

## Intoxication and the Act/Control/Agency Requirement

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**Abstract** Doug Husak has argued, persuasively I think, that there is no literal ‘act requirement’ in Anglo-American law. I begin by reviewing Husak’s reasons for rejecting the act requirement, and provide additional reasons to think he is right to do so. But Husak’s alternative, the ‘control condition’, I argue, is inadequate. The control requirement is falsified by the widespread practice of holding extremely intoxicated offenders liable for criminal conduct they engage in even if they lack control over their conduct at the time of the offense, and even if they are acting involuntarily. I provide examples from Canadian, US and German law to flesh out our legal practices with respect to intoxicated offenders. I then argue that, at least with respect to one class of intoxicated offenders—those known as ‘grand schemers’, who plan their criminal offending prior to rendering themselves incapable of voluntary control over their conduct—we are morally justified in imposing liability. I then propose an alternative to both the act and control requirements: what I call the ‘agency requirement’. I argue that our law does and should impose liability for conduct that is expressive of or constitutive of the defendant’s practically rational agency. Adopting an agency view allows us to expand our focus from just the moment of the offense to temporally extended instances of agency, such as is involved in planned offending by grand schemers.

**Keywords** Intoxication · Criminal liability · Involuntariness · Automatism · Culpability-in-causing · Act requirement · Control requirement · Agency · Planning

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