Criminal Responsibility and Substance Use: Complexities and Controversies

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DISCLOSURES

- I AM THE AUTHOR OF EVALUATION OF CRIMINAL RESPONSIBILITY WHICH IS REFERENCED IN THIS PRESENTATION

- I HAVE NO OTHER FINANCIAL INTERESTS IN ANY MATERIALS OR PRODUCTS DISCUSSED
LEARNING OBJECTIVES

- Explain role of intoxication relative to CR defenses
- Describe the concepts of fixed and settled insanity
- Discuss implications of understanding addiction as a “brain disease”
SOME CAVEATS

- The decision to excuse from criminal responsibility is a legal/moral decision.

- The same person may be excused in one jurisdiction and not in another.

Therefore...

- Insanity is a legal term, not a psychological one.
SOME CAVEATS

“The issue of insanity is not strictly medical; it also invokes both legal and ethical considerations. Otherwise the issue of sanity would be decided in the hospitals and not the courtrooms” Bigby v. State, 892 S.W.2d 864 (1994), p.877

"Ultimately the issue of insanity at the time of the offense excusing criminal responsibility lies in the province of the jury, not only as to the credibility of the witnesses and the weight of the evidence, but also as to the limits of the defense itself." Graham v. State, 566 S.W.2d 941 (1978), p. 949
LEGAL VIEWS
VOLUNTARY INTOXICATION

- the mental disorder that impairs the legally relevant abilities must have been brought about by circumstances beyond the control of the actor *Kane v. U.S.*, 399 F.2d 730 (1968), P. 735

BUT

LONG TERM SEQUELAE (e.g., dementia, Korsakoff’s)

SUBSTANCE INDUCED PSYCHOSIS
FIXED VS. SETTLED INSANITY

FIXED:
- *People v. Lim Dum Dong*, 78 P.2d 1026 (1938)

- CONTRAST WITH *Bieber v. People*, 856 P. 2d 811 (1993) – but this is the minority position

SETTLED:
- *People v. Kelly*, 516 P.2d 875 (1973)
Parker v. State

“If a person drinks intoxicating liquor and is sane both prior to drinking and after the influences of the intoxicant has worn off, but is insane by the applicable test while under the influence of the intoxicant, he comes under the first category.

If he is insane whether or not he is directly under the influence of an intoxicant, even though that insanity was caused by voluntary drinking, he comes under the second category”. (p. 388)
MENTAL ILLNESS AND S.A.

- INSANITY DEFENSE REFORM ACT (IDRA) – 1984
  - “the voluntary use of alcohol or drugs, even if they render the defendant unable to appreciate the nature and quality of his acts, does not constitute insanity or any other species of legally valid affirmative defense.”

  United States v. Knott, 894 F.2d 1119 (9th Cir. 1990)

  United States v. Garcia, 94 F.3d 57 (2d Cir. 1996)
MENTAL ILLNESS AND S.A.

CHICKEN OR EGG ISSUE

- EVIDENCE OF MI SYMPTOMS PRIOR TO S.A. WHICH EXACERBATED

- MI SYMPTOMS IN REMISSION (STABLE) PRIOR TO DRINKING
Now, the effects of the voluntary use of drugs or alcohol do not constitute, nor may they legally give rise to a severe mental disease or defect. The voluntary use, if any you find, of drugs or alcohol also must be disregarded in determining whether the Defendant could appreciate the nature and quality of his acts or the wrongfulness of his acts. However, if you find that at the time in issue the Defendant had a severe mental disease or defect, and that the disease or defect gave rise to an inability to appreciate the nature or quality or wrongfulness of his acts, then the Defendant's consumption of drugs or alcohol, whether voluntary or involuntary, cannot preclude his defense of insanity.
SIMILAR REASONING IN

IDIOSYNCRATIC / PATHOLOGICAL INTOXICATION

- e.g. ALI MODEL PENAL CODE 2.08[4]
- “intoxication grossly excessive in degree, given the amount of intoxicant, to which the actor does not know he is susceptible”

- e.g., KANE V. U.S., 399 F.2d 730 (1968)
- “Kane made it clear in his testimony that he was aware that consumption of alcohol was causing the loss of consciousness”
If the respondent in this case from his past experience or information he had while sane, and before drinking on that day… [had] good reason to believe that owing to a dormant tendency to insanity, intoxication would be likely to produce an extraordinary degree of mental derangement, beyond the effects likely to be produced upon persons clear of any such tendency, he must be held to have intended this extraordinary derangement, as well as the intoxication and other results produced by it.

But if he was ignorant that he had any such tendency to insanity, that is if he did not know that insanity was going to be produced by that experience, and had no reason from his past experience or from his information derived from others, to believe that such extraordinary effects were likely to result from the intoxication, then he ought not to be held responsible for such extraordinary effects."
INTOXICATION AND DIMINISHED CAPACITY

IDRA – “Mental disease or defect does not otherwise constitute a defense”

PROSECUTION ARGUED: Intended to exclude all psychiatric testimony not admitted in conjunction with an insanity defense.

- IDRA DOES NOT PRECLUDE EXPERT TESTIMONY RELEVANT TO SPECIFIC INTENT (ELEMENT OF OFFENSE)
MONTANA V. EGELFHOFF
518 U.S. 37 (1966)

- MONTANA LAW EXPLICITLY BARRED CONSIDERATION OF INTOXICATION IN NEGATING A REQUIRED ELEMENT OF A CRIME

- SUPREME COURT RULED THAT:
  - MONTANA COULD PROHIBIT SUCH USE
  - ACKNOWLEDGED THAT OTHER STATES RECOGNIZED RIGHT TO PRESENT SUCH EVIDENCE

- MONTANA IS IN THE MINORITY
SAMPLE STATE CASE

- INTOXICATION CAN BE USED TO NEGATE SPECIFIC INTENT

- INTENT IS AN ELEMENT OF THE CRIME

- PROSECUTION HAS BURDEN TO PROVE ALL ELEMENTS BEYOND REASONABLE DOUBT

  BUT

CAUTION ABOUT FORENSIC EVALUATORS OVERSTEPPING
CONTROVERSIES

Should addiction be considered a “brain disease”?

If so, could one argue that a defendant addicted to substances cannot control his/her behavior?

Would this implicate the volitional prong?
CASE EXAMPLE

*Eldred vs. Commonwealth*

- 29 year old woman convicted of Larceny
- stole jewelry to pay for drugs (opiates)
- sentenced to probation, including requirement to abstain from drug use
- went for residential treatment
- released, and then tested positive for Fentanyl
- Judge detained her for violating probation
COMMONWEALTH V. ELDRED (MASS)

• MAY THE PROBATIONER PERMISSIBLY BE REQUIRED TO “REMAIN DRUG FREE” AS A CONDITION OF HER PROBATION, AND

• MAY SHE PERMISSIBLY BE PUNISHED (INCARCERATED) FOR VIOLATING THAT CONDITION,

• WHERE THE PROBATIONER SUFFERS FROM SUBSTANCE USE DISORDER [SUD], AND WHERE HER CONTINUED USE OF SUBSTANCES DESPITE NEGATIVE CONSEQUENCES IS A SYMPTOM OF THAT DISORDER.
The Massachusetts Medical Society, joined by the American Academy of Addiction Psychiatry, and multiple other groups submitted an amicus brief on behalf of the plaintiff.

Argument: drug addiction is a brain disorder, and therefore courts should not be allowed to incarcerate for drug use, which is a disease.
AMICUS BRIEFS FOR PLAINTIFF

ADDICTION IS A BRAIN DISEASE:

- “Addiction is a primary, chronic disease of brain reward, motivation, memory and related circuitry”

- “Given that relapse is symptomatic of SUD and is not simply “a weakness of character or will, ”the requirement that Ms. Eldred remain drug free and face incarceration for a failure to do so, seems to ignore the well-established clinical course of SUD.”
Justice asked plaintiff’s attorney if she believed those with substance use disorder could argue they could not stop themselves from committing a crime that would support the drug use.

“I’m trying to figure out what it is you are arguing,” “What is the extent of the lack of control?”

The lawyer replied that under the definition of substance use disorder, the compulsion is not to commit crimes but to keep using drugs.
IMPLICATIONS

- Can we distinguish between inability to refrain from drug use and inability to refrain from actions to obtain drugs?

- If we accept this argument, could one argue that substance abusers lack capacity to conform conduct?
“Can the effect of holding probationers not responsible for violating the condition of drug abstinence be limited to the context of probation and parole?”

“If an addict cannot control herself and is “compelled” to possess in order to use, how can it be fair to blame and punish her?”

Could be expanded to excuse from responsibility not only drug possession, but crimes committed to support the addiction.
Brain Changes Do Not Necessarily Signify Brain Disease

Brain Changes Do Not Per Se Signify Involuntariness

Those Addicted to Substances Can Respond to Incentives

Thus, although those addicted to substances have a strong urge to use, this does not mean they are incapable of choosing not to use

Critique of FMRI pictures as misleading, not really a “picture of the brain”
Brain on Drugs Commercial
THE FUTURE?

- WE DON’T KNOW YET HOW THE LEGAL SYSTEM WILL RESPOND TO ADVANCES IN BRAIN SCIENCE

- AS OF NOW, NOT WELL ENOUGH ESTABLISHED TO FUNDAMENTALLY CHANGE LEGAL PRINCIPLES

- THIS IS PARALLEL TO OTHER AREAS, INCLUDING PSYCHOPATHY

- FAMOUS “FLIP-FLOP” CASE