

Debating intoxication: response to commentaries

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Addiction Opinion and Debate:

Debating intoxication: Response to commentaries

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Abstract

Lack of scientific or clinical clarity faced by courts dealing with cases involving intoxicated criminal defendants is unavoidable, but introducing further legal ambiguity to meet policy goals introduces ever greater risk of problematic (including unjust) legal outcomes.

Keywords: Criminal law, self-defence, alcohol and drugs, mens rea, mental disorders.

Main text

We thank Robert MacCoun (1) and Johann Koehler (2) for their insightful commentaries on our Debates article (3), in which we discuss *R v Taj* (4), a recent judgment from the Court of Appeal (CA) of England and Wales (E&W). Their expert commentaries highlight and discuss a number of important points, including how scientific and legal reasoning more often collide, differences and complexities around causal reasoning in science and law, and what relation we might conceive between holding a person responsible and blaming (or praising) them. Word restrictions prevent us addressing all of these important points, so we limit ourselves to the following.

First, Koehler is certainly correct that the criminal law is prone to cling to simplistic concepts (proxies) that may fail to adequately engage with the complexities of scientific and/or clinical understanding. We see this in different areas (as usefully described by Koehler), including in the context of intoxication and the legal distinctions between insanity and automatism. A useful, and lamentable, example of this is the internal/external cause divide used to legally separate potential cases of insanity and automatism. When applied to those causing harms whilst suffering a diabetic coma, defendant 1 with hypoglycemia as a result of injecting insulin and *a lack of eating* (an external cause) might avail herself of automatism and an unqualified acquittal; while defendant 2 with hyperglycemia brought on by *lack of insulin* (an internal cause), would have to plead insanity. The scientific and moral distinctions here are minimal, but the legal outcome for our defendant is very different.

However, the CA decision in *Taj* (setting precedent going forward) was not simply a rejection of scientific/clinical complexity (i.e., holding to a simplistic legal definition of intoxication), but a rejection of long establish legal doctrine as well (i.e., a change from the simple 'drug-on-board' assumption; e.g. (5)). As we discuss in our article, what appears to be driving the reasoning is not science or legal oversimplification, but what looks like an expression of normative outcome logic: the court decided that Taj was *bad*, not *mad*. MacCoun's reference to motivated cognition may well offer a psychological explanation for such logic.

There is some basis for this normative conclusion, usefully illustrated by MacCoun, though it involves complex analysis of Taj's prior-fault months/years of substance abuse. And we see prior-fault logic of this kind applied to insanity cases in other (civil-law) jurisdictions,

and regularly mooted in common-law ones as well. However, there is presently (in E&W) no legal device for applying a prior-fault rule to insanity cases; nothing from legislative or jurisprudential sources. On that basis, the court in *Taj* were wrong to find him liable. And wrong to dress their ad-hoc outcome logic in a veneer of scientific legitimacy; indeed, we see enough of that from politicians lately!

We appreciate MacCoun's clarifications about causal reasoning in the law and agree that the type of multiple-step, trace analysis illustrated in his Figure 1 offers a valid model of the sort of more complex causal reasoning we (implicitly or explicitly) adopt when deciding responsibility and blameworthiness. Specific to *Taj*, of course he had multiple past occasions when he might have decided to restrain from drink and/or drug taking (especially when on at least one of these occasions he also subsequently experienced delusions), so some responsibility and blame seems appropriate. Whether this should prevent him from raising a defence altogether and a resulting sentence of 19 years for attempted manslaughter is a complex question which we discuss in further detail elsewhere (6). But the issue is less about whether the court was wrong in *Taj* specifically, and more whether the wider and fuzzier definition of intoxication going forward increases the odds of problematic undirected decisions. We, and both commentators, think it will.

Finally, a few quick words in relation to addiction which, though not directly at play in *Taj*, raises interesting legal and moral questions; and around which there is a significant literature (e.g. 7–9), including some recent empirical work of our own (10). Models such as proposed by Pickard, and endorsed by MacCoun, are indeed a more promising and interesting means to break the moralistic 'War on Drugs' deadlock. Perhaps the development of so-called Drug Courts in the US, UK and some other places, are a cautious expression of this sort of more progressive, forward-looking and constructive way of thinking; and as mentioned, holding addicts responsible (at least for their addiction) whilst not looking to blame has important therapeutic benefits (e.g. 11). The 'rate limiting step' however is again political will.

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