

Intoxication and Culpability

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Abstract I tackle the difficult problem of specifying how voluntary intoxication affects criminal culpability generally and recklessness in particular. I contend that the problem need not be conceptualized as an instance of *actio libera in causa*, namely the situation in which persons do something at t_1 to culpably create the conditions of their own defense at t_2 . Instead, I argue that we need only consider intoxicated defendants at t_2 in order to justify their punishment. In the course of defending my view, I challenge conventional wisdom about both the nature of recklessness and the effects of intoxicants. I conclude by discussing a possible ground on which involuntary intoxication might be treated differently.

Keywords Intoxication · Recklessness · Culpability · *Actio libera in causa* · Drugs · Alcohol

The Conceptual Framework

Anglo-American jurisdictions differ widely about how intoxication affects criminal liability generally and culpability in particular.¹ In fact, it is hard to think of many substantive

¹ I speak of intoxicants generally rather than of alcohol in particular. Any substance that is *psychoactive*—that is, any substance that affects thought, perception, mood or behavior through its impact on the central nervous system—should be included in a discussion of the impact of intoxicants on culpability. Although the law has struggled most with alcohol, any principled resolution of this issue must be capable of being extended to other kinds of intoxicants—both licit and illicit.

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