

Sentencing intoxicated offenders: Does alcoholism excuse drunkenness?

N. Sinclair-House, J. J. Child & H. S. Crombag

Criminal responsibility is founded on the volitional control of action, yet many offences are committed whilst intoxicated. Alcohol is a widely-used intoxicant known to impair behavioural control and memory, opening the door to claims of partial or absent responsibility. Criminal law rules have developed to resist such claims. In particular, findings of criminal responsibility in intoxicated offenders frequently call on 'prior fault' logic: the intoxicated offender may claim to have been irrational, but culpability can be imported from their earlier, rational choice to consume intoxicants (Robinson, 1985). That drunkenness does not excuse derives from an unforced choice to become drunk. Yet this raises questions over the extent to which an alcoholic's choice to drink is unforced. Current neurobiological models of addiction stress compulsion as a primary component, bringing into question the volitional nature of continued consumption (Volkow & Fowler, 2000; Dalley, Everitt, & Robbins, 2011). At the same time, some legal scholars have noted that the potentially fatal nature of alcoholic withdrawal could likewise undermine suggestion that consumption is voluntary, drawing analogy to a defence of duress where actions have been forced under the threat of death (Husak, 1999; Yaffe, 2013). We asked 290 UK Magistrates to consider a criminal sentencing scenario in which evidence of a defendant's state of intoxication at the time of the offence was presented in tandem with information that they were either teetotal, a casual drinker or an alcoholic. We found that intoxication reduced blameworthiness for criminal acts if the offender had no previous experience with alcohol whilst, in direct contrast, intoxication served to aggravate offending if the defendant was an alcoholic. The likelihood of our defendant receiving a reduced sentence was over ten times greater in the event that, though intoxicated, they were not also an alcoholic. Leniency was blocked by alcoholism despite Magistrates' qualitative responses suggesting its understanding as a generally mitigating factor, revealing a disconnect between expressed opinion and sentencing behaviour in practice. Our results indicate that, far from excusing drunkenness, the state of being an alcoholic is more frequently deemed to aggravate offending, being associated with harsher sentencing even where the offence in question was committed whilst sober.

Dalley, J. W., Everitt, B. J., & Robbins, T. W. (2011). Impulsivity, compulsivity, and top-down cognitive control. *Neuron*, 69, 680-694.

Husak, D. (1999). Addiction and criminal liability. *Law and Philosophy*, 18, 655-684.

Robinson, P. H. (1985). Causing the conditions of one's own defense: A study in the limits of theory in criminal law doctrine, *Virginia Law Review*, 71(1), 1-63.

Volkow, N. D. & Fowler, J. S. (2000). Addiction, a disease of compulsion and drive: Involvement of the orbitofrontal cortex. *Cerebral Cortex*, 10, 318-25.

Yaffe, G. (2013). Are addicts akratic?: Interpreting the neuroscience of reward. In N. Levy (Ed.), *Addiction and self-control: Perspectives from philosophy, psychology, and neuroscience* (pp. 190-213). New York: Oxford University Press.