

## ADDICTION, RESPONSIBILITY, AND A SORITES PROBLEM

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SUPPOSE we want to find out whether Deanna, a heroin-addicted person, is morally responsible for the death of her two-year-old daughter. As a result of being high on heroin, Deanna forgot about her kid she left unattended in her hot car, and the toddler tragically passed away. Should we condemn Deanna for her reckless heroin use and the resultant harm? In defense of Deanna, she was a heroin-addicted person; her addiction acted as a compulsion to use heroin. Compulsion is one of two commonly accepted excuses to moral responsibility.<sup>1</sup> Thus, Deanna is excused for her heroin use and its resultant harm to her daughter.

A critic of Deanna could respond that Deanna's responsibility can be traced back to a time before she became addicted. In the early days of Deanna's drug use, she exercised free choice to use heroin and knew full well that continued drug use would lead to addiction. Younger Deanna's use of drugs was not compelled by addiction (because she was not yet addicted) but nevertheless began the causal chain ending in the toddler's death. Since Deanna caused the harm as an exercise of free choice, she is morally responsible. In rebuttal, Deanna's defense might appeal to the notion that although younger Deanna knew her continued drug use would lead to addiction, she did not know that it would lead to her daughter's death.<sup>2</sup> Ignorance is the second of the two commonly accepted excuses to moral responsibility.<sup>3</sup>

The line of reasoning just set out is controversial, but much of it seems right to me. For instance, it seems right that one cannot be held responsible for the downstream consequences of one's actions if one did not believe that those consequences would arise. Like most others, I believe ignorance excuses. But is ignorance the only defense available to addicted people? Surely many people starting to use drugs know that becoming addicted will risk severe harm to their families. Are they morally responsible when those harms arise?

1 Fischer and Tognazzini, "The Truth about Tracing," 531.

2 See Moore, "Addiction," 26.

3 Fischer and Tognazzini, "The Truth about Tracing," 531.

This article argues in favor of the following surprising result: Deanna is likely excused from moral responsibility even if at the time she first began using drugs she knew with 100 percent certainty that continued, long-term drug use would lead to her daughter's death. Even if someone knows that long-term drug use leads to harmful consequences, almost no one chooses long-term drug use.<sup>4</sup> Instead, they only choose to do small amounts of drugs such as smoking tonight or opening up a bottle of wine, and those small amounts of drugs happen to end up over time constituting long-term drug use. Since these individuals have never chosen long-term drug use, they cannot be held responsible for the consequences of their long-term drug use.

Section 1 of this article details the *prima facie* argument that addiction excuses certain wrongful behaviors because addiction is an irresistible compulsion. Section 2 details the rebuttal of tracing the addicted person's responsibility to before he became addicted. The addicted person is supposedly responsible for *starting* to use drugs with the knowledge that continued drug use leads to bad consequences. Section 3 examines how addicted people become addicted. Addicted people do not plan out long-term drug use. Instead, they decide to use drugs in small doses, and those decisions merely add up over time. Section 4 argues that addicted people are not responsible for the bad consequences of their addiction because they never chose long-term drug use. Much of section 4 responds to various objections to this core argument. Last, I generalize the moral framework so that it can be used to analyze a wide variety of similar cases.

### 1. ADDICTION SOMETIMES EXCUSES

Addicted people cannot be punished for their wrongful acts when their addiction served as a compulsion to do such acts. Take, for instance, the crime of illicit drug use.<sup>5</sup> Some addictions are so strong as to render the addicted person unable to resist using drugs. Punishing an unavoidable act would frustrate the retributivist since inability to do otherwise excuses the actor from moral responsibility.

This line of thinking can be seen in Justice White's opinion in *Powell v. Texas*: "the chronic alcoholic with an irresistible urge to consume alcohol should not be punishable for drinking or for being drunk."<sup>6</sup> For Justice White, the addicted person is excused not only for the unavoidable act, i.e. drinking, but thereby

4 Heyman, *Addiction*, 131.

5 E.g., Cal. Health and Safety Code § 11550 (West 2021). Also consider the criminal acts of underage drinking and "taking pain medications in excess of their prescribed dosages." Yaffe, "Compromised Addicts," 209.

6 *Powell v. Texas*, 392 U.S. 514, 548–49 (1968).

also for the consequence of that act, i.e. being drunk. Other consequences of drug use can be more sinister, such as forgetting about a child left in a hot car. Addiction might also be raised as a defense to crimes committed in pursuit of drug use, such as stealing money in order to buy drugs. It may very well be the case that an addicted person who feels the compulsion to use drugs but has no drugs to use will also feel a compulsion to steal in order to buy drugs. Thus, there are at least three distinct categories of wrongful acts for which addiction could be seen to excuse: the crime of drug use, the acts that result from drug use, and the acts that are undertaken in pursuit of drug use.<sup>7</sup>

There is general agreement among experts in this area that drug addiction (at least sometimes) diminishes (at least partly) moral responsibility for one's wrongful acts.<sup>8</sup> Compulsion is one reason for thinking addicted people are excused, but it is certainly not the only candidate theory in the literature concerning why addicted people are excused.<sup>9</sup> The topic of this article is a counterargument (laid out in the next section) that is supposed to apply to all of the various arguments that addiction excuses, including the compulsion view. Thus, I wish to remain theory neutral at this level. As long as the reader thinks there is at least one category of wrongful acts that addiction sometimes at least partly excuses, this article will have meaningful implications. However, for my own ease of exposition in this article, I will simply take *arguendo* that all addicted people have a compulsion to use drugs and that this compulsion should be considered as corroding the freedom ordinarily necessary for moral responsibility.

## 2. TRACING

*Arguendo*, addicted people are yielding to irresistible compulsions. Even so, there is a common rebuttal to the proposition that addiction excuses. Applying a tracing principle, the rebuttal states that most addicted people are responsible for their behavior after they become addicted because, at some earlier point in time, they chose to place themselves in that situation.<sup>10</sup> Even if one would ordinarily be permitted an excuse of compulsion for a wrongful act he did, no such excuse is permitted if one earlier freely put himself in that situation, knowing that he would then be committed to doing that wrongful act. Tracing back

7 Yaffe, "Compromised Addicts," 209–10.

8 For a survey, see Moore, "Addiction," 26.

9 Moore, "Addiction," 26.

10 Moore, "Addiction," 23.

moral responsibility in this way is both plausible and an important component of ethical theory in explaining our intuitions about moral responsibility.<sup>11</sup>

Illustrating by example, suppose that there is a pill that delivers an instant release of dopamine but also drives one to murderous psychopathy—if someone takes the pill, he develops an irresistible lust for killing. Suppose that Daniel took the pill and went into a murderous psychopathy, the consequence of which was the killing of his wife, Valerie. Suppose further that Daniel took the pill for his own pleasure but nevertheless knew that it would drive him to kill someone. Daniel is responsible for Valerie's murder regardless of the fact that Daniel's compulsion to kill Valerie at the time of her murder was so strong as to be irresistible.<sup>12</sup>

A necessary condition of tracing is that the actor was morally responsible for having put himself in the binding situation. If someone force-fed Daniel the pill or Daniel made a nonculpable mistake about the pill's negative effects, he could not be blamed for Valerie's murder.

In the literature, the most prominent charge against tracing back moral responsibility has been that the knowledge requirement is rarely satisfied.<sup>13</sup> For example, defenders of addicted people argue that someone like Deanna (who left her daughter in the car while high on heroin) did not know at the time she started doing drugs that addiction would lead to the eventual death of her child. Her lack of knowledge means that responsibility cannot be traced back.

But, of course, the fact that the knowledge requirement is rarely satisfied does not mean the knowledge requirement is never satisfied. Some people do have knowledge that their continued drug use would lead to an irresistible wrongdoing. For example, it is plausible that someone living in poverty has a justified true belief that his continued drug use will eventually commit him to stealing from others in order to finance his drug addiction. Addicted people

11 Fischer and Tognazzini, "The Truth about Tracing," 552–53. But see Agule, "Resisting Tracing's Siren Song," 1; Alexander, "Causing the Conditions of One's Defense," 623; Khoury, "Responsibility, Tracing, and Consequences," 187; and King, "Traction without Tracing," 463. On the competing account, putting oneself in the dangerous incapacitated state is the wrongful act, for which one is responsible if one does so with the mental state necessary for culpability. The competing account can be more fine grained, since tracing's knowledge requirement can be replaced with the more flexible *mens rea* standard applicable to the wrong for which we are trying to hold the actor responsible. Thus, for example, if theft requires specific intent for moral responsibility, the earlier act of putting oneself into the incapacitated state must also have been done with the specific intent of taking another's property in order for that actor to be responsible for theft. This article's conclusions, which deal with responsibility generally, will apply not only to tracing but also to this alternative to tracing.

12 See also Moore and Hurd, "Punishing the Awkward, the Stupid, the Weak, and the Selfish," 179.

13 Moore, "Addiction," 26; and Vargas, "The Trouble with Tracing," 277.

like these cannot rely on the nonsatisfaction of the knowledge requirement to defend themselves from moral responsibility.

In the tracing literature, there is some disagreement about how narrowly/broadly the boundaries of the knowledge requirement should be drawn.<sup>14</sup> Thus, well-informed readers may disagree with my rough characterization of how often drug users know that continued drug use will commit them to future illicit activity. One might, for example, say that it was not necessary for Deanna to know that she would end up leaving her daughter in her car as a result of her addiction but rather that she merely needed to know that she would end up hurting the people around her. In this article, I want to be theory independent with regard to that debate. I would like to argue that moral responsibility fails to trace back for addicted people regardless of which theory of the knowledge requirement we adopt. Even if Deanna satisfied the knowledge requirement—whatever the knowledge requirement is—she is still likely excused from moral responsibility.

### 3. VAGUE DESIRE: WHAT'S THE HARM OF JUST ONE MORE?

To see whether moral responsibility can be traced back for addicted people, we need to look at why and how drug users become addicted. The inquiry is complicated by the fact that addiction often has such harmful consequences.<sup>15</sup> Typically, when thinking about why someone performed some action, we would try to figure out why that individual took himself to have an all-things-considered reason to perform that action. But the state of being addicted to the point of compulsion can be such a nightmare that it just does not seem likely that many would consider the benefits of prolonged drug use to outweigh the costs of addiction.<sup>16</sup> If addiction is so harmful to the person addicted, why does anyone use drugs at levels that result in addiction? Call this the *puzzle of addiction*.<sup>17</sup>

In trying to solve this puzzle and other similar puzzles about why people act in ways contrary to their interests, some philosophers and psychologists have

14 Vargas, "The Trouble with Tracing," 277; and Fischer and Tognazzini, "The Truth about Tracing," 537.

15 "Addiction ravages lives and communities" (Elster and Skog, "Introduction," 1). See also Heyman, *Addiction*, 133.

16 Elster and Skog, "Introduction," 1.

17 Elster and Skog, "Introduction," 1. A similar question can be asked of why addicted people continue to use drugs. See Pickard, "The Puzzle of Addiction," 9–10. The more relevant question for this article is why recreational/nonaddicted drug users use drugs at levels that result in addiction. These two questions are distinct.

proposed that such self-harm can result from a series of individually rational behaviors that, collectively, lead to an irrational result.<sup>18</sup> In this section, I will present this general idea and argue that it is a good explanation of how people become addicted even when they desire not to be addicted.

Before getting to addiction, let us begin with an innocent example. Gus is a thin, rational man (exhibiting no weakness of will) with a desire of first lexical priority not to be fat. No other desire could trump his desire not to be fat. So long as he is thin, however, he does not particularly care how much he weighs; whether he weighs 130 pounds or 135 pounds, for instance, makes no difference to him. He merely desires not to be fat. The postman knocks at Gus's door. The postman informs Gus that Gus just won the sweepstakes for a lifetime supply of fun-sized Snickers, an absolute delight for this sweet tooth. As the candy is carried into his living room by the box, he takes out a single piece and considers whether he should eat it. Given his desire not to be fat, should he allow this indulgence?

Gus is a thin man. A fun-sized Snickers has eighty calories, a miniscule difference maker in his weight. Surely, eighty calories do not separate a thin man from a fat man. Eating the Snickers will serve his desire for sweets, but it certainly will not make him fat. And so Gus eats the Snickers and finds it a delight. He has made a rational decision. Then he reaches for a second fun-sized Snickers. Should he eat this one? We can apply the same reasoning here again. Since the previous one did not make him fat, he is still thin. As clear as day, eighty calories cannot make a thin man fat. And so he eats the second Snickers. And the third Snickers? Same here. And so he eats the third. And the fourth. The fifth. And so on. Gus spends the next month popping one Snickers after another. At the end of the month, when he steps on the scale, he comes to find the truth of the following proposition: Gus is fat.<sup>19</sup>

The astute reader will see that this is a variation on the sorites problem. It is the defining feature of vague predicates such as *fat* that if there is some object *a* to which the vague predicate applies and another object *b* that is qualitatively identical to *a* but for a miniscule difference, then the vague predicate applies also to *b*. Following Crispin Wright, call this the *tolerance principle* of vague predicates.<sup>20</sup> There is no point, no boundary line, at which adding another eighty calories will make a thin man fat, just as there is no hair that falls off to make a man bald, no day that passes to make a man old.<sup>21</sup> When the content

18 E.g., Heyman, *Addiction*, 133; Andreou, "Environmental Damage and the Puzzle of the Self-Torturer," 100–1; Edgington, "Vagueness by Degrees," 296; and Schwartz, "Soritic Thinking, Vagueness, and Weakness of Will," 18.

19 Edgington, "Vagueness by Degrees," 296 (setting out the "dieter's paradox").

20 Wright, "On the Coherence of Vague Predicates," 333–34.

21 It would also be easy to reword the whole example using "not fat" in place of "thin."

of a desire employs a vague predicate, the vague desire cannot motivate even a rational person to stop him from making an incremental change.

More precisely, the issue is the result of an interaction between two phenomena: *de minimus* contribution and vagueness. *De minimus* contribution can complicate ethical inquiry in two ways. The first way is when multiple actors each contribute in a *de minimus* manner to some harmful result. For instance, ordinary individuals contribute in extremely minor ways to global warming that, across our global population of eight billion, add up to an existential threat. This first way has been the subject of much discussion in ethics. The second way in which *de minimus* contribution complicates ethical inquiry is the topic of this article: its interaction with vagueness. In this second way, there is only one actor, but he performs many *de minimus* actions. The trouble is that when some undesired outcome is vague, the actor has no reason to refrain from doing those actions that make only *de minimus* contributions towards the undesired outcome. This second problem has received comparatively little attention.

A similar story can be spun about addiction. Suppose that all addiction is a very high level of desire for a drug.<sup>22</sup> Each additional intake of nicotine increases one's desire for nicotine. At stake in a decision about whether to smoke another cigarette is an extremely minor increase in such a desire. Applying the tolerance principle, smoking an additional cigarette cannot be the difference between addiction and nonaddiction. Therefore, the desire not to be addicted remains causally inert in deciding whether to smoke another cigarette. Both smoking one more cigarette and not smoking the cigarette equally satisfy the desire not to become addicted.

Call the picture described thus far the *Vague Desire* solution to the puzzle of addiction and those people who are accurately described by the picture *Vague Desirers*. How do people become addicted despite their desire not to? The vagueness of their desire not to be addicted renders such desires irrelevant to decision-making about using small dosages of drugs.

The *Vague Desire* picture relies on two key premises to establish that the desire not to become addicted will not stop the user from using drugs.

22 "Addictive desires are just strong desires toward pleasure" (Foddy and Savulescu, "A Liberal Account of Addiction," 16–17). My main argument will go through no matter what the right conceptual analysis of addiction may turn out to be so long as addiction is a vague predicate and so long as the property that serves as the analysans is increased only incrementally by the performance of the addictive act. So, for example, if addiction turned out to be defined by the severity of withdrawal symptoms, then withdrawal symptoms could take the place of desire for drugs in this article so long as performing the addictive act increased the severity of withdrawal symptoms only incrementally.

*Premise 1: The user believes in the tolerance principle with respect to addiction.*

By the tolerance principle, an incremental change at the margin does not affect the application of a vague predicate. The tolerance principle is intuitive and the dominant viewpoint of both laymen and experts.<sup>23</sup> Consider, for example, the Roman philosopher Galen's stance on the principle two millennia ago: "I know of nothing worse and more absurd than that the being and nonbeing of a heap is determined by a grain of corn."<sup>24</sup> The tolerance principle sets out in lucid terms what most of us take for granted about vague language. The tolerance principle is so closely intertwined with vagueness that many would consider it a defining feature of vague predicates.<sup>25</sup> Thus, I take both the truth of the tolerance principle as well as the proposition that most people believe the tolerance principle as received wisdom, though the Vague Desire picture is only contingent on the drug user's belief in the tolerance principle.

One way to explicate the tolerance principle is to contrast it with a competing theory's denial of the principle. Under epistemicism, the tolerance principle is false, and there is some incremental change that does make a difference in the application of a vague predicate; some *n*th candy bar is the difference between fat and thin, but we simply do not know which one it will be.<sup>26</sup> Thus, an epistemicist would believe that each candy bar he eats has some minute probability that it would cause him to be fat, whereas someone who believes the tolerance principle thinks of any one candy bar that it has zero chance of making him fat.

Not all of our language and thought is vague—take, for example, the predicate of numerical identity—but insofar as there are vague predicates, addiction is a good candidate. Vagueness is characterized by borderline cases, and there are clearly borderline cases of addiction.<sup>27</sup>

*Premise 2: The user chooses to do drugs in small, incremental units.*

The Vague Desire picture does not explain the behavior of a recreational drug user who makes the decision that he will smoke a pack a day for the next year. The Vague Desire picture relies essentially on the tolerance principle, and a pack

23 "Leibniz shared the view which has dominated twentieth-century discussions: that the ignorance associated with vagueness is not a matter merely of not knowing where the cut-off lies, but of there being nothing to know" (Sainsbury and Williamson, "Sorites," 741).

24 See Sainsbury and Williamson, "Sorites," 740.

25 See Sainsbury and Williamson, "Sorites," 745.

26 See Sainsbury and Williamson, "Sorites," 752; Sorensen, *Vagueness and Contradiction*; and Williamson, *Vagueness*.

27 "There is no sharp line determining when problem use becomes addiction" (Pickard, "The Puzzle of Addiction," 14). See also Sinnott-Armstrong and Summers, "Defining Addiction," 123.



a day for a year is too large a quantity of nicotine to plausibly apply the principle. In contrast, the Vague Desire picture does explain the recreational user who thinks “just one more” over and over again until he ends up smoking a pack a day for a year. Which kind of drug user seems more typical—the user who one day decides “I’ll smoke a pack a day for the next year” or the user who says, “What’s the harm of just one more”? Surely the latter. Plausibly, many drug users consider whether to do drugs in small units rather than planning out copious usage over the long term.<sup>28</sup> Premise 2 roughly comports with the common characterization of drug users, both by psychologists and by users themselves, as narrowly focused on the next high.<sup>29</sup> Contrast this to a bodybuilder who in his meal planning decides to have fifty chicken breasts in a month and binds himself to that decision like Ulysses at the mast. I would be surprised to find a drug user like the bodybuilding Ulysses at the mast. In fact, the drug user could even be contrasted against those who successfully resist the temptation for drugs. For those who stay clean, it may very well be the case that they plan to be clean for the next week, the next month, the rest of their life, etc.

One clear exception, however, is when individuals plan out their drug usage with the goal of avoiding addiction. For instance, someone might plan to smoke exactly three cigarettes a day, with the belief that this amount will avoid addiction, but nevertheless become addicted because he made a miscalculation. His addiction would not be explained by the Vague Desire picture. On the other hand, the tracing argument for moral responsibility does not apply to him either because he had the belief that his actions would not lead to addiction, so the knowledge requirement has not been fulfilled.<sup>30</sup>

If the above two premises are true—as seems likely the case for many—then the Vague Desire picture is a good explanation of how these people can become addicted despite their concerns about the tragic consequences of addiction. These users think that the small amounts of drugs they use in any one instance will not make a difference to whether or not they become addicted, but they make these decisions again and again until they end up addicted.

28 Heyman, *Addiction*, 133.

29 Heyman, *Addiction*, 131; and Kirst, “Social Capital and Beyond,” 663.

30 The case becomes more complex if one thinks risking is sufficient for the tracing argument to go through. If so, then people who make long-term decisions to use a certain amount of drugs while risking addiction may be outside of the Vague Desire picture and within the ambit of tracing.

## 4. MORAL AND LEGAL IMPLICATIONS OF VAGUE DESIRES

If the Vague Desire picture is right, it presents an interesting question about moral responsibility. The drug user made decisions about using small amounts of drugs, but using small amounts of drugs does not cause addiction; using large amounts of drugs causes addiction, but the drug user never made a decision to use large amounts of drugs.

The more general puzzle is this: suppose some wrongful harm is caused by a series of actions, but none of the individual actions causes any wrongful harm. The actor made a free and knowing decision to commit each action that composes the series but never made a decision about the series as a whole. That the actions formed the series was in a sense accidental. Can we still hold the actor to be responsible for having performed the series of actions? In this section, I will resolve the problem for the special case of addiction and tease out the principles relevant to resolving the general case.

*4.1. Moral Responsibility for Becoming Addicted*

It used to be a crime in California to be addicted to the use of narcotics.<sup>31</sup> Suppose that were still the law. Would it be morally permissible to punish a Vague Desirer for his addiction to narcotics? Retributive justice dictates that punishment is only permissible when applied to those who are culpable for some moral failure. The first hurdle that the law against addiction faces is the act requirement. Our moral rules, on various conceptions, prescribe or forbid acts. Likewise, criminal liability requires some voluntary act.<sup>32</sup> Addiction, insofar as it is a mere status, is not an act. Punishing addiction violates the act requirement.

The obvious revision is to legislate into the penal code an *actus reus* that prohibits the act of entering into that status. What we should punish, an alternate universe California legislature says, is any act that causes one to become addicted to the use of narcotics. Would it be just to punish Vague Desirers under this new statute?

Suppose the candidate act for criminal offense is the Vague Desirer's smoking of any one particular cigarette laced with prohibited narcotics. Such an act fails to violate the prohibition against acts that cause addiction because smoking a single cigarette does not cause addiction for anyone. Applying the tolerance principle, just as no one hair falls to make a man bald, no one cigarette makes a man addicted.

31 *Robinson v. California*, 370 U.S. 660, 660 (1962).

32 Model Penal Code § 2.01 (Am. L. Inst., Proposed Official Draft 1962).

The real question of concern is raised by a different candidate for criminal offense: the conjunction of every act of smoking done by the addicted person. Suppose an addicted person has smoked a thousand narcotic-laced cigarettes thus far. Whereas no individual smoke caused his addiction, the thousand surely did. Unloading a dump truck full of sand creates a heap. Thus, the Vague Desirer, through his own actions, caused his addiction.

Once it is clear that the Vague Desirer committed the crime, the second step is to figure out whether he was morally responsible for it. To establish responsibility, it must also be the case that the individual knew that his actions would lead to the prohibited state of affairs (or knew that there was a substantial likelihood that it would lead to the prohibited state of affairs). Criminal law calls this the *mens rea* requirement.<sup>33</sup> The Vague Desirer knew that smoking a thousand cigarettes would cause him to be addicted to narcotics so, the hypothetical California legislature would claim, he is morally responsible for his becoming addicted and therefore can be punished.

But *ex hypothesi*, the Vague Desirer made decisions only about whether or not to use small units of drugs; there was never a decision-making process regarding whether or not he would smoke a thousand cigarettes. Thus, even though the Vague Desirer knows that his smoking a thousand cigarettes will cause addiction, that knowledge is disconnected from his smoking the thousand cigarettes.<sup>34</sup> This disconnect, I will argue, is why the Vague Desirer does not satisfy the *mens rea* requirement despite his knowledge. Moral responsibility requires not only the knowledge of the consequences of one's actions but that this knowledge be connected to one's acts in the appropriate ways. Consider the following examples.

*Railway<sub>1</sub>*: Bam knows there is a train that runs through Princeton every day at 3:00 PM. The train is hard to see, has no breaks and no warnings, so one must be very careful to avoid the railways around 3:00 PM. Bam knows that the street he is driving on, Nassau Street, will soon intersect with the railway. It is 2:59 PM. Not wanting to be late for his hot date, Bam decides to take a chance and continues to drive down Nassau. Bam crashes into the train, killing a passenger.

*Railway<sub>2</sub>*: Dayvid believes that the railway line and Nassau street are parallel to one another. However, he also believes that the railway runs north–south and that Nassau street runs east–west. Despite the

33 In actuality, *mens rea* is a bit more complicated. See generally Model Penal Code § 2.02 (Am. L. Inst., Proposed Official Draft 1962).

34 Cf. Shabo, “More Trouble with Tracing,” 998 (arguing that the knowledge requirement for tracing is not satisfied when the causal steps are gradual with no single “pivotal moment”).

metaphysical impossibility of all three propositions being true at once, Dayvid holds these three beliefs because he never thought about all three at once—his beliefs are compartmentalized.<sup>35</sup> Dayvid knows there is a train that runs through Princeton every day at 3:00 PM. The train is hard to see, has no breaks and no warnings, so one must be very careful to avoid the railways around 3:00 PM. Dayvid, driving down Nassau Street, sees that it is 2:59 PM. Attending only to his belief that Nassau is parallel to the railway, he concludes that Nassau is free from any train-related danger. Consequently, he continues driving down Nassau. At 3:00 PM, Dayvid collides with the train and kills a passenger.

Despite the fact that both Bam and Dayvid had the belief that Nassau and the railway would intersect, my intuition is that Bam is morally responsible for crashing into the train and Dayvid is not. The mere fact that Dayvid knew that the railway runs north–south and the street runs east–west is irrelevant if that knowledge was separated from the decision-making for his actions. The relevant belief is that Dayvid thought Nassau was parallel to the railway since that was the belief that factored into his decision-making. It is pure accident that Dayvid crashed into the train.

My intuition here comports with the uncontroversial proposition that moral responsibility requires not only the right sorts of mental states but also that the wrongful acts of an individual arise from those mental states in the right ways. Not as uncontroversial is what exactly those right ways are.

Should the right way be analyzed as counterfactual dependence between the wrongful act and the mental state? No. In *Railway*<sub>1</sub>, Bam is clearly morally responsible because he recklessly killed the train passengers. Bam had the belief that continuing to drive down Nassau risks train collision. However, had Bam lacked that belief, he still would have driven down Nassau so that he could make his date on time. Bam's wrongful act lacked counterfactual dependence with respect to his belief, but his belief nevertheless grounds his responsibility.

Consider now the following necessary condition for a wrongful act to have arisen from one's belief in the right way:

*Mental Difference-Maker Condition:* In order for individual *D*'s belief *B* to satisfy the *mens rea* requirement for his wrongful act *A*, the following modal fact must obtain of *B* with respect to *A*. In the closest possible world in which *D* has the desires and self-control of a morally ideal virtuous model as well as belief *B*, *D* abstains from *A*-ing.

35 This example derives from Lewis, "Logic for Equivocators," 436.

Put more colloquially, a belief cannot satisfy the *mens rea* requirement with respect to an offense if the defendant's having morally virtuous desires would not have prevented him from committing the offense. How could we blame and criticize you if you acted just the same as a morally virtuous person would have done in your situation?

What separates Railway<sub>1</sub> from Railway<sub>2</sub> is the violation of this modal proposition. Bam, in Railway<sub>1</sub>, thought that meeting his date on time was more important than the risk he imposed on the train passengers. A virtuous person would not have such skewed priorities. If Bam had virtuous desires, he would have thought it more important that he not risk the lives of others and would have consequently changed his course of driving. Dayvid, on the other hand, may already have had the virtuous desire not to harm others. Because Dayvid was acting on his belief that Nassau Street is parallel to the railway, however, those desires would not have made him abstain from driving down Nassau. Therefore, the mental difference-maker condition does not obtain for Dayvid's beliefs, and the *mens rea* requirement cannot be satisfied by those beliefs.

I use Railway<sub>2</sub> to illustrate compartmentalization because it is a canonical example familiar to philosophers, but our story need not be so fancy. Of course our beliefs sometimes fail to make a difference. An obvious case is that of distraction. As I assume is similar for most of us, when I am doing philosophy, I find it very difficult to pay attention to anything else. A few years ago, in the middle of writing an essay on self-defense, I drew a hot glass cup out of my dishwasher and poured in some ice water. The glass immediately shattered. I had known since childhood that putting ice water in a hot glass would break it. And yet I was so focused on doing philosophy that my belief about glass failed to guide my actions. My breaking the glass was an accident because my belief was never accessed or attended to during my decision-making process. My belief that hot glass is disposed to break was not a difference maker.

A Vague Desirer's belief that smoking a thousand cigarettes would cause addiction is also not a mental difference maker. Since he was always making decisions about smoking the next cigarette, not about smoking many cigarettes over the course of a long period of time, his having the virtuous desires of health and concern for his family would not have stopped him from smoking. Recall that this is the principal conclusion of the Vague Desire picture. The conditions of his decision-making were such that, like Dayvid, the belief that is supposed to be the grounds for his *mens rea* never came into play. Therefore, the Vague Desirer's belief cannot form the basis for *mens rea*, and he is not morally responsible for causing his addiction.

For precision, I state explicitly the theoretical role of the mental difference maker condition. There are at least two kinds of phenomena covered by the

condition: (1) knowledge that is never accessed/attended to and (2) knowledge that has no rational bearing on the decisions the actor makes even if the knowledge is accessed. In *Railway<sub>2</sub>*, Dayvid is excused because his knowledge that the railway runs north–south and Nassau Street runs east–west was never accessed. If Dayvid did access the knowledge, it would have had rational bearing on his decision to drive down Nassau, since the coming of the train obligated Dayvid to avoid it. For the Vague Desirer, accessing his knowledge that prolonged use of drugs causes addiction is neither here nor there because he is only thinking about whether to take the next hit. As I have argued, the fact that long-term drug use causes addiction has no rational bearing on one’s short-term drug-use decisions. Even if one does access that knowledge, it should not influence one’s decision to take the next hit. Thus, the mental difference-maker condition provides a unified explanation of these two distinct categories of excuse. The mental difference-maker condition is itself justified by the notion that we cannot blame individuals who act in ways that the morally virtuous would have in that same situation.

We finally return to the original question of this article: are addicted people morally responsible for their wrongful acts? We began with the *prima facie* argument that drug use by addicted people cannot be punished when addiction acted as a compulsion to use drugs. The response of concern tries to trace back moral responsibility to an earlier point in time—addicted people may be acting under compulsion but only because they culpably placed themselves in that situation.

If my arguments are sound, such a response fails. As discussed earlier, a necessary condition of tracing is that the actor was morally responsible for having put himself or herself in the binding situation. Vague Desirers are not responsible for their having become addicted. Strikingly, this is so even if the addicted people knew that repeated drug use causes addiction and that addiction would lead to wrongful behavior—because such knowledge was disconnected from their decision-making. To the extent that addicted people have a compulsion excuse, no tracing negates it.

The question of whether addicted people are responsible for their having become addicted is an important question in its own right. It deepens our understanding of an important fact of many people’s lives. And though this article has focused on criminal law and the harms that addicted people may cause others, getting a better understanding of responsibility for addiction may also have similar implications for how we should think about the harms that addicted people may bring on themselves and the proper response to such self-harming by individuals and the government. To give one example, for luck egalitarians who believe that the government should provide aid to correct

only for unchosen disadvantages, it is of the utmost importance whether the disadvantage of being addicted is, in the morally relevant sense, chosen by the addicted people.<sup>36</sup>

#### 4.2. *Objections and Replies*

In this section, I respond to the following three objections to the Vague Desire framework and its implications for moral responsibility. First, the mental difference-maker condition should be rejected because it cannot account for negligence as a basis for moral responsibility. Second, the tolerance principle is false; people believe that using small amounts of drugs presents a risk (or certainty) of getting addicted. And third, drug users are responsible for becoming addicted because they chose not to quit.

##### 4.2.1. *Negligence*

The most common counterargument I have received in response to the mental difference-maker condition is that it cannot account for the blameworthiness of negligence.

Here, it is important to distinguish between two kinds of negligence. The first kind of negligence arises when and only when someone inadvertently creates an unreasonable risk of harm. Negligent acts, under this first definition, are a subset of inadvertent acts, and the mental difference-maker condition excuses those who did not advert to the possible risk of harm.<sup>37</sup> This is why Dayvid did not satisfy the mental difference-maker condition when he collided with the train. He knew that the railway runs north–south and Nassau Street runs east–west, but he never attended to this knowledge, so his having virtuous desires would have made no difference to the ultimate outcome of a collision. To the extent that negligent acts are a species of inadvertence—and only to that extent—the mental difference-maker condition entails that negligent acts cannot be the basis for blame.

If the supposed “controversial” implication of the mental difference-maker condition is that it excuses inadvertent behavior, then that is not a controversial implication at all. It is widely agreed that inadvertence excuses.<sup>38</sup> To the extent that the mental difference maker justifies the proposition that inadvertence

36 See Dworkin, *Sovereign Virtue*, 74–78.

37 Moore and Hurd, “Punishing the Awkward, the Stupid, the Weak, and the Selfish,” 149–50.

38 “Many people consider it to be a precept just of ordinary common sense that we cannot be held morally responsible for behavior in which we have engaged only inadvertently” (Frankfurt, “Inadvertence and Moral Responsibility,” 1). See also King, “The Problem with Negligence,” 577.

excuses, it is an advantage of my theory because it shows explanatory power over a widely agreed upon proposition.

Even if one disagrees with the proposition that ordinary intuition is on the side of inadvertence as excuse, one must surely agree that whether negligence suffices for responsibility is heavily disputed. Many explicitly deny that negligent actors are blameworthy.<sup>39</sup> Thus, it would be unreasonable to demand that all ethical theories make room for the blameworthiness of the negligent. Hard cases make bad law.

The second kind of negligence is simply wrongful failure to take a precaution. Negligence under this second definition is not a subset of inadvertence because one can wrongfully fail to take a precaution while fully advertent to the risk that the failure to take the precaution presents. Consider, for example, a ship captain who thinks, "I really should check my boat's seaworthiness before setting sail, but I'm just too lazy and I don't care about my passengers." This alternate kind of negligence is not excused by the mental difference-maker condition, since a captain who has virtuous desires, that of caring for his passengers, would check his ship for seaworthiness based on his belief that doing otherwise presents significant risk of harm to his passengers.

#### 4.2.2. Risk of Addiction

Earlier, I argued on the basis that the tolerance principle is true. If there is some object *a* to which a vague predicate applies and another object *b* that is qualitatively identical to *a* but for a miniscule difference, then the vague predicate will apply also to *b*. I have relied on this principle to argue that smoking an additional cigarette, making only a miniscule difference, cannot cause addiction.

As is famously the case, accepting the tolerance principle leads to a paradox. Namely, if one thinks smoking one additional cigarette does not lead to addiction, then how could smoking many cigarettes, which is merely a combination of smoking one cigarette at a time, lead to addiction?<sup>40</sup> This paradox leads some philosophers to reject the tolerance principle. According to epistemicists, for example, there is some *n*th cigarette that flips the switch between addicted and nonaddicted (though it is epistemically impossible to obtain the value of *n*).<sup>41</sup>

Suppose, then, the tolerance principle is false, and the *n*th cigarette did in fact cause addiction, thereby satisfying the *actus reus* of entering into addiction. Can the drug user be held responsible for smoking the *n*th cigarette, thereby causing his addiction? Not if the drug user is a Vague Desirer. As I earlier

39 E.g., King, "The Problem with Negligence," 577.

40 See Sainsbury and Williamson, "Sorites," 742.

41 Sainsbury and Williamson, "Sorites," 752.



stipulated by definition, a Vague Desirer must believe the tolerance principle. Thus, he did not think of any single cigarette (including the *n*th cigarette) that it would cause addiction. In fact, he was sure of any one cigarette that he smoked that it would not. Someone who wrongfully believes that his action will not cause any untoward consequence lacks the relevant internal reason not to undertake that action and can avail himself of the excuse of ignorance. The drug user believed that smoking the *n*th cigarette would not cause addiction, so he cannot be blamed for his addiction on the basis of his smoking the *n*th cigarette.

Most people believe the tolerance principle—in fact, philosophers sometimes assert it would even be absurd to deny it—but there remains a minority of people who do not believe the principle.<sup>42</sup> Some might believe that addiction begins upon the first use of a drug. Others might be epistemicists, who believe that there is some unknown threshold for becoming addicted and that each use of a drug increases the probability that one has crossed that threshold. Drug users who have such beliefs would not be able to appeal to the Vague Desire excuse.

#### 4.2.3. *Choosing Not to Quit*

I had earlier discussed the possibility of someone who decides that he will smoke one pack of cigarettes a day for the next year and how unlikely such a possibility was. Although drug users typically do not make long-term plans to use large amounts of drugs, they do consider whether or not they should make a long-term plan to *not* use drugs. Drug users give consideration to the question of whether they should quit using drugs altogether. The key distinction between what the user does and does not consider is illuminated by the following hypothetical decisions. “Should I commit myself to smoke a pack a day for the next year?” is not a question that smokers ask themselves, but “Should I commit myself to quitting smoking for the rest of my life?” is a question that smokers often ask themselves. And many answer the latter sort of question in the negative. They know that if they quit using drugs, they would eliminate the possibility of addiction and the harms that follow from addiction, but they decide not to quit. The drug user had a path by which he could avoid addiction that he chose not to take. One objection to this article’s conclusions states that the drug user’s choice not to take the safe path is sufficient grounds to hold him to be responsible for his addiction regardless of whether he is a Vague Desirer.

I would like to here consider two variants of this counterargument. The first variant leverages the putative principle that if there is *any* precaution that the

42 Sainsbury and Williamson, “Sorites,” 740–41.

agent chose not to take, then he or she is morally responsible for the resulting harm. Quitting the drug was a precaution the user did not take, so he is therefore responsible for the resulting harm.

I disagree with this principle. It cannot be that we are morally responsible for the harms that result from *every* precaution that we choose not to take. Consider those instances in which a driver accidentally hits and kills a pedestrian. In all such instances, the driver had earlier made a decision whether or not to go for a drive. If the driver had decided at the earlier point in time to not get in the car, he or she would have successfully avoided the resultant homicide. Does that mean drivers are morally responsible for *every* pedestrian death, without exception? Surely not. It would be an absurd result to conclude that all instances of vehicular homicide are blameworthy cases.

The second variant of the counterargument gets around my response above by leveraging an alternative principle: if there is a precaution that the agent chose not to take *despite being morally obligated to take that precaution*, then he or she is morally responsible for the resulting harm.<sup>43</sup> The second variant specifies that responsibility attaches only if one had a duty to take the precaution one chose not to take. Quitting drug use is a precaution the drug user did not take despite the moral obligation to do so, so he is responsible for the resulting harm. This variant avoids my earlier response since one presumably has no obligation to forego driving completely, especially when the cost of foregoing driving is high.

On consequentialist grounds, I disagree with the variant's claim that users have a moral obligation to quit drugs as a precaution against addiction. Taking a single hit of a drug would violate the supposed requirement to quit. However, following the tolerance principle, taking a single hit does not cause addiction. Taking a single hit would be a harmless violation of the requirement to quit, demonstrating that one can avoid addiction without following the "requirement." Since violating the rule and not violating the rule have the same consequences when it comes to the harms of addiction, consequentialism entails that there is no moral requirement to quit using drugs as a precaution against addiction. (According to consequentialism, moral properties of actions supervene on the consequences of those actions. Thus, it cannot be that one action is permitted and another action prohibited if the two actions have the same consequences. The relevant consequences, on the counterargument's own terms, is that of harmful addiction.)

43 See generally Moore and Hurd, "Punishing the Awkward, the Stupid, the Weak, and the Selfish," 180–81 (discussing "culpable failures to take precautions" more generally).

Even if the tolerance principle is false, it is hard to see how responsibility could attach so long as the drug user believes the tolerance principle as Vague Desirers do. That is, if the tolerance principle is true, smoking one additional cigarette is a harmless act with respect to the relevant harm, that of addiction. Thus, the Vague Desirer who believes the tolerance principle believes that he or she is engaging in a harmless act. That someone believes he is doing a harmless act is precisely the circumstance under which he ought to be excused from responsibility.

#### 4.3. Moral Responsibility for Causing Harm

The theoretical framework built up in this paper can be generalized to all vague crimes and moral prohibitions. Any crime with a vague *actus reus* can be committed without satisfying the *mens rea* so long as decision-making is done at a gradual level. Take, for instance, homicide, the *actus reus* of which is causing another's death.<sup>44</sup> Causation is a vague polyadic predicate. Given the vagueness of the homicide statute, just as with addiction, one can violate the *actus reus* without ever having the requisite *mens rea*. Suppose Dr. White poisons Nacho Varga one drop at a time. Varga eventually dies. What is the most poison Dr. White can administer to Varga without causing his death? What is the least poison that Dr. White can administer to Varga while still causing his death? The vagueness of causation means that there is no answer to either question.<sup>45</sup> No single drop makes Dr. White's poisoning the cause of Varga's death. This is an instance of *soritical wrongdoing*, wrongdoing in which a series of actions causes some wrongful harm but none of the individual actions caused the wrongful harm.

My analysis thus far illuminates that whether we can hold wrongdoers to be responsible for soritical wrongdoing depends crucially on whether the wrongdoer made a free and knowing decision about the series of actions *qua* series. The key when it comes to soritical wrongdoing is not necessarily the "free and knowing" condition but rather the "decision" condition. Because it is the series that caused the harm rather than any of the individual actions, when a soritical wrongdoer has never made a decision to commit the series of acts, he or she cannot be held to be morally responsible. To use the above example

44 Model Penal Code § 210.1 (Am. L. Inst., Proposed Official Draft 1962).

45 If it is easier to conceptualize, here is a soritical way to think about this. Suppose each drop of poison reduces Varga's lifespan by one second. I take it as obvious that to reduce another's lifespan by one second is not to cause that person's death. It would be absurd if that were sufficient to satisfy the *actus reus* of homicide. Then, applying the tolerance principle, reducing Varga's lifespan by two seconds is not causing his death. Same for three seconds, four seconds, five, etc.

of Varga and Dr. White, suppose further that Dr. White never desired to kill Varga and only ever made decisions about whether to give Varga one more drop of poison. For all of the reasons just explicated about addiction, Dr. White will not be morally responsible for Varga's death. Soritical wrongdoing opens the possibility of someone doing something wrong without ever having decided to do the thing that was wrong.

Contrast this to another, more common case of soritical wrongdoing: environmental pollution. A Manufacturer, as a byproduct of manufacturing a Widget, releases a small amount of chemical X into the river that feeds into the local drinking supply. Chemical X in trace amounts is harmless but when built up in the body is lethal. One resident in Manufacturer's town was found to have died from a lethal dose of chemical X—he had been drinking the water in this town for several years and the build-up of the chemical was too much for his body to take. Here, in contrast to the case of Vague Desirers who make decisions only about using small amounts of drugs, the Manufacturer, as a business, is likely to have made a long-term decision to produce Widgets. Thus, if they knew that long-term production of Widgets would kill local residents, then they are morally responsible for the resident's death. Where there has been soritical wrongdoing, responsibility turns on whether an individual had chosen the entire series of actions rather than choosing only piece by piece. Thus, the manufacturer is responsible while the addicted person is not.

## 5. CONCLUSION

I first demonstrated how the problem of Vague Desire would solve the puzzle of addiction and the plausibility with which the Vague Desire picture explains real-world phenomena. Drug users considering the consequences of their next high are right to think, "What's the harm of just one more?" Due to the vagueness of addiction and the tolerance principle, taking another hit of a drug is rationally consistent with their desire not to become addicted.

I argued that Vague Desirers are not morally responsible for their becoming addicted. Although they knew that continued drug use would lead to their addiction, for a belief to satisfy the *mens rea* requirement, it must be a mental difference-maker. Since Vague Desirers never made the decision to do large amounts of drugs, their knowledge that large amounts of drug use would lead to addiction stayed inert.

An analysis of moral responsibility for soritical wrongdoing must principally consider whether the wrongdoer made a free and knowing decision about the series of actions *qua* series. We can attach moral blame only when this condition is satisfied.

For this reason, we cannot trace back moral responsibility for addicted people. Even if Deanna knew that heavy drug use would lead to leaving her child in the car several years in the future, it is highly unlikely that she ever decided to engage in prolonged drug use. Since Deanna is not morally responsible for having become addicted, we cannot trace back responsibility to the start of her drug use to negate the compulsion excuse that addiction provides.<sup>46</sup>

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