

Brain Diseases in the Courtroom: Addiction and Insanity at the Intersection of Medicine and Criminal Justice

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Abstract

Among the many frontlines of the opioid epidemic, the courtroom is both underrepresented in popular media and outsize in its importance. People struggling with opioid addiction continue to interact with the criminal justice system at disproportionate rates, complicating efforts to render addiction a disease, not a crime. In this essay, I seek to illuminate the tensions between medicine and criminal justice with respect to addiction and insanity, another category of non-normative human behavior with a rich history of medicalization. I analyze two trials as case studies: the recent trial of *Commonwealth vs. Eldred*, in which Julie Eldred unsuccessfully argued that her detainment for violating her probation's drug-free condition was an unconstitutional punishment for a symptom of her chronic brain disease of addiction, and the 1881 trial of Charles Guiteau, in which Guiteau's defense unsuccessfully argued that the brain disease of insanity exonerated him from legal responsibility for the murder of President James Garfield. Both trials involved remarkably parallel conflicts. On one side, self-consciously progressive voices advanced paradoxically deterministic models of human behavior. On the other, socially conservative interests argued for voluntaristic models that paradoxically justified severe restrictions on human autonomy. The similarities between the two trials may reflect certain intrinsic aspects of the tension between medicine and criminal justice. I conclude with an appraisal of important points of divergence between the two trials, which help reveal the unique status of addiction as a partially and complicatedly medicalized condition.

Biography

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Glossary of Abbreviations

AEI.....	American Enterprise Institute
ALI.....	American Law Institute
MMS.....	Massachusetts Medical Society
NIDA.....	National Institute on Drug Abuse
SUD.....	substance use disorder

Introduction

In 2016, a year in which more than 63,000 Americans died of drug overdoses,¹ a young woman named Julie Eldred relapsed on fentanyl and was detained for violating her probation's drug-free condition. She sued the state of Massachusetts, claiming she had been punished unconstitutionally for a symptom of her chronic brain disease: addiction.² More than a century earlier, a different brain disease starred in the trial of Charles Guiteau, a delusional man whose lawyers argued that his disease of insanity exonerated him of legal responsibility for the murder of President James Garfield. Both trials captured national attention, with potential ramifications much more far-reaching than the fates of Eldred and Guiteau themselves. Both trials showcased conflicting testimony regarding cutting-edge biomedical science from some of the country's foremost authorities. As a result, both trials serve as remarkably revealing windows onto the contested, ever-evolving relationship between medicine and criminal justice in the United States.

The tension between medicine and criminal justice in the United States has become remarkably visible and consequential, as the ongoing epidemic of opioid overdose deaths continues to haunt public consciousness. The opioid epidemic seems to have dramatically shifted the tenor of public discourse toward understanding drug use and addiction as medical issues, not criminal ones. Where President Nixon launched the "War on Drugs" and President Reagan supported severe mandatory minimum sentencing for possession of crack cocaine,³ President

¹ National Institute on Drug Abuse, "Overdose Death Rates," August 9, 2018, <https://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>.

² I use the term "addiction" as opposed to "substance use disorder" throughout this essay for multiple reasons. "Substance use disorder" is a relatively recent term that appears in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) and is explicitly aligned with a biomedical model. The term "addiction," on the other hand, has a much longer history and does not belong to any particular discipline.

³ "Timeline: America's War on Drugs," NPR.org, accessed March 14, 2019, <https://www.npr.org/templates/story/story.php?storyId=9252490>.

Trump declared the opioid crisis a “national public health emergency.”⁴ Public figures seeking to promote this shift tend to mobilize rhetoric in line with Surgeon General Jerome Adams’s statement in the introduction to *The Surgeon General’s Spotlight on Opioids* in 2018: “The first step is understanding that opioid use disorder is a chronic but treatable brain disease, and not a moral failing or character flaw.”⁵ According to this logic, because addiction is a brain disease, the most appropriate response to a social crisis of addiction is treatment (the central method of medicine) and not punishment (the central method of criminal justice).

Nevertheless, the current transformation of addiction from a criminal issue into a public health issue appears partial at best. As the federally-funded National Institute on Drug Abuse (NIDA) acknowledges, the opioid crisis continues to devastate the population circulating through the criminal justice system, where the availability of medical treatment for addiction is dwarfed by the number of individuals who need it.⁶ Many of these individuals, like Julie Eldred, enter the criminal justice system for charges related to their drug use, a longstanding pattern which challenges the assertion that addiction is now a public health problem and not a criminal one. The increasing popularity of drug-induced homicide laws—which allow murder charges for individuals who sell or share drugs that end up involved in a fatal overdose—suggests that criminal justice is becoming even more central to the national response to the opioid epidemic.

Against this complicated backdrop, court cases like the trial of Julie Eldred allow for more careful examinations of the contested boundary between the jurisdictions of medicine and criminal justice. How do efforts to shift public discourse away from criminalizing addiction affect

⁴ “Remarks by President Trump on Combatting Drug Demand and the Opioid Crisis,” The White House, accessed March 14, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-combatting-drug-demand-opioid-crisis/>.

⁵ U.S. Department of Health and Human Services (HHS), Office of the Surgeon General, *Facing Addiction in America: The Surgeon General’s Spotlight on Opioids* (Washington, DC: HHS, 2018).

⁶ National Institute on Drug Abuse, “How Is Opioid Use Disorder Treated in the Criminal Justice System?,” accessed March 14, 2019, <https://www.drugabuse.gov/publications/medications-to-treat-opioid-addiction/how-opioid-use-disorder-treated-in-criminal-justice-system>.

what happens on the ground to real individuals? Where is the rhetoric of addiction as a chronic brain disease achieving its desired effect, and where may it simply be reformulating old conflicts between medicine and criminal justice in new terms? Trial proceedings, which force precise articulations of arguments and result in concrete legal outcomes, are well suited to exploring these questions, which in turn are vitally important for mounting effective responses to the opioid epidemic.

In the effort to understand the Eldred trial and its broader meanings, the trial of Charles Guiteau proves surprisingly relevant, despite involving unrelated criminal charges and taking place more than a century earlier. As I elaborate below, the legal teams representing both Guiteau and Eldred sought to mobilize cutting-edge models of addiction and of insanity as brain diseases to exonerate their clients of criminal responsibility. In so doing, they brought ongoing controversies within biomedical science squarely into the courtroom. In both trials, the opposing legal teams, representing the state, responded by appealing to contemporary critiques of those very same novel models by equally credentialed scientists and physicians. As a result, the judges in both cases were faced with the unenviable task of adjudicating scientific debates and philosophical questions about agency and responsibility in addition to deciding legal questions. Both trials thus provide remarkably rich elaborations of multidimensional conflicts, not merely between medicine and criminal justice as monolithic, abstract institutions but between factions of thought leaders within medicine divided by their relative rejection or approval of the theory and methods of criminal justice. These latter conflicts highlight the kinds of political sensibilities and rhetorical aims that so often underlie purportedly value-neutral, apolitical appeals to science in public discourse. As it turns out, these conflicts ran along remarkably similar lines in both trials, a parallel which helps highlight what may be enduring aspects of the perpetual tension between medicine and criminal justice.

Theoretical Framework: Medicalization

Before I outline my arguments in detail, it will be useful to introduce the idea of medicalization, a social scientific concept that unites addiction and insanity within a single theoretical framework. Addiction and insanity—or, in contemporary biomedical terms, substance use disorders and psychotic disorders—obviously diverge in many significant ways. Yet both conditions seriously challenge a view of humans as rational, self-interested agents. The hallmark of addiction is the compulsive use of a substance despite negative consequences to oneself and others, while insanity often presents with paranoia, delusions, hallucinations, and tangential speech. Both sets of behaviors are non-normative in most social environments in the United States and tend to mark those who exhibit them as “other.” Depending on the observer, these behaviors often evoke reactions on the spectrum from sympathy to scorn. Moreover, both addiction and insanity can involve acts, including theft and violence, that directly threaten the social order. Consequently, individuals with both conditions frequently come under the jurisdiction of criminal justice as well as of medicine. In ideal terms, medicine seeks to understand and treat human pathology, whereas criminal justice is fundamentally concerned with assessing responsibility and distributing punishment to preserve the social order. In reality, of course, the boundary between these two domains is quite blurred. This blurring is especially apparent in cases like those of Eldred and Guiteau, where physicians mobilized biomedical concepts to make arguments about legal responsibility and judges engaged in what amounts to clinical decision-making.

The issues at stake in these two cases are best understood in light of the phenomenon of medicalization, which sociologist Peter Conrad defines as “a process by which nonmedical problems become defined and treated as medical problems, usually in terms of illnesses or

disorders.⁷” As Conrad notes, much of the foundational literature on medicalization, produced in the 1970s, centers on critiques of this process as it has brought child abuse,⁸ hyperactivity in children,⁹ madness,¹⁰ and alcohol use¹¹ under the domain of medicine—with variable effects. While a thorough review of the extensive literature on medicalization that now exists across the fields of sociology, anthropology, and history is far beyond the scope of this paper, the basic framework that Conrad and his interlocutors provide for thinking about the medicalization of “deviance” will prove useful here. Following sociologist Talcott Parsons,¹² among others, Conrad argues that a primary function of medicalization is to reformulate certain threats to social order as objects of medical, not criminal, control. Crucially, the agents of medicalization tend to see themselves primarily as advancing compassionate humanism through science. Yet the “sick” role, while avoiding the moralistic and punitive implications of criminality, still clearly demarcates a form of deviance (from health), thereby justifying a form of social control (through medicine’s efforts to heal). In the essay that follows, I analyze the trials of Julie Eldred and Charles Guiteau as case studies to examine how medicalization continues to confront the criminal justice system in the United States.

Argument Summary

I begin by narrating the basic facts of each trial, beginning with the Eldred trial. Using a combination of court documents and journalistic accounts, I describe Julie Eldred’s trajectory from

⁷ Peter Conrad, “Medicalization and Social Control,” *Annual Review of Sociology* 18, no. 1 (1992): 209–32, <https://doi.org/10.1146/annurev.so.18.080192.001233>.

⁸ Stephen J. Pfohl, “The ‘Discovery’ of Child Abuse,” *Social Problems* 24, no. 3 (1977): 310–23, <https://doi.org/10.2307/800083>.

⁹ Peter Conrad, “The Discovery of Hyperkinesis: Notes on the Medicalization of Deviant Behavior,” *Social Problems* 23, no. 1 (1975): 12–21, <https://doi.org/10.2307/799624>.

¹⁰ Andrew T. Scull, “From Madness to Mental Illness: Medical Men as Moral Entrepreneurs,” *European Journal of Sociology / Archives Européennes de Sociologie* 16, no. 2 (November 1975): 218–61, <https://doi.org/10.1017/S0003975600004938>.

¹¹ Joseph W. Schneider, “Deviant Drinking as Disease: Alcoholism as a Social Accomplishment,” *Social Problems* 25, no. 4 (1978): 361–72, <https://doi.org/10.2307/800489>.

¹² Talcott Parsons, *The Social System* (Routledge & Kegan Paul, 1951).

an apparently idyllic childhood to an adult life dominated by opioid addiction. I summarize her involvement with the criminal justice system, including her charges, the terms of her “drug-free” probation, the course of her addiction treatment, and the relapse that led to her detention, which sparked her lawsuit against the state of Massachusetts. I outline the core arguments presented by Eldred’s legal team, identify some of the case’s central debates regarding the status of addiction as a brain disease, and describe the key legal briefs from opposing experts on addiction that form the basis of my analysis of the trial. I then introduce the Guiteau trial, relying primarily on historian Charles Rosenberg’s book *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age*. I describe Guiteau’s early life and events leading up to his shooting of President James Garfield, with special attention to clues that suggest the existence of what might today be diagnosed as a delusional psychiatric disorder. I briefly summarize the key ways in which the trial implicated contemporary debates about the nature and manifestations of the disease of insanity.

I then turn to an analysis of the arguments presented in each trial, focusing on how the models of insanity and addiction as brain diseases were characterized, mobilized, and challenged on both sides. Comparing the two trials, I show how both involved remarkably parallel conflicts between, on one side, self-consciously progressive voices advancing paradoxically deterministic models of human behavior and, on the other, socially conservative interests arguing for voluntaristic models that paradoxically justify severe restrictions on human autonomy.¹³

¹³ Of course, these terms—progressive, conservative, deterministic, and voluntaristic—often carry different meanings in different contexts. In this essay, I use these terms in a general sense to refer to broad political and philosophical orientations. By *progressive*, I refer to a political ideology that upholds social reform as the pathway to an increasingly equitable, free, and morally enlightened society. Within progressive ideology, behavior that harms the social order is typically seen less as the fault of an individual than as a sign of a society in need of reform. By *conservative*, I refer to a political ideology that is suspicious of social reform, instead prioritizing preservation of the status quo and traditional values. Within conservative ideology, especially in the United States, individuals are held primarily responsible for behavior that harms the social order. By *deterministic*, I simply refer to theories of human behavior that minimize agency and the concept of free will, whereas by *voluntaristic* I refer to the converse.

First, I analyze the arguments of the defense in each trial to show how progressivist political ideology dovetailed with deterministic models of human behavior to minimize Eldred's and Guiteau's individual responsibility and advocate for removing addiction and insanity from the domain of criminal justice. I demonstrate how both defense teams represented recent biomedical models of addiction and insanity as not only scientific but also moral advances. I contextualize these arguments within the broader history of the medicalization of each condition: the work of the European-inspired physicians of the late 19th century who sought to understand insanity as an organic, neurological problem as well as the work of the neuroscientists who promulgated the model of addiction as a chronic, relapsing brain disease a century later. I then show how relying on these medicalized models ended up leading the defense teams to make remarkably deterministic claims about their clients' behavior, arguments whose implications in part contradicted their humanitarian aims. With respect to the Guiteau trial, I follow Rosenberg to explain how the ideas expounded by the defense's expert witnesses—namely those of insanity as an organic condition deriving from identifiable, hereditary brain defects—later contributed to the eugenics movement. With respect to the Eldred trial, I summarize contemporary critiques of the brain disease model that highlight the lack of agency it seems to offer individuals with addiction.

Next, I analyze the arguments of the state's legal team in each trial to identify a fundamentally conservative political ideology underlying their mobilizing of voluntaristic explanations of human behavior to push back against the defense's arguments. I rely on Rosenberg to demonstrate how the state's expert witnesses, though they largely agreed that insanity was a disease of the brain, insisted that Guiteau was not insane and explicitly attacked the medicalization of sinful, criminal actions as a danger to society at large. I also explain how Guiteau's defense threatened the predominantly religious moral values that were common among the American people at the time. Turning to the Eldred trial, I outline how the state's experts

argued for the total rejection of the brain disease model of addiction in ways revealed a more subtly conservative political ideology. To support the case against Eldred, these experts emphasized evidence that people with addiction respond to incentives and retain agency over their drug use, making incarceration an appropriate and effective deterrent for drug use. Both this general approval of criminal justice methods and this implicit model of humans as rational economic actors perfectly suited for the free market economy align well with contemporary conservative politics in the United States. In both trials, I therefore show how legal arguments defending the Eldred and Guiteau's possession of agency ended up justifying significant encroachments on their agency by the state.

I conclude with an appraisal of important points of divergence between the two trials, which help reveal the unique status of addiction as a partially and complicatedly medicalized condition. I note that addiction lacks insanity's long, albeit inconsistent and controversial, history of successful legal defenses against criminal responsibility. I also highlight how in the case of addiction, unlike in that of insanity, institutions of criminal justice now purport to be an essential, rehabilitative force for the benefit of the individual who has committed an illegal act, not solely a protection of the social order against the actions of the individual. In other words, the criminal justice system has responded to the medicalization of addiction by medicalizing incarceration—but with little evidence of accompanying improvements to the medical care provided to incarcerated individuals. In reflecting on how and why the medicalization arguments used by Eldred and Guiteau's legal teams failed to achieve their desired outcomes, I suggest that the brain disease models of insanity and addiction work relatively well within medical practice, which allows for indeterminate gradations of agency, but are inadequate to answer the binary questions about responsibility demanded by criminal justice.

Strengths and Limitations

My essay examines two individual court cases in rich detail to highlight continuities and divergences that are suggestive of broader historical trends in the relationship between medicine and the law in the United States. This narrow scope allows for a relatively precise articulation of specific tensions that have and will likely continue to arise at the contested boundary between medicine and the law. The very dynamicity of this boundary requires the particularity of a case study to make it legible yet renders any case study inadequate to describe it authoritatively and durably. As an effort to make sense of the Eldred trial, recent and not yet well-studied at the time of this writing, my essay also offers an initial argument for situating the case within the broader history of medicalization in the courtroom. The preponderance of parallels between the Eldred and Guiteau trials despite the obvious differences in their subject matter and historical context is itself a finding worth exploring. Amidst the significant amount of public attention and media coverage surrounding the opioid epidemic as a phenomenon unique to the contemporary United States, this essay seeks to serve as a reminder to think historically.

Of course, this analysis is by the same token subject to several limitations. For the sake of brevity and focused scope, I have not situated the two trials within an exhaustive timeline of case law relevant to insanity and addiction. Certainly, a great deal has changed regarding the status of the insanity defense in the United States since the Guiteau trial, and my analysis does not quite capture this fact. Nor have I traced in full detail exactly how addiction has been discussed and adjudicated in the courts in the preceding centuries. Understanding these histories along with more detailed histories of the evolving medical models of insanity and addiction would allow for stronger, more generalizable conclusions about the trajectory of medicalization in the courtroom; these would be fruitful avenues for future scholarly work in this area.

The Trials

Commonwealth v. Eldred

Julie Eldred's story is perhaps most striking for how seamlessly it blends into the countless narratives of white tragedy and wasted potential that dominate media coverage of the ongoing opioid epidemic.¹⁴ As a young, white girl growing up in an affluent suburb of Boston, Eldred "channeled her energy into cheerleading, dancing and horseback riding" before, as her profile in *The New York Times* describes, "opiates, swiped from a friend's parents' medicine cabinet, quelled her restlessness and anxiety in ways that her A.D.H.D. medications did not."¹⁵ Over the next fifteen years, Eldred's opioid use progressed precipitously, from increasing doses of prescription opioids to heroin and fentanyl. As described in the *Times*, addiction came to dominate her life, as she "pinballed among detox, rehab, halfway houses and, briefly, jail."¹⁶ In the summer of 2016, six months into a relapse that followed a two-year stretch of sobriety, Eldred stole more than \$250 worth of jewelry from a dog-walking client and sold it for money to buy heroin.¹⁷ She was caught and charged with larceny. Instead of sentencing Eldred to jail time, a judge granted her probation, under strict conditions: Eldred had to attend outpatient addiction treatment and submit to random drug testing. Most importantly, she had to "remain drug free."¹⁸

Per the terms of her probation, Eldred enrolled in an intensive outpatient treatment program and started on Suboxone, a medication that acts on opioid receptors in the brain to

¹⁴ Julie Netherland and Helena B. Hansen, "The War on Drugs That Wasn't: Wasted Whiteness, 'Dirty Doctors,' and Race in Media Coverage of Prescription Opioid Misuse," *Culture, Medicine, and Psychiatry* 40, no. 4 (December 1, 2016): 664–86, <https://doi.org/10.1007/s11013-016-9496-5>.

¹⁵ Jan Hoffman, "She Went to Jail for a Drug Relapse. Tough Love or Too Harsh?," *The New York Times*, June 7, 2018, sec. Health, <https://www.nytimes.com/2018/06/04/health/drug-addict-relapse-opioids.html>.

¹⁶ Hoffman.

¹⁷ Jen Christensen, "Drug Users on Probation Can Be Required to Remain Drug-Free, Court Rules," CNN, July 16, 2018, <https://www.cnn.com/2018/07/16/health/massachusetts-court-opioid-addiction-eldred/index.html>.

¹⁸ Julie Eldred and Lisa Newman-Polk, "Brief for the Probationer," *Commonwealth v. Eldred* 480 Mass. 90 (2017), http://www.ma-appellatecourts.org/?pdf=SJC-12279_03_Appellant_Eldred_Redacted_Brief.pdf.

prevent withdrawal and reduce cravings. According to Eldred, the Suboxone didn't seem to be enough to treat her withdrawal; she still felt "sick," so she used some fentanyl as well.¹⁹ When she told her doctor what had happened, he did what most addiction specialists would: he increased her dose of Suboxone and encouraged her to stay in treatment. His medical opinion turned out to be irrelevant. A few days later, Eldred was "shackled, strip-searched and incarcerated" after her first random drug test showed traces of the fentanyl she had used days before.²⁰ A judge ordered her to start inpatient treatment, but until her lawyer, Lisa Newman-Polk, was able to find her a bed, Eldred ended up spending the next ten days in a state prison. There, she received neither addiction counseling nor Suboxone, a medication shown to halve the risk of death from opioid addiction.²¹

Eldred and Newman-Polk, who happened to be a clinical social worker with experience in addiction treatment as well as an attorney, appealed the finding of a probation violation directly to the Supreme Judicial Court of Massachusetts. Their argument centered on two provocative claims. First, they argued that Eldred's relapse was a symptom of "severe substance use disorder, a chronic brain disease marked by the compulsive use of a substance despite negative consequences." In this light, jailing Eldred for her failure to remain drug-free violated her constitutional protection from punishment for "being an individual with a chronic medical condition." Moreover, Eldred and Newman-Polk argued that because her "active opioid use disorder...left her powerless to exert control over the compulsion to use opioids, despite negative consequences," her failure to "remain drug free" could not be considered "willful."²²

¹⁹ Hoffman, "She Went to Jail for a Drug Relapse. Tough Love or Too Harsh?"

²⁰ Hoffman.

²¹ Luis Sordo et al., "Mortality Risk during and after Opioid Substitution Treatment: Systematic Review and Meta-Analysis of Cohort Studies," *BMJ* 357 (April 26, 2017): j1550, <https://doi.org/10.1136/bmj.j1550>.

²² Eldred and Newman-Polk, "Brief for the Probationer."

At stake was much more than a technical question regarding the permissibility of a certain condition of probation. Indeed, *Commonwealth v. Eldred* became the grounds for far-reaching battles about the validity of the chronic brain disease model, the voluntariness of substance use in addiction, and the role of incarceration in addressing addiction and its social consequences. The case launched, briefly, into the national spotlight. News media outlets like *The New York Times*, *The Atlantic*, and CNN covered the case in depth, while a large collection of experts—physicians, researchers, drug court professionals, and others—submitted amicus curiae briefs to the Supreme Judicial Court on either side. Although Eldred and Newman-Polk ultimately lost their appeal, *Commonwealth v. Eldred* remains a remarkably productive point of insight into historically fraught conflicts surrounding addiction in American society that continue to manifest amidst the opioid epidemic.

My analysis of *Commonwealth v. Eldred* in this essay centers on five key documents from the trial. First is the written decision from the Supreme Judicial Court, which ruled against Eldred's appeal. Next are the Brief for the Probationer, in which Eldred's legal team lays out the key arguments for their appeal, and the Brief of the Commonwealth, in which the Massachusetts Attorney General's office presents the state's arguments. I will also analyze two amicus curiae briefs, one submitted in support of each side of the trial. The first of these was written by a team of several scholars, with psychiatrist Sally Satel as lead author, in support of the state of Massachusetts. For simplicity, I refer to this source as the Satel et al brief. The other amicus brief, submitted in support of Eldred's appeal, was authored by the Massachusetts Medical Society in conjunction with dozens of other medical organizations and professionals.

The Trial of Charles Guiteau

To reconstruct the facts of the case and arguments presented in the trial of Charles Guiteau, I rely primarily on historian Charles Rosenberg's book *The Trial of the Assassin Guiteau: Psychiatry*

and the Law in the Gilded Age. Drawing on meticulous research, including over three thousand pages of records of the trial proceedings, Rosenberg paints a vivid picture of the trial as a dramatic event—and indeed it was a spectacle that captured a great deal of national attention at the time. As a historian of medicine, Rosenberg also analyzes the trial and its associated public debates as a “microcosm of American psychiatry” as the field was developing its own identity, values, and standards toward the end of the 19th century.²³ In Rosenberg’s hands, the introduction of expert testimony into the courtroom—with twenty-four witnesses generally aligned with one of two schools of psychiatric thought dominant at the time—provides a highly revealing stage on which to see intradisciplinary conflicts and broader social tensions play out.

As Rosenberg recounts, Charles Guiteau was born in 1841 in Freeport, Illinois. His mother died in 1848, and his father was a businessman whose tendencies toward extreme religious opinions led him to become a convert and follower of John Humphrey Noyes and his utopian Oneida community in New York state. Guiteau’s relationship with his father was strained at best, and he left home at 18 to attend college in Ann Arbor. College did not suit Guiteau, however, and he found himself drawn to the Oneida doctrines to which his father had exposed him. He eventually made his way to join the Oneida Community, although his social awkwardness and strange comportment—alternating “between brooding silence and garrulous enthusiasm²⁴”—did not endear him to the people there. At age 24, he left for New York City, galvanized by increasingly grandiose and off-kilter plans to found a chain of daily newspapers as a vehicle to spread the religious teachings of Noyes and the Oneida Community. The next decade or so saw Guiteau repeatedly struggle to establish himself, never seeming to apply himself fully to real work even after he passed the Illinois bar and became an attorney. Instead, he relied on financial

²³ Charles E. Rosenberg, *The Trial of the Assassin Guiteau: Psychiatry and the Law in the Gilded Age* (University of Chicago Press, 1968), xiii.

²⁴ Rosenberg, 19.

trickery like asking family members for loans and avoiding paying bills in order to get by. After divorcing his wife, Guiteau began a new life as an itinerant self-described “lawyer and theologian,” delivering bizarre, half-baked lectures from town to town on the East Coast.²⁵

In 1880, Guiteau abruptly decided to become a politician. He tried and failed to gain entrance into the political machinery of the Republican Party as a speechwriter. Soon, he began bombarding politicians like president-elect James Garfield and Secretary of State James G. Blaine for patronage positions, although he had actually performed no meaningful service for them. Suddenly, in May 1881, Guiteau had the inspiration that President Garfield should be “removed”; after some contemplation, he confirmed for himself that this idea was indeed the result of divine inspiration, and he made plans to carry out his duty to God. On June 30, 1881, after writing a number of feverish notes framed as addresses to the American people, Guiteau finally shot President James Garfield, who eventually died.

The assassination, unsurprisingly, sparked a national outpouring of sorrow for the deceased president—and of rage toward his killer. Guiteau had made quite public his belief that God asked him to kill President Garfield, through letters he had written and a few public appearances. While there was virtually no question that he would hang for the crime, given the identity of his victim and the uniformity of public opinion against him, it was equally clear that his legal representation would pursue the insanity defense, which Rosenberg describes as “bitterly controversial in 1881.”²⁶

By this time, Guiteau had clearly been exhibiting signs of what contemporary psychiatrists would likely label a psychotic disorder, and even lay observers in 1881 could understand his behavior as bizarre. But psychological medicine of the time had not yet evolved full agreement

²⁵ Rosenberg, 33.

²⁶ Rosenberg, 53.

about the nature and boundaries of insanity, and someone who, like Guiteau, could speak intelligibly and respond appropriately to conversation would not have been uniformly considered mentally ill, despite his apparent disconnect from reality. As Rosenberg narrates, Guiteau's trial became a platform for a younger generation of physicians to articulate newer, more provocative models that included individuals who seemed more or less cognitively intact but exhibited behavior that violated social norms under the umbrella of insanity, which was universally understood to be a physical disease of the brain at the time. An older generation of physicians took the opposite stance as witnesses for the prosecution.

Guiteau's defense ultimately lost, and he was hanged in 1882. His autopsy revealed mild brain abnormalities that would likely seem nonspecific and unrevealing through the lens of contemporary medicine, although Rosenberg raises the possibility of a diagnosis of neurosyphilis, which could potentially explain his unusual behavior. Yet at the time, these findings convinced at least some doubters of the truth of Guiteau's insanity. As public outrage over the death of President Garfield died down, the prevailing medical consensus continued to shift in the same direction. Rosenberg states, "Within a dozen years of Guiteau's execution, few interested physicians doubted that he had been insane, indeed chronically and obviously so."²⁷ The story of Charles Guiteau, in addition to its moving qualities as a human tragedy, thus also sheds light on an important, instructive moment in the evolution of American ideas about insanity and criminal responsibility.

Analysis of the Trials

Central to Rosenberg's interpretation of the Guiteau trial is his mapping of the arguments of the prosecution and the defense onto a familiar divide in political ideology. On the side of the defense stood zealous promoters of progressivist moral aims couched in deterministic models of

²⁷ Rosenberg, 243.

human behavior that minimized individual responsibility. Against them, on the side of the prosecution, stood conservative protectors of traditional morality who mobilized voluntarist understandings of human behavior to emphasize individual responsibility. As I will demonstrate in the following sections, a remarkably similar tension characterized both sides of the Eldred trial. This framework helps make sense of the key points of contention in *Commonwealth v. Eldred*.

Progressivism and Determinism

Rosenberg notes that Guiteau's defense embodied and even specifically appealed to a spirit of progressivism. In calling for the application of broader, less stringent criteria for insanity, Guiteau's lawyer argued that "there had been a tendency since the Middle Ages for the insane to be treated with gradually increasing understanding," corresponding with a continuous civilizational process of "progressing to a better state of things, to higher intelligence, to a better judgment."²⁸ This teleological perspective closely mirrors the position advanced by Eldred's defense team. Their brief contrasts an unenlightened, moralizing past—"One hundred years ago, drug addiction was commonly presumed to be a manifestation of 'moral perversion'"—with a "revolutionized" present: "Science now recognizes that drug addiction...is not caused by moral turpitude but rather is a chronic brain disease."²⁹ In both cases, scientific advances are represented as moral advances.

Rosenberg identifies Guiteau's defense as situated in a "new intellectual climate" emerging by the 1880s, one that emphasized "the innate value of human life and individual dignity" along with "the values and findings of science" over and above "traditional moral categories."³⁰ Within American psychological medicine, this climate happened to find expression in the group of

²⁸ Rosenberg, 123.

²⁹ Eldred and Newman-Polk, "Brief for the Probationer," 3–4.

³⁰ Rosenberg, *The Trial of the Assassin Guiteau*, 60.

physicians who called themselves “neurologists” in reference to the neurological basis they identified as the common root of neuroses and psychoses as well as seizures and neuropathies. Rosenberg suggests that the progressive inclinations of the neurologists drew less from the specifics of their scientific theories than from their youth and status on the fringes of the psychiatric establishment, which then was dominated by the Association of Medical Superintendents of American Institutions for the Insane. The superintendents’ association consisted of older men whose careers had begun before American psychiatry had developed “shared bonds of education, intellectual assumption, and disciplinary values” and who instead were united by their institutional positions of power and distrust for new ideas.³¹ The neurologists thus struggled to gain legitimacy for the more materialist orientation they brought from the new science of European clinical medicine. Interested in the study of human behavior as subject to scientific principles and seeing insanity as a deviation of normal psychological functioning, the neurologists held that behavioral and emotional abnormalities, such as a loss of control leading to criminal behavior, could also be symptoms of insanity. The asylum superintendents, on the other hand, tended to insist that insanity consisted solely of defects in a person’s ability to comprehend reality and think rationally. In this way, as my analysis of the Guiteau trial will make more clear, the neurologists’ scientific theories supported contemporary progressive efforts “to liberalize the treatment and adjudication of the possibly insane criminal.”³²

This picture carries important resonances of the discourse surrounding the model of addiction as a chronic relapsing brain disorder, particularly with respect to the marriage of humanitarian and scientific aims. As historian Nancy Campbell contends, neuroscientific understandings of addiction developed gradually over the late 20th century, less as a source of a

³¹ Rosenberg, 61.

³² Rosenberg, 30.

novel conceptual framework than as a biomedical legitimization of pre-existing models derived from behavioral experiments.³³ Descriptions of severe addiction as having characteristics of a chronic disorder date back to the 1950s, with relapse understood as being triggered by conditioned cues. These are behavioral concepts, not neurobiological ones. By the 1990s, however, which President George H.W. Bush declared the “The Decade of the Brain” in order to “enhance public awareness of the benefits to be derived from brain research,³⁴” framing addiction as a brain disease took on special importance.

The blend of meanings contained in this “discursive shift³⁵” is well encapsulated by National Institute on Drug Abuse (NIDA) director Alan Leshner’s 1997 editorial in *Science* magazine entitled, “Addiction Is a Brain Disease, and It Matters.” In the piece, Leshner leads with a few sentences summarizing recent achievements in identifying the neurobiological mechanisms of addiction. However, he quickly switches gears to critique solely social or moralistic understandings of addiction, not for their lack of scientific validity but for their social and political consequences. Leshner argues that thinking of addiction as something other than a brain disease contributes to stigma and prevents effective treatment and research, stating, “The gulf in implications between the ‘bad person’ view and the ‘chronic illness sufferer’ view is tremendous.³⁶” Eldred and her lawyer’s heavy citation of NIDA, the Surgeon General, and Sarah Wakeman (a Massachusetts-based physician and well-known champion of the brain disease model) suggests just such a rhetorical effort to cast Eldred as a chronic illness sufferer who needs treatment, not a bad person worthy of punishment.

³³ Nancy Dianne Campbell, *Discovering Addiction: The Science and Politics of Substance Abuse Research* (University of Michigan Press, 2007).

³⁴ “Decade of the Brain Home Page (Library of Congress),” accessed December 12, 2018, <http://www.loc.gov/loc/brain/>.

³⁵ Campbell, *Discovering Addiction*, 204.

³⁶ Alan I. Leshner, “Addiction Is a Brain Disease, and It Matters,” *Science* 278, no. 5335 (October 3, 1997): 45–47, <https://doi.org/10.1126/science.278.5335.45>.

In this way, both the neurologists' model of insanity and the NIDA model of addiction as brain diseases represent clear instances of medicalization at work: bringing human problems under the umbrella of medicine to redefine the moral status of those who suffer from them. These medicalized models of brain disease take on additional functions in the context of the courtroom, as evidenced in the trials of Guiteau and Eldred. Here, progressive humanitarianism somewhat paradoxically leads into determinism.

In the trial of Guiteau, determinism manifested primarily through the idea of heredity. For Rosenberg, the story of Guiteau's trial is also the story of a society and specifically a medical profession in transition, adjusting to increasingly popular theories of evolution. Most physicians in the era could agree that mental illness typically arose from some combination of individual behavior, hereditary psychological features, and environmental stress: not so different in kind than contemporary "biopsychosocial" models. However, great disagreement existed about the specific causal role that heredity played. The progressivist, younger generation held much more zeal for evolutionary ideas and contended that inherited factors themselves could lead to insanity and antisocial behavior without environmental intervention. Indeed, it was on this principle that much of Guiteau's defense depended: because his mental illness was determined by heredity (which his lawyers went to great lengths to prove by a review of his family history), he could not be held responsible for actions that were the result of insanity.

To be successful, this line of argument would have required a shift in legal standards regarding the insanity defense. Guiteau's lawyers urged the court to adopt what was known as the New Hampshire doctrine, which stated that the "accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."³⁷ In a sense, the New

³⁷ John Reid, "Understanding the New Hampshire Doctrine of Criminal Insanity," *The Yale Law Journal* 69, no. 3 (1960): 367–420, <https://doi.org/10.2307/794241>.

Hampshire doctrine represented medicalization par excellence: the granting of a separate moral and legal status based on an individual's medical diagnosis. Much more accepted at the time was the M'Naghten rule, which held that an insanity defense must prove the defendant cognitively impaired to the point that he either did not understand what he was doing or did not know that what he was doing was wrong. Given the relatively narrow nature of Guiteau's delusions and his otherwise cognitively intact appearance, he clearly did not satisfy the standard of the M'Naghten rule. Yet, as Rosenberg explains, while the judge in Guiteau's trial did not explicitly accept the New Hampshire doctrine, he also did not limit the trial to a strict application of the M'Naghten rule. Both criminal justice and medical discourses had become open (to varying degrees) to a more emotional or volitional notion of insanity, as opposed to a purely cognitive one. The diagnosis of "moral insanity," meaning a condition that impaired an individual's emotional functioning while leaving her cognitive faculties intact, had achieved some popularity among medical experts, particularly the progressivist generation. Under some interpretations, moral insanity could cause a person, cognitively capable of telling right from wrong, to become incapable of controlling the impulse to commit an unlawful or immoral act. Indeed, the defense of insanity as a "lesion of the will" had been successful in an English court in 1840, just prior to the development of the M'Naghten rule.³⁸ Eventually, many countries and at least some states in the U.S. came to accept a test of insanity involving an "irresistible impulse."³⁹

Guiteau's defense did not push hard on the idea of moral insanity or of irresistible impulses. Instead, his lawyers tried (and ultimately failed) to convince the court that Guiteau was truly insane and that his condition was inherited in a deterministic fashion, through no fault of his own. This impulse led to several claims by expert witnesses for the defense that might strike the

³⁸ Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (Yale University Press, 1995).

³⁹ Edwin R. Keedy, "Irresistible Impulse as a Defense in the Criminal Law," *University of Pennsylvania Law Review* 100, no. 7 (1952): 956–93, <https://doi.org/10.2307/3310101>.

contemporary observer as at odds with their progressivist, humanitarian aspirations. For instance, neurologist and witness for the defense James Kiernan argued that an examination of Guiteau's brain would reveal an asymmetry in hemisphere size invariably found in the "originally insane," that is, patients who were born and inevitably remained "easily irritated, unable to tell right from wrong, prone to embark upon visionary schemes."⁴⁰ His fellow neurologist Thomas Spitzka concurred, adding that the physical stigmata which indicated Guiteau's form of insanity included the shape of his head and face, facial asymmetry, and deviation of his tongue to the left.⁴¹ Moreover, the defense's insistent efforts to establish the hereditary nature of Guiteau's insanity by locating it within his family's medical history presaged what would become a popular belief in the concept of "degeneration." This theory held that antisocial or immoral behavior is not merely inherited but progressively intensified in subsequent generations, a proposition that figured heavily in the nascent eugenics movement. These expressions of progressivist, deterministic zeal in the Guiteau trial make evident the potential pitfalls of medicalizing insanity. Understanding an individual as having the hereditary brain disease of degeneration—and therefore subject to social control under the guise of medicine—carries its own unsavory ethical implications, even if it avoids imprisoning him as a criminal.

In *Commonwealth v. Eldred*, similar concepts undergirded the core arguments of Eldred's team, albeit in less explicit terms. In identifying Eldred's relapse as a "symptom of active opioid use disorder," defined as a "chronic brain disease," and therefore beyond criminal responsibility, Eldred's brief implicitly invokes the New Hampshire doctrine. Similarly, the idea of an irresistible impulse resonates through the argument that Eldred's addiction impaired her control over substance use to the point that she should not be considered responsible for it. Citing current

⁴⁰ Rosenberg, *The Trial of the Assassin Guiteau*, 148.

⁴¹ Rosenberg, 162.

NIDA director Nora Volkow's 2016 defense of the brain disease model of addiction in the *New England Journal of Medicine*,⁴² Eldred's brief states that an addicted person "who intends not to use drugs again will nonetheless feel 'an intense motivational push' to do so."⁴³ As for the question of whether this impulse is indeed irresistible, the brief later states that continued drug use occurs because "the disorder, by definition, has eliminated the capacity to exert free will over the compulsion to use."⁴⁴ Of note, this remarkably deterministic claim—of a brain disease literally eliminating the capacity to exert free will—is the language of Eldred's defense team, not of the medical experts on whom they lean. Where the brief does directly cite these experts, the language is more moderate. Citing the Surgeon General 2016 report *Facing Addiction in America*,⁴⁵ the brief describes addiction as involving "impaired control over substance use."⁴⁶

Evident in this example is an illuminating discrepancy between the brain disease model's explicit scientific claims and the manner in which those claims became mobilized for particular aims. Large sections of the Brief for the Probationer appeal to neuroscience research, in apparent attempts to legitimize the claim that Eldred was powerless to exert control over her drug use. The brief cites scientific reviews to highlight "underlying change in brain circuits" and "physical changes in areas of the brain that are critical to judgment, decision-making, learning and memory, and behavior control" visible in neuroimaging studies.⁴⁷ The underlying rhetorical strategy here relies on visually identifiable, material signs not only to support the status of addiction as a medical condition but also to create a deterministic image of Eldred's behavior as constrained by a

⁴² Nora D. Volkow, George F. Koob, and A. Thomas McLellan, "Neurobiologic Advances from the Brain Disease Model of Addiction," *New England Journal of Medicine* 374, no. 4 (January 28, 2016): 363–71, <https://doi.org/10.1056/NEJMra1511480>.

⁴³ Eldred and Newman-Polk, "Brief for the Probationer," 11.

⁴⁴ Eldred and Newman-Polk, 32.

⁴⁵ U.S. Department of Health and Human Services (HHS), Office of the Surgeon General, *Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health* (Washington, DC: HHS, 2016), <https://addiction.surgeongeneral.gov/sites/default/files/surgeon-generals-report.pdf>.

⁴⁶ Eldred and Newman-Polk, "Brief for the Probationer," 27.

⁴⁷ Eldred and Newman-Polk, 7.

physical reality that cannot be questioned in the same way an account of internal psychological vulnerabilities could be. Eldred's brief, in this way, displays remarkable parallels to the expert testimony of the neurologists in the Guiteau trial, which relied heavily on physical signs of Guiteau's insanity beyond the symptomatology itself.

Of course, as Rosenberg emphasizes, somaticism need not imply determinism; many of the expert witnesses for the prosecution shared the neurologists' understanding of insanity as a condition deriving from the physical structure of the brain yet rejected the neurologists' belief in insanity's inevitable inheritance. Similarly, although the version presented in Eldred's brief likely overstated what scientists who support the brain disease model of addiction might believe, contemporary critics of this model do highlight its tendencies toward determinism as a major flaw. For instance, anthropologist Angela Garcia has argued that the brain disease model's emphasis on chronicity—its characterization of relapse as an expected outcome—reinforces local narratives of cyclical loss and hopelessness in the communities in northern New Mexico described in her ethnography *The Pastoral Clinic*.⁴⁸ In theory, understanding relapse as a feature of the disease of addiction should help patients avoid counterproductive self-blame while encouraging their healthcare providers to maintain empathy and patience. Garcia's ethnographic study of a detoxification clinic, however, highlights how relapse becomes perceived not merely as an understandable occurrence but instead as an inevitable destiny both by patients of the clinic and by the staff who care for them over repeated admissions and discharges. If we tell patients that they lack control and should expect failure, Garcia suggests, where can they find hope for a new way of living? Even critics of the brain disease model who come from more closely aligned disciplinary orientations than anthropology, such as developmental neuroscientist Marc Lewis,

⁴⁸ Angela Garcia, *The Pastoral Clinic: Addiction and Dispossession Along the Rio Grande* (University of California Press, 2010).

agree that “psychological change, development, and indeed all learning involve brain change” but advocate for interpreting those changes as evidence of a reversible psychological learning process, rather than a brain disease caused by exposure to psychoactive substances.⁴⁹

As this analysis demonstrates, the Eldred and Guiteau trials intersected with complex, dynamic debates surrounding controversial models of addiction and insanity as brain diseases. What emerges thus far from a comparison of the two cases is a deeper understanding of medicalization as a legal strategy for minimizing criminal responsibility, in which progressivist humanitarian aims end up promoting deterministic scientific claims that carry potentially troubling implications.

Conservatism and Voluntarism

Conversely, Eldred and Guiteau’s opponents in their respective trials exemplified a linkage between conservatism and voluntarism in their attack of the reach of medicalization into the courtroom. As Rosenberg explains, the prosecution in the Guiteau trial clearly stood for socially conservative values. Rosenberg describes John Gray—physician, asylum superintendent, and chief witness for the prosecution—as “the most prominent American defender of a narrow interpretation of criminal responsibility and in general a staunch upholder of religion, social order, and traditional morality.⁵⁰” Like the neurologists Kiernan and Spitzka, Gray confidently asserted that insanity was “a disease of the brain.⁵¹” Yet in his testimony, Gray argued forcefully that Guiteau’s actions evidenced not insanity but instead a depravity born of lifelong sin. Indeed, Gray was deeply suspicious of the medicalization of non-normative behavior. In reflecting on the trial after its conclusion, Gray warned against the threat of “medical science” becoming “the mercenary

⁴⁹ Marc Lewis, “Brain Change in Addiction as Learning, Not Disease,” *New England Journal of Medicine* 379, no. 16 (October 18, 2018): 1551–60, <https://doi.org/10.1056/NEJMra1602872>.

⁵⁰ Rosenberg, *The Trial of the Assassin Guiteau*, 190.

⁵¹ Rosenberg, 191.

abettor of the criminal and revolutionary elements of society.⁵² During the trial itself, Gray criticized newly medicalized concepts like moral insanity, kleptomania, and pyromania as “makeshifts to secure from punishment for crime.⁵³”

Rosenberg situates Gray’s perspective as largely consistent with the moral and intellectual climate of the United States in the late nineteenth-century. As he describes, “many articulate and responsible Americans” found the arguments of Guiteau’s defense to be “dangerous in the extreme—a deterministic apology for willful wrong-doing and a threat to civil tranquility.⁵⁴” In this era, immoral behavior was commonly understood in mechanistic terms as a habit, reinforced over time. This habit might be so strong as to leave an individual unable to exercise restraint enough to avoid a specific criminal act, but the individual would still bear responsibility for the “series of immoral decisions” that had “in the end paralyzed his moral faculties.⁵⁵” This context helps explain the defense’s concerted effort to prove not only that Guiteau was in fact insane but also that his insanity was predetermined by heredity. For even if the defense had been able to establish Guiteau’s insanity, the conservative position represented by the prosecution held that he could still be considered responsible for the immoral actions he initially chose to commit, which then activated whatever predisposition to insanity he might have had.

The stakes of the Guiteau trial were high indeed. Not only did the neurologists’ account of absolute, deterministic heredity complicate the question of criminal liability in the courtroom, it posed a grave threat to the “traditional concepts of free will and individual responsibility” upon which common contemporary conceptions of morality itself depended.⁵⁶ In the trial of *Commonwealth v. Eldred*, on the other hand, the linkage between conservatism and voluntarism

⁵² Rosenberg, 191.

⁵³ Rosenberg, 195.

⁵⁴ Rosenberg, 184.

⁵⁵ Rosenberg, 59.

⁵⁶ Rosenberg, 148.

on the side opposing Eldred's appeal carried significantly different moral overtones. Neither the Brief of the Commonwealth nor the supporting amicus brief submitted by several experts led by psychiatrist Sally Satel appeals to traditional religious values or accuses Eldred of sinful behavior. Yet through their anti-determinist critique of the brain disease model of addiction, both ultimately advance an argument against medicalization that aligns with contemporary conservative political ideology.

Both briefs center on a voluntarist objective: to refute the claim that Eldred relapsed because her addiction made her completely powerless to control her drug use. Given how extreme this claim was—and how much it stretched the assertions of the standard brain disease model—the task of Eldred's opposition was not difficult. As the Brief of the Commonwealth itself notes, since the standard brain disease model highlights impairments of control but does not specify absolute loss of control, “the neurobiological account of addiction is compatible with the presence of free will in persons with SUD [substance use disorder].⁵⁷” Yet neither the Brief of the Commonwealth nor the Satel et al brief stops at establishing the failure of Eldred's appeal to justify its claims on its own terms.

Instead, whereas Guiteau's prosecutors and their expert witnesses largely agreed with their opponents on the status of insanity as a brain disease, disagreeing only about its symptomatology and etiology, the side opposing Eldred's case aimed their criticism directly at the brain disease model of addiction itself. The Brief of the Commonwealth states, in no uncertain terms: “The defendant's brief relies, in large part, on contested scientific theories of addiction and the supposed legal implications of these theories.⁵⁸” Complicating the defense's teleological characterization of the brain disease model as the ultimate in compassionate and scientifically

⁵⁷ Maura Healey and Maria Granik, “Brief of the Commonwealth of Massachusetts,” *Commonwealth v. Eldred* 480 Mass. 90 (2017): 9–10.

⁵⁸ Healey and Granik, “Brief of the Commonwealth of Massachusetts.”

advanced understandings of addiction, the Brief of the Commonwealth emphasizes the model's contested status by citing ongoing debates between its proponents, such as NIDA director Nora Volkow, and its vocal critics, including many of the authors of the Satel et al brief. This latter brief describes the brain disease model as “dogma” that is “often believed without question” by most clinical addiction specialists but “not necessarily [by] premier scholars in psychiatry, psychology, or allied fields.”⁵⁹

The grounds upon which both briefs challenge the brain disease model—and upon which the Satel et al brief proposes a well-defined alternative model of addiction—begin to reveal an underlying political conservatism, first through an implicit appeal to a particular economic ideology. The Brief of the Commonwealth notes that Eldred's brief itself describes contingency management—the therapeutic use of incentives, often financial, to promote abstinence from substances—as an effective treatment for addiction, which implies that addicted individuals can modify their drug use in response to incentives and therefore do retain some control over it. The Satel et al brief places this proposition at the center of the case: “the real question...is whether the behavioral manifestations of addiction are unresponsive to contingencies.”⁶⁰ Beyond answering this question in the negative, the Satel et al brief challenges the idea that drug-induced neurobiological changes cause addiction as an enduring disease. Instead, the brief advocates for a model in which an individual's drug use behavior reflects an internal calculus of costs, benefits, and alternatives. In this view, addiction is simply a descriptive term for heavy drug use patterns that emerge from certain configurations of incentives. This behavioral model frames humans first and foremost as rational economic actors. Such a focus on *Homo economicus* aligns well with contemporary political conservatism in the United States, which asserts free market dynamics as

⁵⁹ Sally Satel et al., “Brief of Amici Curiae of 11 Addiction Experts in Support of Appellee,” *Commonwealth v. Eldred* 480 Mass. 90 (2017): 4, 35, http://www.ma-appellatecourts.org/?pdf=SJC-12279_08_Amicus_Morse_Brief.pdf.

⁶⁰ Satel et al., 2.

the engine of human progress and the core solution to social problems. Indeed, in addition to her clinical work as a psychiatrist, Satel is a Resident Scholar for the American Enterprise Institute (AEI), a conservative think tank.

As Satel's AEI affiliation would suggest, conservative ideology is much more readily apparent in the Satel et al brief than in the Brief of the Commonwealth. An important clue to the Satel et al brief's politically conservative inclination is the ubiquitous use of the term "addict," which has lost favor in contemporary medical discourse for what progressivists like physician Sarah Wakeman argue are its stigmatizing connotations.⁶¹ The terminology favored by Wakeman and others—e.g., "patient with a substance use disorder" instead of "addict"—fits with the broader trend toward "person-first language" in the U.S. today. Such changes to language are the subject of much-publicized derision from large swathes of the political right, who decry what they identify as a culture of political correctness and policing of speech. Satel herself is the author of a book entitled *P.C., M.D.: How Political Correctness is Corrupting Medicine*.⁶² Notably, the Brief of the Commonwealth is less obviously conservative in this way, using "person with SUD [substance use disorder]" throughout, except when discussing previous court decisions that had used the word "addict." This difference may not be surprising given that the lead author of the Brief of the Commonwealth, Attorney General Maura Healey, is a registered Democrat.

While the Brief of the Commonwealth displays less explicit markings of conservative ideology, it shares with the Satel et al brief a focus on incentives as central to understanding addiction. This framing performs a crucial secondary function: it leads logically to a particular philosophy of addiction treatment. Both briefs highlight the status of contingency management as an evidence-based, effective treatment for addiction. The Satel brief expounds at length on the

⁶¹ Sarah Wakeman, "Words Matter: The Language of Addiction and Life-Saving Treatments," Harvard Health Blog, December 18, 2017, <https://www.health.harvard.edu/blog/words-matter-language-addiction-life-saving-treatments-2016081510130>.

⁶² Sally Satel, *P.C., M.D.: How Political Correctness Is Corrupting Medicine* (Basic Books, 2008).

body of research supporting this treatment modality, which involves the deliberate application of concrete positive and negative incentives, as opposed to a purely motivational approach or the prescription of a medication like buprenorphine. Crucially, both briefs subsequently argue that the criminal justice system functions in an exactly analogous way, to impose corrective incentives on drug use behaviors. In this light, the threat of incarceration under a drug-free probation requirement is construed as a therapeutic tool. As the Satel et al brief states, “If addicts cannot be sanctioned for violating this condition of probation and parole, the state will lose this powerful contingency management technique for assisting addicts to remain free of drugs and for protecting society.⁶³” The ultimate ruling in *Commonwealth v. Eldred* confirmed this proposition: not only do the law and legal precedent sanction the power of judges to impose drug-free conditions for probation, this power is central to the rehabilitative function of the criminal justice system. This endorsement of the criminal justice system as an essential force for social good, of course, aligns quite well with typical conservative politics in the present-day United States. (Only recently have mainstream conservative politicians begun to support criminal justice reform that includes a softening of mandatory minimum sentencing standards, which were a central tenet of “tough on crime” platforms through the late 20th century.⁶⁴)

An important tension emerges from this analysis. The rational actor model of addiction outlined in the Satel brief purports to push back against the excessive biomedical determinism of the brain disease model, specifically by highlighting “the capacity for self-control in addicts.⁶⁵” In many ways, this effort seems successful, especially compared against the overstated determinism of the Brief for the Probationer. For instance, the Satel et al brief’s argument that people who use

⁶³ Satel et al., “Brief of Amici Curiae of 11 Addiction Experts in Support of Appellee,” 31.

⁶⁴ Nicholas Fandos and Maggie Haberman, “Trump Embraces a Path to Revise U.S. Sentencing and Prison Laws,” *The New York Times*, November 15, 2018, sec. U.S., <https://www.nytimes.com/2018/11/14/us/politics/prison-sentencing-trump.html>.

⁶⁵ Satel et al., “Brief of Amici Curiae of 11 Addiction Experts in Support of Appellee,” 28.

drugs “act for psychological reasons, such as deep-seated angst, profound boredom, or concerns about the future⁶⁶” suggests a more humanistic perspective than the idea that addicted people are controlled by hijacked brain circuitry. Yet to a certain degree, this model merely advances a different kind of determinism, one that relocates the determinants of drug use behavior from within the addicted person’s brain to the incentives in her external environment. According to Satel et al’s model, people do not simply choose to use or not use in a vacuum; they respond to a configuration of incentives, and the most effective way to change their behavior is to change those incentives—including by incarceration. In this way, Satel et al’s brief and the Brief of the Commonwealth end up justifying limitations on individual autonomy through what initially appears to be a more voluntaristic, humanistic understanding of addiction.

The parallel in Guiteau’s case is even more strikingly ironic: the same conservative, voluntarist arguments that challenged a disturbing view of Charles Guiteau as a broken human—the product of hereditary mental defects—ultimately justified his execution. From this perspective, although Eldred’s opponents in the trial avoided the overt moralizing language of Guiteau’s prosecutors, both represented forms of conservative ideology common in their time. Both also challenged the deterministic brain disease models put forth by their progressivist opponents, albeit on somewhat different grounds of criticism. A useful way to understand these efforts in both trials is as rejections of medicalization. Guiteau’s prosecutors feared that giving a disease label—“moral insanity”—to what they understood to be a sinful personality would erode the foundations of morality in their society. In *Commonwealth v. Eldred*, those on the side of the state saw the medicalization of addiction as a threat to the criminal justice system’s ability to fulfill its beneficial social functions. In both instances, those who opposed the reach medicalization into the courtroom won their cases.

⁶⁶ Satel et al., 14.

Complexities of Medicalization

As the preceding section began to demonstrate, there are obvious, important differences between the Eldred and Guiteau trials. One of the most instructive is the difference in legal status between the “deviant” conditions under question: addiction and insanity. The insanity defense remains hotly controversial, rarely used, and rarely successful today, more than a century after the Guiteau trial. Initially, the decades following the Guiteau trial saw a general liberalization of rules governing the insanity defense. In 1962, the American Law Institute (ALI) published its Model Penal Code, which contained a legal standard for insanity that required the defendant to lack “substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law.”⁶⁷ Combining a softer version of the M’Naghten rule’s cognitive test with an “irresistible impulse” test, the ALI standard became widely used throughout the United States. However, the 1982 acquittal by reason of insanity of John Hinckley Jr. for the attempted assassination of President Ronald Reagan caused a nationwide backlash. In 1984, Congress passed the Insanity Defense Reform Act, which replaced the ALI standard with a stricter version of the M’Naghten test in federal trials. Dozens of states followed suit, often shifting the burden of proof away from the prosecution and toward the defense, and three even abolished the insanity defense altogether. At least twenty states have established an additional verdict of “guilty but mentally ill,” which allows convicted defendants to receive mental health treatment until their symptoms remit, at which point they must serve the remainder of their sentence in a correctional facility.⁶⁸ Even with these recent developments, there still does exist a significant body of legal precedent

⁶⁷ Legal Information Institute, “Legal Encyclopedia: Insanity Defense,” Legal Information Institute of Cornell Law School, August 6, 2007, https://www.law.cornell.edu/wex/insanity_defense.

⁶⁸ Sanford H. Kadish, Stephen J. Schulhofer, and Rachel E. Barkow, *Criminal Law and Its Processes: Cases and Materials* (Wolters Kluwer Law & Business, 2016).

legitimizing insanity as a medical condition that at least in principle can absolve an individual of criminal responsibility. The same cannot be said of addiction.

The Brief of the Commonwealth from the Eldred trial explicitly highlights this disparity to support its arguments, stating, “Despite the inclusion of substance use disorder in the Diagnostic and Statistical Manual of Mental Disorders, it is not the basis for any affirmative defense to criminal responsibility, such as insanity.⁶⁹” The brief references the case of *Commonwealth v. Muller*, heard by the Supreme Judicial Court just one year prior to *Commonwealth v. Eldred*. In the earlier trial, Christian Muller admitted to killing two people during an armed home invasion but claimed a lack of criminal responsibility due to mental illness and cocaine addiction. The decision in *Commonwealth v. Muller* cited the 1970 case of *Commonwealth v. McGrath* to reaffirm that the insanity defense “is not available where the defendant’s loss of the substantial capacity to appreciate the wrongfulness of his conduct [i.e., a version of the M’Naghten rule] or conform his behavior to the requirements of the law [i.e., a version of the irresistible impulse test] is caused by the voluntary consumption of drugs or alcohol as opposed to a mental disease or defect.⁷⁰” Of course, Eldred and her legal team were not actually mounting an insanity defense, and they were attempting to prove that her drug use was involuntary and due to a mental disease. Still, this excerpt reveals just how far from success the project of medicalizing addiction is, at least in terms of the criminal justice world.

Addiction also stands apart in terms of how its medicalization has been contested and negotiated in the realm of criminal justice. In the Guiteau trial, objections to the medicalization of insanity centered on concern for the social order: the need to protect society against dangerous individuals (by preserving the criminal justice system’s ability to sequester or eliminate them) as

⁶⁹ Healey and Granik, “Brief of the Commonwealth of Massachusetts,” 35.

⁷⁰ J. Hines, *Commonwealth v. Muller*, No. SJC-11176 (Supreme Judicial Court July 11, 2017).

well as the need to preserve the foundations of traditional morality (by rejecting a deterministic, hereditary theory of antisocial behavior). Similar concerns did arise in *Commonwealth v. Eldred*, as both the Brief of the Commonwealth and the Satel et al brief warn that granting Eldred's appeal would limit the state's ability to punish and thereby deter any crime related to drug use. Crucially, however, these briefs also argue that allowing addiction to become fully medicalized as a brain disease, outside the jurisdiction of the criminal justice system, would produce negative effects not solely on the social order but on addicted individuals themselves. Both briefs paint the threat of incarceration and drug-free probation conditions as therapeutic contingency management systems that would no longer be available to help people improve their lives if Eldred won her appeal. In 1881, nobody argued that execution would be beneficial for Charles Guiteau's health.

This example reveals that a key element of the criminal justice system's response to the attempted medicalization of addiction has been to adopt its very tactics. As proponents of medicalization argue that people suffering from addiction should be treated for their medical condition, not punished as criminals, the criminal justice system has responded with a proliferation of drug courts and diversionary pathways involving mandated treatment. This move challenges the implicit dichotomy of sick person vs. criminal from which the process of medicalization draws its energy. If people charged with crimes receive treatment for their addiction from the criminal justice system, then—it would seem—there is no need to afford them a special, medicalized status that removes them from this system. Conrad and other sociologists of medicalization might argue that this outcome is only to be expected, given that in their view, medicalization configures its objects as sick people with an implicitly inferior moral status. Those who inhabit the sick role may not be guaranteed a right of self-determination when it comes to whether and how they receive medical treatment, especially if their medicalized illness has implications for the social order. This agency-limiting effect perfectly serves the purposes of the

criminal justice system in its co-optation of medicalization: as displayed in the Eldred trial, incarceration becomes rebranded as medical treatment, instead of its opposite.

The documents from the case of *Commonwealth v. Eldred* suggest that the individuals who operate the system of addiction treatment within criminal justice genuinely see themselves as performing a critical service for the people who end up in their care. From one perspective, this fact is reassuring; from another, it is alarming. For nowhere in the Brief of the Commonwealth, the Satel et al brief, or the written decision of *Commonwealth v. Eldred* does there appear a reckoning of whether probation officers and judges have the training, experience, or ethical authority to make clinical decisions about the diagnosis and treatment of addiction. The judge who detained Julie Eldred to send her to inpatient treatment presumably did so because she thought it would be best for the young woman before her. Yet this decision led to Eldred spending ten days in a state prison where she was not given the medication she had been prescribed by her physician to help her reduce cravings and prevent opioid withdrawal symptoms. A large body of research, of very high quality by the standards of contemporary medicine, has consistently shown that medications like the one Eldred was forced to taper from lead to remarkable reductions in death rates. By contrast, the world of “inpatient treatment” to which the judge wanted to send Eldred is notoriously under-regulated and wildly variable in quality—although the evidence base is so thin that assessing quality is challenging.

This criticism of the clinical decision-making in Eldred’s case lies at the heart of an amicus brief submitted on Eldred’s behalf by the Massachusetts Medical Society (MMS) in association with a long list of organizations and individuals, mostly physicians and related professionals specializing in the clinical treatment of addiction. Contrary to the Brief of the Commonwealth and the Satel et al brief, the MMS brief asserts widespread consensus “within the medical community”

recognizing substance use disorder as “a disease of the brain.”⁷¹ Unlike the Brief for the Probationer, however, the MMS brief does not argue that addicted individuals lack all control over their substance use. Indeed, the brief’s statement of the issue—“Whether incarceration is an appropriate response for the criminal justice system to take to relapse by a person suffering from acute SUD, whose only infraction is failure to abstain from substance use⁷²”—completely bypasses the issues of control and legal responsibility that preoccupy the other briefs. Instead, the brief argues, the “requirement that Ms. Eldred ‘remain drug free’ in order to avoid incarceration is clinically contraindicated.”⁷³ The MMS brief invokes the brain disease model to justify the need for the medical treatment of opioid addiction in general and to characterize Eldred’s short relapse as a normal part of the clinical course that did not warrant a dramatic shift in treatment approach. Unburdened by the need to make epistemically ambitious claims about Eldred’s ability to exert control over her drug use, the brief’s portrayal of the brain disease model does not read as particularly deterministic.

The strength of the MMS brief lies in its focus on a domain over which medicine has a strong claim to authority and on questions which medical science is well-positioned to answer. For much the same reasons, the brief ultimately proved irrelevant to the case. The Supreme Judicial Court’s decision addressed two fairly narrow issues, squarely within the bounds of legal discourse. First, the court decided there was insufficient evidence to suggest that an addicted individual totally lacks control over the use of drugs, in which case there was insufficient cause to consider being detained for violation of a drug free probation condition cruel and unusual

⁷¹ Massachusetts Medical Society et al., “Brief on Behalf of the Massachusetts Medical Society, Amicus Curiae,” *Commonwealth v. Eldred* 480 Mass. 90 (2017): 19, http://www.ma-appellatecourts.org/?pdf=SJC-12279_11_Amicus_MA_Medical_Society_Redacted_Brief.pdf.

⁷² Massachusetts Medical Society et al., 19.

⁷³ Massachusetts Medical Society et al., 22.

punishment. Second, the court reaffirmed through reference to statute and legal precedent that judges do have the authority to set drug free conditions for probation.

Here is visible a longstanding central tension in the relationship between medicine and criminal justice, one that Rosenberg highlights in the case of the Guiteau trial. The law operates via the establishment of separate, mutually exclusive categories: sane or insane, in control or not in control, responsible or not responsible. However, in the words that Rosenberg quotes from nineteenth-century English legal authority John Bucknill, “In nature we find no such sharply defined classification...and in the kingdom of mind, mind itself is scarcely able to conceive the gradations of power and knowledge.⁷⁴” Medicine is somewhat better able to tolerate this indeterminacy, given that clinical care routinely operates via provisional treatment decisions in the context of epistemic uncertainty (although a long history of controversy surrounding psychiatric diagnoses provides just one example of where problems persist). Nevertheless, the trials of Charles Guiteau and Julie Eldred indicate that medical understandings of human problems, however effective they may be in the clinic, are often forced into poorly fitting boxes when they enter the courtroom. In 2018 as in 1881, one is hard-pressed to identify “mutually consistent formal means, either institutional or intellectual, for bringing legal thought and practice in line with changing clinical pictures.⁷⁵”

Conclusions

In concluding his analysis of the trial of Charles Guiteau, Rosenberg states, “In some ways, the psychological medicine of the twentieth century has served merely to reformulate rather than

⁷⁴ Rosenberg, *The Trial of the Assassin Guiteau*, 56.

⁷⁵ Rosenberg, 102.

resolve the continuing social dilemma created by the possibly insane criminal.⁷⁶ This characterization is apt for the status of addiction in the 21st century as well.

The Guiteau trial and *Commonwealth v. Eldred*, although they are but two snapshots in a long and complex history, reveal much of interest and importance about the messy interface where medicalization confronts the criminal justice system. In both cases, individuals with conditions manifesting in behavior that threatened the social order found themselves locked into the criminal justice system. In both cases, the progressivist, humanist impulse to rescue these individuals from punishment required finding ways to negate their criminal responsibility under the law. In both cases, this effort resulted in the mobilization of questionably rigorous and highly deterministic models of brain disease that proved easy to refute for the conservative opponents of medicalization. Finally, in both cases, these conservative opponents advanced voluntaristic models of addiction and insanity that on the surface seemed more humanistic and palatable yet ultimately supported outcomes—execution for Guiteau, incarceration for Eldred—that dramatically constrained individual agency. To some extent, these themes seem to be intrinsic to the relationship between medicine and criminal justice, deriving from the conflict between each domain’s ethical commitments and mode of understanding the world. However, addiction seems to occupy a special place in the present moment, uniquely caught between medicine and a criminal justice system that is undergoing its own internal version of medicalization. Given that individuals who live in the margin between these two worlds have just about the highest risk of overdose death of any demographic in the ongoing opioid epidemic, finding a way for these two spheres to cooperate meaningfully—perhaps if only to bring real medical expertise directly into criminal justice settings—is of paramount importance. It is not altogether clear how to achieve this

⁷⁶ Rosenberg, 252.

goal, but one useful lesson of the trials of Charles Guiteau and Julie Eldred may be that simply advancing a medicalized model of addiction as a brain disease will not be enough.

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