

Blaming the addicted brain

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ANNEX I: IMPACT & VALORISATION

Especially for such a societally relevant matter as addiction, it is relevant to reflect upon the (potential) impact that this thesis may have on a social or economic level. This annex briefly outlines the ways in which this research contributes to such processes.

Aside from theory-building on the role and influence of addiction on criminal law, and the added benefits of neuroscience, there is a large, practical relevance. This already became apparent in the first chapter, in which I discussed the Tolbert case. There, these differences in perspectives on addiction – as portrayed by the experts – had clear practical implications for the defendant. Thus, it is clear that this study is relevant for the addicted defendant. It nuances the approach towards addiction in various legal questions (such as accountability and sentencing) and advocated for a more individualised approach. If these findings make their way into legal practice, defendants can benefit from this, for instance in cases of complicated comorbidities in which *culpa in causa* may not immediately apply. Even though this is likely relevant only for a subgroup of severely addicted or severely comorbid defendants, it is an important development in valuing the specific characteristics of the defendant and the addiction. Moreover, defendants can benefit from the recommendation to be hesitant with regard to special conditions, for instance in granting parole or in conditional sentences. Furthermore, individual defendants may benefit in general from a more nuanced perspective towards addiction in criminal law, in which the personal capacities of the individual are central.

The other side of the same coin concerns legal professionals (judges, prosecutors and attorneys), who are dealing with addicted defendants on a daily basis and are confronted with the various behavioural consequences of addiction. They need to be able to determine how to incorporate the defendant's addiction into their assessment. To them, this thesis is not so much a theoretical exercise but rather a valuable tool to navigate the various legal questions. The research can guide them towards appropriate uses of neuroscientific tools and information, and provide background into addiction-related problems that they often encounter. Additionally, for experts reporting on addiction, this thesis provides a clear overview of relevant legal questions which they can elaborate on in their reports. Moreover, it contains insights into the effects experts have in their choice of words and type of explanation. To both legal and behavioural practitioners, this thesis bridges the gap between what the law wants to know about the defendant's mind and behaviour, and how the social sciences and neurosciences can inform the law. Similarly, neuroscientists asked to address legal cases from their expertise, or report on legal matters, are better equipped to do so. The meaning of each legal question, and the answers that neuroscientific tools can provide

(or maybe even more importantly, which answers they cannot provide) can guide them in such assessments.

Societal relevancy can be found in the added benefit of neuroscience on a collective level. Hopefully, the insights of this thesis can help shape the general perception towards addiction in criminal law, in which there is a nuanced standing towards the assessment of blameworthiness as well as the sanctioning. Addiction should not immediately be perceived as a negative or aggravating condition. Moreover, I strongly advocate a capacitarian approach in criminal law, not only towards addiction but also for other (mental) disorders. This will lead to tailored conclusions. As a consequence, it is highly likely that sentences are better suited to the risks, needs and responsivity of the defendant which maximises the chances of the intervention being effective. Effective interventions, in turn, lead to less recidivism, which naturally is a desirable outcome for society as a whole.

What is more, several times throughout this thesis I hypothesised whether the societal perspective of addiction may influence legal perspectives, for instance, as was suggested due to some implicit prior fault-like arguments. If this is the case, and an underlying moral model still remains prominently present, this may improve based on new perspectives towards addiction as provided in this thesis. Addiction does not need to become entirely exculpatory, and choice perspectives can still remain, without having an underlying moral disapproval.

As mentioned, there are a few target groups for whom this research is relevant. Mentioned already were legal professionals, i.e. attorneys, judges and prosecutors, as well as behavioural experts who write behavioural reports for the courts. They may be informed about the implications of neuroscience in the law in the case of addicted defendants. This thesis may help put more nuance to their judgments and general approach to addiction. Other target groups that received less attention are policy- and law- makers as well as educational services. To start with the first, this thesis has concluded that, for instance, the current sanctioning of addicted offenders may be suboptimal in terms of efficiency as well as fairness. Suggestions for the ISD measure as well as the potential for drug courts were discussed. This is interesting for those in charge of creating or amending policies.

Secondly, knowledge about neurolaw and awareness about its (potential) implications has been extensively discussed throughout this thesis. Thus, the research can be used for educational purposes as well. Especially for professional training, e.g. post-academic trainings including training to become an attorney or a judge, this would be relevant. Based on the collected literature and the findings, a training programme could be established on the topic of neurolaw and addiction. An interesting party is thus the creators of such programmes. Additionally, university programmes may wish to create more interdisciplinary courses, minors, or degrees. A good example is the interfaculty minor

‘Human and Legal Decision-Making’ at this university.⁹³³ The topic of addiction in the context of criminal liability offers an excellent theme to bring several faculties together in a joint project.

The practical recommendations for legal professionals can be conveyed in two ways. First, a comprehensive handbook based on the current research may be provided in which the ways to accommodate addiction in all legal questions is outlined. Moreover, the suggested improvements, such as reducing the amount and complexity of special conditions, or the benefits of the capacity approach, can be addressed there. Second, visits to the post-academic research institutions can be used to provide guest lectures or training sessions on the topic. This may eventually result in the creation of specific courses, although a one-off session would already be interesting. Institutes such as SSR (*Studiecentrum Rechtspleging*) provide post-academic training and would be an interesting partner. During the research itself, I already discussed the possibility to come back when the results were out and they expressed their interest in something like that. Similarly, when approaching the Dutch public prosecution office to request their participation in the vignette study, many of the team leaders that I spoke with expressed their interest in hearing about the results. Thus, this seems to be a viable option. Lastly, it may be relevant to join symposia or conferences for practitioners to address the findings and thus reach a large group. These plans will be developed in the course of the next year, after defending this thesis.

It would also be very valuable to bridge disciplines in an expert meeting, where small groups of professionals from various background come together to discuss the interdisciplinary topics that were addressed in this thesis. A framework for *culpa in causa*, how to address capacities in a way that is legally appropriate, whether or not sanctioning is adequately tailored to the needs of addicted defendants: such discussions require different backgrounds and expertise. For mutual understanding, but also for more effective changes (potentially) in the law, it would be useful to involve such groups.

933 An explanation about the contents can be found on this website: https://www.maastrichtuniversity.nl/sites/default/files/minor_human_and_legal_decision-making.pdf, last accessed on 05 May 2021.