

**Foley's folly** – Twenty-six years ago, in October 1980, then Maryland Congressman Robert Bauman, staunch Catholic crusader against moral decay and homosexuality, a person who received a perfect 100 on the Christian Voice “Morality Rating,” was busted for soliciting sex from a 16-year-old prostitute. The resulting stress allegedly caused him to become an alcoholic.

Now we see another congressman — Mark Foley of Florida — desperately scrambling to avoid responsibility for his misbehavior, behind the disease concept of alcoholism. Foley was busted in October for writing dirty emails to a 16-year-old page. A few days later, he entered treatment for the “disease” called alcoholism.

Alcoholism is only metaphorically a disease. It is not a literal disease. Diseases have signs (objective, physical characteristics revealed through scientific tests) and symptoms (subjective complaints).

All literal diseases can be asymptomatic: they can be found by their signs in your body, even though you manifest no symptoms. Metaphorical diseases such as alcoholism depend on symptoms alone. There are no signs of alcoholism. Just as there is no such thing as asymptomatic depression, so there is no such thing as asymptomatic alcoholism, demonstrating that these conditions are not literal diseases.

Diseases are cellular abnormalities, pathologies, things that people have. Behaviors are modes of conduct, deportments, things that people do. Behaviors are always voluntary; there's no such thing as an involuntary behavior. Diseases are always involuntary, there's no such thing as a voluntary disease – one cannot will the onset of a disease, just as one cannot will a disease away.

While behaviors may increase the probability of acquiring diseases, behaviors and diseases are as different as night and day. People obscure the difference between behavior and disease in order to escape legal and moral culpability for socially unacceptable behaviors. They also obscure the difference to get paid for treating metaphorical diseases, and researching the causes of metaphorical diseases.

How is the disease concept of alcoholism used to avoid responsibility for one's own chosen behavior? The “my-alcoholism-made-me-do-it excuse” goes like this: If we are to believe that alcoholism is a disease, then we must consider what the signs and symptoms of alcoholism are. In this case, criminal, immoral, or unethical acts become the signs and symptoms of alcoholism disease.

In the criminal law, the disease model argument was used in a famous Supreme Court case entitled *Powell v. Texas* (1968; cf. <http://tinyurl.com/ycv32f>.) The argument failed in that case because Leroy Powell was not considered an alcoholic by tie-breaker Justice Byron White. White did not believe Powell's alcoholism was severe enough to render his behavior involuntary. Four of the justices bought the disease model argument then, and four did not. Byron White's opinion was crucial.

Justice White's opinion was also crucial in a later and related case, that of *Traynor v. Turnage* (1988). In that case, involving a Maryland plaintiff blaming alcoholism for willful misconduct, White, writing for the majority, stated that the “District of Columbia Circuit accurately characterized . . . ‘a substantial body of medical literature that even contests the proposition that alcoholism is a disease, much less that it is a disease for which the victim bears no responsibility.’ 253 U.S.

App. D.C., at 132-133, 792 F.2d, at 200–201. Indeed, even among many who consider alcoholism a ‘disease’ to which its victims are genetically predisposed, the consumption of alcohol is not regarded as wholly involuntary.”

Much of the present frequent recourse to the disease defense stems from a famous Supreme Court case in 1962: *Robinson v. California*. In that case, the Supreme Court called heroin addiction a disease, and overturned a California misdemeanor conviction as cruel and unusual punishment. Being a heroin addict, wrote the Court, was a disease, and thus involuntary. Punishing someone for an involuntary disease was cruel and unusual. *Robinson* had nothing to do with buying, selling or using addiction as an excuse to commit illegal acts. Simply the status of being an addict was considered criminal in California. Later on, people began to use *Robinson* to say that acts stemming from addiction status were equally involuntary. Status and acts were considered by many to be inseparable.

Since the disease of alcoholism is asserted as involuntary — quite consistently, since all diseases are involuntary — then the products or symptoms of the disease of alcoholism (in Congressman Foley's case, allegedly writing lascivious emails to 16-year-old pages) must also be involuntary. The products of alcoholism are viewed as inseparable from its disease status, just as the signs and symptoms of a disease are considered inseparable from a disease itself. Since the disease of alcoholism is involuntary, writing dirty emails is not a choice.

We must expect Mr. Foley's lawyers to try to convince the courts and the public that he didn't *choose* to write those dirty emails; his alcoholism made him do it. They might also argue that suppressing his homosexuality caused him to develop the disease of alcoholism, which in turn caused him to write dirty emails, which in turn reinforced his homosexuality, which he had to suppress, and so on. Who knows where and if pedophilia may fit in? That issue rests on whether a person 16 years old is considered a minor.

Even if Foley does not use a disease defense against criminal responsibility, there is much to be gained when it comes to moral absolution, particularly in the court of public opinion. In order to be guilty of a criminal act, two ingredients are necessary — *actus reus*, meaning the criminal act, and *mens rea*, meaning guilty mind or intent. If alcoholism, or what philosopher Herbert Fingarette prefers to call “heavy drinking,” is a disease characterized by loss of control or involuntariness — the legal corollary of “loss of control” — then one thing follows another: “Presto change-o,” there's no *mens rea*. What Congressman Foley could argue is that he had no *mens rea*; thus, he should not be held accountable for the consequences of his behavior.

It doesn't take a legal scholar or a psychologist to recognize the bogus quality of such patent nonsense. Pedophilia or moral turpitude? Paging Officer Krupke: “This boy don't need a doctor . . .” – *Jeffrey A. Schaler*

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