decision-making process in competency determination and the factors likely to impact upon the process.

Factors Influencing Legal Decision-Making

Although legal decision-making in incompetency determinations is relatively unexplored,

many studies have investigated such decision-making in relation to the insanity defence (see Costanzo & Krauss, 2012; Zapf et al., 2014). Researchers have concentrated on elucidating the extra-legal factors that can exert a significant impact on legal decision-making. Studies conducted so far have revealed that legal decision-makers are not blank slates; instead, they have their own biases and values that influence the decisions they make (Skeem, Loudon, & Evans, 2004). Briefly reviewed below are the impacts of gender and attitudes on legal decision-making among jurors.

Studies examining the influence of gender have found gender differences, although there are some exceptions (see Dunn, Cowan, & Downs, 2006). Compared to males, females are reported as being more likely to attribute less responsibility for a criminal act to a defendant with a previous history of mental dysfunction (Hans & Slater, 1984) and also more willing to acquit based on the insanity verdict (i.e. not guilty by reason of insanity; Finkel & Handel, 1988). Females have also been reported to attribute less criminal responsibility to a defendant with an existing mental disorder, and also to be lenient in perceiving the defendant as being mentally ill (Breheney, Groscup, & Galietta, 2007).

Boehm (1968) identifies authoritarianism, anti-authoritarianism, and equalitarianism as influential in predicting legal decisions. He posits that authoritarianism relates to the tendency to indiscriminately approve acts constituting authority, or acts that are essentially punitive in nature. Anti-authoritarianism on the other hand refers to the tendency to ascribe the emergence of all forms of antisocial behaviours to society, or to a rejection of the acts constituting authority such as finding someone guilty of a crime. Equalitarianism, on the other hand, refers to the propensity for individuals to express non-extreme positions regarding legal questions, or to give two answers to legal questions. In criminal decision-making, high scores in authoritarianism suggest a tendency to convict the suspect,

high scores in anti-authoritarianism reflect a tendency to acquit the suspect, and high scores in equalitarianism are presumably not related to verdicts.

In line with Boehm's (1968) postulations, studies have consistently reported legal authoritarianism as a robust predictor of juror verdicts (Daftary-Kapur, Groscup, O'Connor, Coffaro, & Galietta, 2011; De La Fuente Solana, García, & Martín Tamayo, 1998; Kravitz, Cutler, & Brock, 1993; Martin & Cohn, 2004; Narby, Cutler, & Moran, 1993; Rendell, Huss, & Jensen, 2010; Skeem et al., 2004). A meta-analytic study by Narby et al. (1993) involving 25 studies found that legal authoritarianism not only positively correlates more strongly with verdicts but also significantly moderates verdict decision-making. Daftary-Kapur et al. (2011) also report that legal authoritarianism significantly accounts for a 4.3% variance in decision-making relating to not guilty by reason of insanity verdicts.

Relatedly, public attitudes towards the punishment of offenders – in the form of punitiveness – have received substantial research attention. Punitive attitudes have been described as those supportive of sanctioning and punishment (i.e. retribution, incapacitation, deterrence, and rehabilitation; Mackey & Courtright, 2000). Individuals supportive of retribution, incapacitation and deterrence may be considered as being more punitive relative to those who support rehabilitation (Falco, 2008). Empirical evidence has revealed that members of the public hold punitive attitudes to varying degrees (Cochran & Chamlin, 2005; Hogan, Chiricos, & Gertz, 2005; Robbers, 2006). Some authors suggest that people who have a strong affinity with legal authoritarianism are more likely to be punitive (Daftary-Kapur et al., 2011).

The Present Study

There are two important unaddressed research areas in the CST literature in general that warrant empirical investigation. The first concerns whether the CST indicators

proposed in the literature are relevant in competency determination across jurisdictions. Establishing this would provide strong evidence for the uniformity or commonality of CST, as posited by White et al. (2013).

According to the wording of Hong Kong's competency legislation, defence lawyers – and sometimes prosecution lawyers – are extremely important, as they have the responsibility to raise competency issues during criminal proceedings (see *R v Keung Sai-chung*, 1986). Furthermore, the Criminal Procedure Ordinance stipulates two discrete and independent pathways to determine CST depending on the court exercising jurisdiction over the case. In the high courts, juries are empanelled to ascertain trial competency issues, whereas in the magistrate and district courts, the trial or sitting judges or magistrates hear and make a finding on CST, based on the medical evidence submitted for that purpose. Importantly, because the lower courts serve specific areas they represent the first point of involvement in the judicial system for less serious and summary (non-indictable) offences. This arrangement makes judges and lawyers – and especially defence lawyers – important agents in raising competency issues, and judges are also extremely important in determining whether or not a defendant is competent to stand trial. The hope with this study was to recruit judges and lawyers, but this turned out to not be practically possible because of administrative and other constraints, such as the professionals' unwillingness to participate in the study due in part to their busy schedules.

Consequently, participants were recruited from a legal education course (i.e. law students), as opposed to laypersons without legal education, and this population was targeted first and foremost because they are rarely included in competency studies. Obviously, and most importantly, law students will be key players in the judicial system in the future, either as judges, magistrates, prosecutors or defence lawyers, where they will be expected to contribute to CST decisions.

Therefore, understanding their views about the relevance of CST indicators can partly determine the extent to which due process rights will be upheld during the criminal adjudication process. Accumulation of empirical evidence regarding the indicators of CST can significantly and positively influence the content of the curriculum used to train legal and judicial staff (e.g. by placing more emphasis on CST and other criminal procedural issues). Thus, the first goal of the present study is to elucidate the abilities or the discrete court-related functions that may be suggestive of incompetence to stand trial among participants enrolled on a law course.

The other interesting topical area relates to whether decision-making in competency determination may be affected by extra-legal factors. Indeed, as previously noted, studies have suggested that decision-making in relation to the insanity defence is affected by some extra-legal factors. However, relatively little is known about whether decision-making in CST determinations can also be influenced by extra-legal factors. In this regard, the present study expands upon previous studies of the cognate area of the insanity defence by investigating the extent to which gender, age, legal attitudes, and punitiveness influence and/or predict competency decision-making. Insights into the possible influences of these and several other factors can help institute appropriate measures (e.g. education and awareness on the effects of personal and non-personal factors in decision-making) to counter the likelihood of biased decision-making among law students taking place even before they start to play their respective roles in the criminal justice system upon completing their course. While it is argued that the process of reducing or eliminating unfair judicial decision-making should commence during the training period (i.e. in law school), this is only possible if research is successful in delineating potential biasing factors which can then be mitigated. This study is an invitation to other researchers to engage in further empirical investigations

into the extra-legal factors in decision-making among participants undergoing legal training. In summary, as the first of its kind, this preliminary and exploratory study is expected to contribute significantly to the CST literature by explicating the supposed universality of CST indicators, as well as the extra-legal factors likely to impact upon CST decision-making.

Methodology

Sample

Data were collected from 197 first-year students (98 females [50.8%]) from a two-year Juris Doctor course at the City University of Hong Kong. The participants included in the study are natives of Hong Kong. International students – including students from mainland China – were excluded due to the focus of the study, and also to avoid the potential influence of Chinese legislative provisions on their responses. The age of the participants was within the range of 20 to 34 years, with an average age of 25 years ($SD = 3.72$ years). All participants had completed an undergraduate degree on different courses (Humanities, 49%; Sciences, 8%; Business, 12%; Arts, 31%) before enrolling on the Juris Doctor course. A total of 109 (55.3%) enrolled on the course immediately after graduating from their first degree course, whereas 80 (40.6%) reported working prior to enrolment.

Research Design and Procedure

Data were collected using a cross-sectional survey. The study protocol was approved by the university research committee of a public Hong Kong university. The participants were recruited during an advanced law course lecture. After explaining the purpose of the study, with the permission of the course professor, the participants were invited to take part in the study. They were given the opportunity to ask questions about the research. Participation was strictly voluntary, with no

incentive provided. Each participant was handed a questionnaire pack containing a case vignette of a murder suspect pleading incompetence to stand trial and the following measures: a CST scale, the Revised Legal Attitudes-23 (RLAQ-23; Kravitz et al., 1993), and a punitiveness scale (Falco, 2008). The case vignette was developed to mirror several instances of trial competency hearings. As mentioned previously, in Hong Kong, the defence counsel, the prosecutor, and the judge can raise the issue of competency. In this hypothetical case, the defence counsel had raised the issue of the client's incompetency to stand trial by enumerating some of the courtroom abilities that the defendant appeared to lack. These abilities constitute some of the items of the CST measure. Out of the 200 questionnaires administered, 197 were returned – a response rate of nearly 99%.

Measures

Competency to Stand Trial Scale

The previous discussions pertaining to competency provisions in legislation in the United States, Canada, England and Wales, Australia, and Hong Kong indicate some commonality in the legislation. Therefore, although the Group for the Advancement of Psychiatry proposed indicators of CST are based on the United States legislation (Melton et al., 2007), the indicators appear to be relevant and applicable in Hong Kong. As a result, the items comprising the competency scale are those proposed by the Group for the Advancement of Psychiatry. To include more pertinent items, the literature was explored for studies on CST dealing specifically with indicators of competency (e.g. Costanzo & Krauss, 2012; Melton et al., 2007; *R v Leung Tak-Choi*, 1995; Rogers et al., 2008; Zapf et al., 2014). Following a thorough discussion and deliberation, a total of 26 items with good face validity (i.e. appearing to form the competency indicators of the jurisdictions

reviewed above) were used in the study. The participants rated the relevance of each competence item for finding the defendant incompetent to stand trial on a 5-point Likert-type scale ranging from 1 = *strongly disagree* to 5 = *strongly agree*. Additionally, the participants responded to a yes/no question about whether the defendant was incompetent based on their ratings of the CST indicators.

To ascertain the usefulness of each of the 26 items used to form the CST scale, the corrected item-total correlations, squared multiple correlations (SMCs), and Cronbach's alpha when items were deleted were examined. The results show that all the items meaningfully contribute to the competency scale. The overall findings indicate that the items are purportedly measuring the same construct. Factor analysis was also conducted to determine whether the items could be organized into meaningful factors. The result yielded no interpretable factor solution. Consequently, a CST scale was developed by summing all 26 items, with total scores ranging from 26 (minimum) to 130 (maximum). Higher scores reflect a greater propensity for finding a defendant incompetent to stand trial. The internal consistency of the 26-item competence scale is .86.

Revised Legal Attitudes-23 (RLAQ-23; Kravitz et al., 1993)

The RLAQ-23 was developed by Boehm (1968) and revised by Kravitz et al. (1993) as a measure of juror decision-making in criminal cases. It is a 23-item scale measuring the following constructs: authoritarianism (8 items), anti-authoritarianism (6 items), and equalitarianism (9 items). The items on the various subscales are scored on a 6-point Likert-type scale ranging from 1 = *strongly disagree* to 6 = *strongly agree*. Higher scores on a particular subscale indicate that a participant has a strong affinity with the attribute in question (e.g. authoritarianism). The present study found a Cronbach's alpha of .65 for

authoritarianism, .62 for anti-authoritarianism, and .71 for equalitarianism.

Punitiveness Scale (Falco, 2008)

The Punitiveness Scale is a 12-item scale developed to measure participants' beliefs towards the degree of punishment judged appropriate for offenders. The scale was developed specifically to measure the level of punitiveness towards criminal offenders among college students likely to work in the criminal justice system field in the future. The 12 items are scored on a 5-point Likert-type scale ranging from 1 = *strongly disagree* to 5 = *strongly agree*. The total score on the scale ranges from 12 to 60, with high scores indicating more punitiveness. The Cronbach's alpha in the present study is .76.

Data Analyses

All data were analysed with SPSS v21. A two-tailed statistical significance set at .05 was used. Descriptive statistics (e.g. frequency and percentages) were used to estimate the reliability of the various questionnaires, as well as the participants' endorsement of the various items on the competency scale. The data normality assumption was assessed using the Shapiro-Wilk test, which indicates normality ($p > .05$). Second, the Pearson product moment correlation coefficient was used to examine the correlations among the study variables. An independent-samples *t*-test was also used to examine the effect of gender on the study variables. An effect size (r) was calculated and interpreted based on Cohen's formulation of .10 representing small effect, .30 a medium effect, and .50 a large effect (Field, 2011). Thirdly, a hierarchical linear regression was also used to predict competency as a continuous variable, and also determine the proportion of variance attributable to the predictors.

Finally, a hierarchical logistic regression analysis was used to predict judgements on CST as a dichotomous outcome variable

from authoritarianism, punitiveness, anti-authoritarianism and equalitarianism. The logistic hierarchical analysis procedure similarly helps to determine whether the predictors in successive models add significant incremental validity over and above the previous ones (Canales, Campbell, Wei, & Totten, 2014). Given that the Nagelkerke R^2 is a mathematically-derived estimate that permits a theoretical maximum R^2 value of 1.00, it was used to estimate the proportion of variance explained by the hierarchical models (Cohen, Cohen, West, & Aiken, 2003; Field, 2011; Nagelkerke, 1991).

Results

Endorsement of the Various Competency Indicators

The number of times the various response options were endorsed for the various items is presented in Table 2, examined using descriptive statistics. The majority of the participants endorsed *agree* and/or *strongly agree*, followed by *neutral*, and lastly *disagree* and/or *strongly disagree*. As stated above, *agree* and *strongly agree* reflect the tendency that a particular item is useful for finding the defendant incompetent to stand trial, while the opposite is true for *disagree* and *strongly disagree*. Uncertainty as to the relevance of the items is recorded using *neutral*. Based on the above, items 1 to 10, 13, 15, 18 to 21, 24, and 25 are regarded as relevant indicators of the defendant's competency, while items 11, 14, 16, 17, 23, and 26 are regarded as not being useful for judging the defendant's competency (i.e. the participants were uncertain). On the other hand, item 12 (Aid in developing a strategy for cross-examining witnesses) and item 22 (Be able to challenge the prosecution) were not considered as relevant to finding the defendant incompetent.

In a further analysis, the *neutral* responses were treated as missing data and excluded from the analysis. This was done to estimate the number of items that are deemed relevant

to finding the defendant incompetent and those that are not. Thus, during the transformation and conversion process, the *disagree* and *strongly disagree* responses were recoded and grouped as indicating the items are not relevant for finding of incompetency. Using this 'crude' approach, the results reveal that 22 of the items are deemed relevant indicators of incompetency. Conversely, only 4 of the items (items 12, 16, 22, and 26) were used to find the defendant competent. In summary, the majority of the items used in the present study were considered as relevant indicators for finding the defendant incompetent to stand trial.

Correlations among the Study Variables

The results from the correlation analysis reveal some significant correlations (Table 3). The CST score is significantly and negatively correlated to punitiveness, $r = -.21, p < .01$, and authoritarianism, $r = -.30, p < .01$. Punitiveness also shows significant negative correlations with anti-authoritarianism, $r = -.18, p < .05$, and equalitarianism, $r = -.14, p < .05$. Authoritarianism shows a significant negative relationship with anti-authoritarianism, $r = -.28, p < .01$. Furthermore, a high score in punitiveness is significantly related to a high score in authoritarianism, $r = .41, p < .001$. The relationship between equalitarianism and anti-authoritarianism is similarly positive and significant, $r = .23, p < .01$. The gender of the participants is also significantly and positively correlated with the CST score, $r = .18, p < .05$, anti-authoritarianism, $r = .20, p < .01$, and equalitarianism, $r = .24, p < .01$, suggesting that females are more likely to find a defendant incompetent and also more likely to have a strong affinity with anti-authoritarianism and equalitarianism.

Gender Effects on the Study Variables

As can be seen in Table 4, the independent-samples *t*-test results show that males and females do not differ significantly in their

Table 2. The proportion of participants who endorsed the items of the Competency to Stand Trial Scale.

	Item	Response options (%) (<i>n</i> = 197)				
		Strongly disagree	Disagree	Neutral	Agree	Strongly agree
1	Understand the charges against him/her	0.0	5.1	4.1	45.2	45.7
2	Understand his/her current legal situation	0.0	4.1	11.2	53.3	31.5
3	Understand the arrest process	1.5	10.7	32.0	42.6	13.2
4	Trust and communicate with defence counsel	0.0	8.6	11.7	40.1	39.6
5	Refrain from irrational and unmanageable behaviours during trial (shouting, singing, disobeying orders)	1.5	7.6	25.4	38.1	27.4
6	Understand the roles of the judge	4.6	7.1	32.0	39.6	16.8
7	Understand the pleas available	2.5	8.1	14.7	48.2	26.4
8	Understand the possible penalties if convicted	3.6	8.6	7.1	42.6	38.1
9	Be able to appraise the likely outcome of the case	6.6	14.7	26.9	43.7	8.1
10	Testify relevantly and be cross-examined if necessary ^a	2.0	3.0	22.8	49.7	20.3
11	Help locate witnesses	9.1	23.9	36.5	24.9	5.6
12	Aid in developing a strategy for cross-examining witnesses	15.7	37.1	29.9	16.2	1.0
13	Be of sound mind (absence of mental illness)	0.0	10.2	16.2	39.6	34.0
14	Have the capacity for rational manipulation of information	2.0	12.2	37.1	34.5	14.2
15	Ability to provide a reasonable account of one's behaviour prior to, during, and subsequent to the alleged crime	1.0	10.2	35.5	43.1	10.2
16	Make appropriate decisions about trial strategy	10.7	32.5	42.1	13.7	1.0
17	Maintain a collaborative relationship with counsel	3.0	16.2	37.1	30.5	13.2
18	Make decisions after receiving advice	3.0	8.6	38.1	40.1	10.2
19	Understand the charges, both in nature and severity	0.0	6.1	21.3	47.7	24.9
20	Be able to follow testimony for contradictions or errors	4.6	29.9	30.5	31.0	4.1
21	Be able to disclose pertinent facts surrounding the alleged offence	4.6	16.2	31.5	44.2	3.6
22	Be able to challenge prosecution witnesses	14.7	37.1	33.0	9.6	5.6
23	Be able to tolerate stress at the trial and while awaiting trial	5.1	6.6	49.7	28.4	10.2
24	Understand the roles of defence counsel	5.1	3.6	25.4	49.2	16.8
25	Understand the roles of the prosecutor	5.1	6.1	31.5	43.1	14.2
26	Help plan legal strategy for his/her defence	18.8	26.9	37.1	16.2	1.0

Note: ^aResponses were missing for 8% of the participants.

Table 3. Correlations among the study variables.

	1	2	3	4	5	6	7
1. Competency	—						
2. Punitiveness	-.21**	—					
3. Anti-authoritarianism	.02	-.18*	—				
4. Authoritarianism	-.30**	.41***	-.28**	—			
5. Equalitarianism	.03	-.14*	.23**	-.04	—		
6. Age	.06	-.15*	-.02	-.09	.16*	—	
7. Gender	.18*	-.03	.20**	.01	.24**	-.03	—

Note: * $p < .05$; ** $p < .01$; *** $p < .001$.

Table 4. Independent-samples t -test results for the effect of gender on the study variables.

Variables	Male ($n = 95$), Mean (SD)	Female ($n = 98$), Mean (SD)	t	P
Competency	88.42 (12.49)	92.50 (10.51)	-3.46	.007
Punitiveness	34.47 (4.96)	34.08 (6.87)	0.45	.649
Anti-authoritarianism	21.40 (3.07)	22.65 (2.98)	-2.87	.005
Authoritarianism	27.00 (3.89)	27.12 (4.74)	-0.20	.845
Equalitarianism	27.34 (3.96)	29.49 (4.70)	-3.78	.001

levels of punitiveness, $t(191) = 0.45$, $p = .649$, $r = .03$, or authoritarianism, $t(191) = -0.20$, $p = .845$, $r = .01$. In contrast, the female participants scored significantly high on the measure of competency compared to the male participants, $t(191) = -3.46$, $p = .007$, $r = .24$. This means that the females found the defendant incompetent to stand trial more often than the males. The female participants also report significantly more anti-authoritarianism, $t(191) = -3.55$, $p = .001$, $r = .25$, and equalitarianism, $t(191) = -3.78$, $p = .001$, $r = .26$, than their male counterparts.

Predictors of Competency as a Continuous Outcome

To predict competency as a continuous variable, hierarchical multiple regressions were performed using the enter method. When age and gender were entered into the model in Step 1, a significant model emerged, accounting for 4% of the variance in the outcome variable, $R^2 = .04$, $F(2, 187) = 3.35$, $p = .037$

(see Table 5). The significant predictor is gender, $\beta = .18$, $t(188) = 2.45$, $p = .015$, with females more likely to find the defendant

Table 5. Hierarchical regression of predictors of competency as a continuous outcome.

	B	Standard error	B
Step 1:			
Constant	79.20	6.34	
Age	0.20	0.23	.06
Sex	4.13	1.69	.18*
Step 2:			
Constant	39.48	11.87	
Age	0.35	0.22	.11
Sex	4.07	1.67	.17*
Punitiveness	-0.26	0.15	-.13*
Authoritarianism	-0.79	0.21	-.29**
Anti-authoritarianism	0.30	0.28	.08
Equalitarianism	-0.02	0.19	-.01

Note: * $p < .05$; *** $p < .001$; $n = 190$; $R^2 = .04$ for Step 1, $R^2 = .11$ for Step 2 ($p < .002$). Sex: Male = 0, Female = 1. Variance inflation factor (VIF) = 1.00–1.17 within the acceptable limit (Field, 2011).

Table 6. Hierarchical logistic regression of predictors of competency as a dichotomous outcome.

			95% confidence interval for odds ratio		
	<i>SE</i>	β	Lower	Odds ratio	Upper
Step 1:					
Constant	1.48	−4.070			
Age	0.05	0.146	1.04	1.16	1.29
Sex	0.03	0.370	0.80	1.44	2.60
Step 2:					
Constant	2.76	−10.150			
Age	0.06	0.180**	1.07	1.20	1.34
Sex	0.33	0.420	0.80	1.51	2.88
Equalitarianism	0.04	−0.020	0.91	0.98	1.06
Anti-authoritarianism	0.06	0.060	0.95	1.06	1.19
Authoritarianism	0.04	−0.110**	1.03	1.12	1.21
Punitiveness	0.03	0.040	0.98	1.04	1.10
Step 3:					
Constant	10.00	0.880			
Age	0.06	0.210***	1.10	1.24	1.40
Sex	0.34	0.580	0.89	1.79	3.61
Equalitarianism	0.30	0.450	0.86	1.57	2.84
Anti-authoritarianism	0.37	0.640	0.92	1.90	3.94
Authoritarianism	0.26	−0.830**	0.26	0.44	0.73
Punitiveness	0.21	−0.730**	0.32	0.48	0.73
Authoritarianism × Punitiveness	0.01	−0.030***	1.01	1.03	1.05
Anti-authoritarianism × Equalitarianism	0.01	−0.020	0.95	0.98	1.01

Note: ** $p < .01$; *** $p < .001$; $n = 190$. Sex: Male = 0, Female = 1.

incompetent to stand trial. In Step 2, punitiveness, authoritarianism, anti-authoritarianism and equalitarianism were regressed on CST scores, with age and gender as the control variables. A significant model emerged, explaining 15% of the total variance in the CST score, $R^2 = .15$, $F(6, 183) = 5.53$, $p < .001$. An inspection of the individual predictors revealed that the most significant predictors are authoritarianism, $\beta = -.29$, $t(183) = 3.73$, $p = .000$, and punitiveness, $\beta = -.13$, $t(183) = 1.77$, $p = .050$. The results indicate that participants high in authoritarianism and punitiveness are more likely to find the defendant competent to stand trial.

Predictors of Competency as a Dichotomous Outcome

As previously noted, the participants responded to a yes/no question about the defendant's competency. To conduct a hierarchical logistic regression, the responses were coded as 0 = competent and 1 = incompetent and used as the outcome variable. The control variables and predictors are the same as those used for the hierarchical linear regression. The results are presented in Table 6.

In Step 1 of the model involving age and sex, compared to the constant model, the overall model is statistically significant, $\chi^2(2) = 10.49$, $p = .005$, Nagelkerke $R^2 = .072$. Age is a significant predictor, $\beta = .15$,

Wald $\chi^2 = 7.37$, $p = .007$, OR = 1.18, 95% CI [1.04, 1.29], suggesting that the probability of the defendant being regarded as incompetent to stand trial increases with age. In Step 2, when equalitarianism, anti-authoritarianism, authoritarianism and punitive scores were added as predictors while controlling for age and sex, a significant model was obtained, $\chi^2(6) = 24.17$, $p = .000$, Nagelkerke $R^2 = .159$. An inspection of the individual predictors revealed authoritarianism as a significant predictor, $\beta = -.11$, Wald $\chi^2 = 7.28$, $p = .007$, OR = 1.12, 95% CI [1.03, 1.21]. The finding implies that participants scoring high on authoritarianism are more likely to find the defendant competent to stand trial.

In Step 3, punishment-oriented attitudes were created from the interaction terms of authoritarianism and punitiveness and non-punishment-oriented attitudes were created from the interaction between anti-authoritarianism and equalitarianism. These two broad attitude terms were created to investigate their general predictive effect of CST. When these variables were entered into the regression model in Step 3, a significant model emerged, $\chi^2(8) = 41.89$, $p = .000$, Nagelkerke $R^2 = .264$. As expected, punishment-oriented attitudes strongly predict the outcome variable, $\beta = -.03$, Wald $\chi^2 = 12.69$, $p = .000$, OR = 1.03, 95% CI [1.01, 1.05]. The finding also indicates that participants scoring high in both authoritarianism and punitiveness are more likely to regard the defendant as competent to stand trial. In contrast, the non-punishment-oriented attitude is not statistically significant ($p > .05$).

In general, the proportion of variance in the outcome variable increases tremendously from 7% in Step 1 to 16% in Step 2 and finally to 26% in Step 3. The -2LL also shows significant reductions; the -2LL at constant is 262.64, then 252.15 in Step 1, 238.47 in Step 2 and finally 220.75 in Step 3. These patterns illustrated the utility of the various predictors built into the models; the predictors in the successive models added

incremental validity to the preceding models. The significant predictors are age, authoritarianism and punitiveness, as well as the interaction between authoritarianism and punitiveness.

Discussion

This study examines the perspectives of law students regarding some proposed indicators of CST. It further investigates the influence of gender, punitiveness, authoritarianism, anti-authoritarianism, and egalitarianism on CST decision-making. The participants endorsed the majority of the items canvassed from the literature – especially from the Group for the Advancement of Psychiatry formulations based on the United States legislation (Melton et al., 2007) – as relevant to determining whether or not a defendant is competent to stand trial in Hong Kong. This finding largely implies some commonality of indicators of CST, perhaps regardless of the jurisdictional differences in the conceptualization and formulation of CST legislation. The above assertion is tenable when evaluated against the earlier review of the commonalities in the CST indicators across different jurisdictions. The foregoing explicitly shows that the most important consideration in CST – notwithstanding the wording of legislative provisions – is the defendant's capacity to attain a satisfactory level of participation in the court process. Stated differently, CST basically concerns the defendant's capacity to comprehend the criminal process as well as the ability to function throughout the process, for instance by meaningfully and intelligently consulting with counsel and then making decisions after receiving advice.

The findings further evince that several psycho-legal abilities may be relevant to and useful for decision-making regarding a defendant's present ability to engage in criminal proceedings. Thus, the Hong Kong competency legislation – 'under any disability such that apart from this Ordinance it would constitute a bar to his being tried' – may

encompass a wide range of competency abilities. Notably, 'under any disability' appears to be the most important and underlining terminology in the legislation. This involves some noticeable and recognizable deficiencies in the abilities needed to successfully engage in and contribute to the criminal adjudication process. For instance, a defendant who is capable of commenting on the criminal proceedings or talking to a legal representative but willingly declines to do so is likely to be making a rational decision, and hence is competent to stand trial. However, where there is lack of motivation to do so as a result of psychopathology (e.g. depression), the issue of CST may arise (for a related discussion, see Melton et al., 2007). Thus, the meaning and relevance of 'under any disability' is largely conditional on the nature and characteristics of a given case, alongside any circumstantial evidence and contemporaneous behaviours that occur before, during and after the act.

Worthy of discussion is the finding relating to the majority endorsement of the items 'Aid in developing a strategy for cross-examining witnesses' and 'Be able to challenge the prosecution' as not being useful for finding a defendant incompetent to stand trial. It may be that the participants regarded these psycho-legal abilities as the province of the defence counsel, rather than as a requirement of the defendant – that is, it is the duty of the defence counsel to develop strategies to cross-examine witnesses and challenge the prosecution during the trial process. Unfortunately, this appears to contradict the general expectation that criminal defendants should be able to participate meaningfully in the trial process, including assisting in developing legal strategies and identifying misrepresentations of facts by the prosecution (Jackson, 2003; Melton et al., 2007).

Notwithstanding this, the findings suggest that a broad range of abilities may be subsumed under Hong Kong's legislation on CST. Whereas it is practically impossible to list all such abilities, it is clear, based on

relevant Hong Kong precedents (e.g. *R v Chiu Te-ken*, 1993; *R v Leung Tak-Choi*, 1995) that every case is uniquely defined and hence presents with unique competency requirements – that is, the same competency indicators may have differential effects on the competency of two different defendants. This assertion is consistent with everyday judicial practice involving the judgement of a case based its own unique merits and characteristics.

With respect to the factors influencing decision-making in competency determinations, it emerged that females are more likely to find a defendant incompetent to stand trial than males. This finding partly corroborates previous reports suggesting that females are more lenient in decision-making in simulated insanity trials (Breheney et al., 2007; Finkel & Handel, 1988; Hans & Slater, 1984). This – together with previous findings – raises profound concerns with respect to whether male legal decision-makers are harsher and less lenient in executing their professional duties. The lingering question pertains to the sanctity and fairness of judicial outcomes involving male decision-makers either as jurors, judges or magistrates. The interesting question relates to the possibility and feasibility of empanelling a somewhat equal representation of males and females as decision-makers, and whether such a representation would lead to a more balanced decision outcome.

In another point of discussion, legal codes, doctrines and legislations in the judicial system are supposedly the guiding frameworks and principles necessary for arriving at unbiased and impartial decisions. Yet, this preliminary study has added to the volume of studies suggesting that underlying extra-legal factors affect legal decision-makers, and in this that context punishment-oriented attitudes have significant impact on their decision-making propensities. Specifically, legal authoritarianism was found to relate significantly to as well as be predictive of the decision to find the defendant competent to stand trial, thus partly supporting previous studies

of related construct (i.e. the insanity defence; Daftary-Kapur et al., 2011; Rendell et al., 2010; Skeem et al., 2004). This reaffirms Boehm's (1968) assertion that legal authoritarianism is associated with the tendency to make harsh legal decisions. Another notable empirical contribution to the literature is the significant and positive correlation between legal authoritarianism and punitiveness. Again, this validates the hypotheses of Boehm (1968) and Daftary-Kapur et al. (2011) concerning the relationship between these two constructs. Unsurprisingly, punitive attitudes significantly predict CST to the extent that high punitiveness is associated with a low likelihood of declaring the defendant incompetent to stand trial. What is more, punishment-oriented attitudes created from the interaction of punitiveness and authoritarianism significantly predict CST findings such that participants who score high on these punishment-oriented attitudes are more likely to find the defendant competent to stand trial.

These attitudes are presumably obtained in the form of object-evaluation associations (e.g. 'criminal offender' and 'dangerous') that are stored in memory, persist over time, are pervasive and guide people's thinking, including legal decision-makers (van Overwalle & Siebler, 2005). Indeed, decades of empirical studies in the international criminology literature have revealed a heightened fear of crime by members of the public, including legal decision-makers (e.g. Box, Hale, & Andrews, 1988; Tseloni & Zarafonitou, 2008). This development may culminate in negative attitudes towards criminal offenders, perhaps regardless of their background (Gakhal & Brown, 2011). Importantly, disparaging attitudes can affect behaviour unfavourably in a spontaneous manner without any conscious effort or intention on the part of an individual. That is, they can 'become active automatically on the mere presence or mention of the object in the environment' (Bargh, Chaiken, Govender, & Pratto, 1992, p. 893), and thus can guide subsequent information processing and

behaviour in relation to the attitude object (offenders or criminal suspects). With regard to legal decision-making, unfavourable and negative attitudes towards criminal defendants can be pervasive to the extent that they may exert their influence by dictating the outcome of the decision-making process. In this context, the decision-maker's propensity is to interpret legislative provisions in such a way as to justify their previously chosen outcome. From the foregoing, it is perhaps unsurprising that this and previous studies have consistently implicated these punishment-oriented attitudes (i.e. authoritarianism and punitiveness) in harsh, unfavourable and biased legal decision-making in different legal contexts.

Meanwhile, consistent with Boehm's (1968) postulation, anti-authoritarianism and equalitarianism are not significantly predictive of CST decision-making. The general implication is that biased legal decision-making can occur regardless of whether the individual is undergoing legal training (as revealed in the current study), is legally trained (Yourstone, Lindholm, Grann, & Svenson, 2008) or is provided with judicial instructions (Finkel & Handel, 1988; Peters & Lecci, 2012).

Limitations of the Study and Directions for Future Research

The study is not without limitations, hence the findings should be considered carefully. The sample size is too small to warrant any firm conclusions. The study was conducted on students from a legal education course owing to difficulties in recruiting legal practitioners (e.g. judges, magistrates and legal practitioners), as stated previously. Although the findings do not deviate substantially from studies of legal decision-making in insanity defence cases (e.g. Breheney et al., 2007; Daftary-Kapur et al., 2011), they should not be taken as necessarily reflecting the views of legal practitioners. With this said, there is a bounty of intellectual and professional benefits that can be reaped by investigating

decision-making attitudes in individuals enrolled on legal education courses. As future legal practitioners, judges and/or magistrates, insight into their decision-making processes can reshape and reorient the focus and content of legal teaching curricula, as well as inform strategies to foster and promote unbiased and impartial decision-making.

Another limitation pertains to the inability to manipulate several pertinent variables such as the type and severity of the crime, or the age and gender of the defendant, in order to investigate their influence on the decision-making process. These variables could exert influence in several ways, for instance as moderators, which might affect the outcome of the study. In addition, the competency indicators utilized are those listed by the defence lawyer. The results could have turned out to be different if the CST indicators were provided by the prosecutor or instructed by the judge.

Studies addressing these limitations will help to provide deeper insights into CST decision-making. Moreover, while standardized decision-making may not be tenable or feasible among legal decision-makers in the same or similar cases, it is possible to institute measures to minimize or reduce excessive discrepancies in legal decision-making outcomes. Yet this can be achieved with adequate knowledge and understanding of the underlying attitudes and factors likely to bias the decision-making process and by constructing standardized measures to assess these factors in a bid to identify impartial decision-makers. By doing this, intervention programmes can be instituted to bring decision-making processes into closer alignment with the law. Consequently, it is recommended that future studies – especially cross-cultural studies – examine the CST indicators used in the present study to help determine their potential universality. This will be helpful in determining the possibility of standardizing a competency measure that might serve as a numerical and quantitative measure to the existing gamut of resources employed in

screening biased legal decision-makers (for discussion on standardized measures for screening juror bias in insanity trials, see Skeem et al., 2004).

In summary, the present study has found preliminary evidence suggesting a degree of universality in what may be construed as indicators of CST. The study also found evidence that females are more lenient in legal decision-making. Lastly, punishment-oriented attitudes (authoritarianism and punitiveness) are highly and significantly predictive of harsh and unfavourable legal decision-making in CST determinations. With respect to the latter finding – and given that attitudes are not only predictive of behaviour (Kong, Zhang, & Chen, 2013) but amenable to planned intervention (Hansson & Markström, 2014) – the findings of the present study and those of previous studies suggest the need to develop strategies and programmes (e.g. training workshops) for legal decision-makers to mitigate or lessen the impact of underlying extra-legal factors such as unfavourable and harsh attitudes, thereby bringing their decision-making into closer alignment with the law and legal principles.

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