ADDICTION AND RESPONSIBILITY: AN INTRODUCTION *

(Accepted April 9, 1999)

The law appears to be inconsistent in its treatment of addicts. It sometimes treats them as if they are responsible for what they do, and sometimes as if they are not responsible for what they do. For example, the law prohibits certain substances in the belief that (among other things) they deprive the consumer of responsibility for his actions. The United States Code contains a definition of “addict” that reflects this belief:

The term ‘addict’ [refers, among others, to] any individual …who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.¹

One who has lost the “power” of self-control is surely not responsible for what he does in the absence of that power, and protecting people from such a state would certainly seem desirable. Hence the restrictions on certain drugs.

On the other hand, when addicts are charged with possession of prohibited substances to which they are addicted, the courts have generally refused to excuse their behavior as nonresponsible.² Furthermore, the addicted do not generally receive the benefits that the handicapped receive, though an incapacity to control your behavior is generally admitted to be a disabling condition.

¹ 21 U.S.C. §802(1).
² For an array of conflicting views on this point, see United States v. Moore, 486 F.2d 1139 (D.C. Cir. 1973).

* This issue is the first of two devoted to the problem of addiction and legal responsibility. The essays contained in these two issues were delivered at the Second North Carolina Workshop in Law and Philosophy, held on September 25th through 27th, 1998, at the National Humanities Center near Durham, North Carolina, U.S.A.

and though the mentally ill, for example, will receive benefits as handicapped.  

A philosophical investigation of these issues, if successful, may have one of two different outcomes. It may show that, contrary to appearance, the law’s response is in fact consistent. Or it may show that the law really is inconsistent, and may serve as a prelude to reform. The papers in this collection, originally delivered at the Second North Carolina Workshop in Law and Philosophy, are contributions to this investigation. They are attempts to determine precisely how addiction, as commonly conceived, does affect moral responsibility and should affect legal responsibility.

Perhaps a word is in order about the relationship of essays like these to the empirical biomedical work that is going on in connection with substance dependence. The law responds to our ordinary conception of what addiction is. We are far from understanding the underlying mechanism of addiction, and the chances are that as we understand more the popular conception of addiction will change. As that happens, the law’s response is also likely to change. But the incomplete nature of our understanding of the biological mechanism does not prevent us from trying to determine what the response of the law ought to be if addiction turns out to be this or that sort of thing. Biomedical research can tell us something about what happens to the addict, and in the future it will tell us much more. But the facts it discovers cannot tell us how the law ought to respond. Science cannot tell us, for example, what it means to say that an addict cannot help himself, and it cannot tell us how the law ought to respond if in fact the addict cannot help himself. These are

---

3 Must the seller of legal addictive substances warn of the addictive properties of his product? If the addict is not responsible for his addictive behavior, then addiction can be a trap for the uninformed; that would seem to require such a warning. Although the question of a duty to warn has recently been raised in the context of cigarette litigation, there is no definitive answer yet from the courts and the legislatures. See Alan Schwartz, “Views of Addiction and the Duty to Warn,” Virginia Law Review 75 (1989). The question of the responsibility of the pregnant addict has, as far as I know, yet to be raised.

4 September 25–27, 1998. The Carolina Workshops in Law and Philosophy are supported by the Department of Philosophy and the Law School of the University of North Carolina at Chapel Hill, by Kluwer Academic Publishers, and by the National Humanities Institute.