

# Moral Responsibility and Alcohol-Related End-Stage Liver Disease: Punishing Delilah Saunders

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## **Abstract**

This paper was originally written for Dr. Diego Silva's HSCI 319W course *Applied Health Ethics*. The assignment asked students to argue why it *was* or *was not* ethical for Delilah Saunders to have been denied a liver transplant from the organ donation organization in Ontario, Canada by focussing on one topic and by drawing only from the assigned class readings. The paper uses APA citation style, but the title page, margins, font, spacing, and running headers that were originally formatted to APA have been retrofitted to the contest template.

In this essay, I will argue that it was unethical for Trillium Gift of Life Network (TGLN) to deny Delilah Saunders a liver transplant. Saunders' rejection from the transplant waitlist was unethical because it violated Kant's principles of punishment by (1) Issuing punishment though no crime was committed, for excess alcohol consumption is not a crime and because her autonomy was compromised; and by (2) Imposing a punishment disproportionate to the crime (if excess alcohol consumption were a crime), where suffering and hastened death is disproportionate to excess alcohol use. Lastly, not assessing moral responsibility in other patients requiring medical treatment violates Kant's universal maxim principle. The consequences of assessing moral responsibility in medical resource allocation disadvantages certain people to reproduces the racial inequities that contributed to Saunders' alcohol consumption behaviours initially.

Delilah Saunders was diagnosed with acute liver failure and was subsequently denied access to Ontario's liver transplant waitlist on the grounds of her condition being alcohol related (Meloney, 2017). To negotiate between the high demand and scarce supply of livers, people with alcohol related end stage liver disease (ARESLD) are excluded from Ontario's liver transplant waitlist (Payne, 2017; Meloney, 2017). While Saunders' physician accredited her liver failure to

acetaminophen consumption, her history of alcohol use disorder likely hastened the harmful effects of the painkiller, further deteriorating her liver (Payne, 2017). Saunders' experience as an Indigenous rights activist in a colonized Canadian society and the murder of her sister only three years prior to her liver denial (Payne, 2017) provide context to the precipitating factors of her alcohol use disorder. To cope with these impacts, Saunders' family reports that she had been accessing treatment prior her liver failure (Meloney, 2017).

Glannon argues that people with alcohol use disorders (PWAUD) are morally responsible for their actions and resulting conditions (1998). Consistent with Kant's deontology, Glannon defines a free agent as an individual who has the capacity to understand the risks of a decision and to control their subsequent actions (1998). Proponents assume that PWAUD are aware of the health risks associated with alcohol consumption and that they made the *autonomous* decision to drink regardless (Glannon, 1998). Therefore they argue that in order to treat PWAUD as free agents, we ought to respect their autonomy by deeming them responsible for their deteriorated condition, and therefore ARESLD patients ought to accept responsibility for their conditions by receiving lower priority for resources when competing with people who are not morally responsible for their conditions (Glannon, 1998). The pro-exclusion arguments rely on the assumption of *lower priority*, yet due to resource scarcity Ontario's categorical exclusion of ARESLD patients disregards their consideration entirely. As such, Saunders was not given a "lower priority" but was given no chance at all, thereby punishing her.

Excluding ARESLD patients treats them as fully rational criminal agents rather than victims of circumstance. *If* ARESLD patients were morally responsible for a "crime", then Kant's retributivism asserts that they should be punished accordingly. Where punishment is defined as an imposed penalty as retribution for an offense, TGLN's denial of a liver to Saunders is punishment and the merits of this decision can be examined using Kant's retributivism. Kant's principles of punishment are that (1) A person who has committed a crime deserves a punishment and (2) A punishment should be proportionate to the crime (Rachels, 2011). Saunders' exclusion from the liver transplant waitlist does not meet either of these principles and was therefore unethical.

Kant's first principle of retributivism asserts that crime merits punishment (Rachels, 2011) yet Saunders' alcohol use was not a crime. The individual should not bear full responsibility for their condition because their alcohol use is a) lawful and b) precipitated by societal forces. These forces impede an individual's capacity to control their actions, therefore compromising the autonomy of a decisions.

Therefore, it is critical to consider situational context by acknowledging the social and individual factors reducing Saunders' degree of voluntariness over her alcohol use. Cohen and Benjamin correctly remark that it is difficult to assess an individual's degree of voluntariness in order to establish their autonomy regarding one's initial and subsequent decisions to drink alcohol (2011). For Saunders', two primary concerns negate the applicability of this principle: factors reduce her autonomy in consuming alcohol, and drinking in itself is not a crime.

Saunders' voluntariness was compromised and therefore she did not have complete autonomy over her alcohol consumption (Cohen and Benjamin, 2011). At the individual level, evidence shows that certain genetic traits predispose people to increased risk, making certain individuals more biologically susceptible to disease (Thorton, 2009). As alcohol affects dependency between sexes differently (Thorton, 2009), a secondary double moral standard exists. Despite this relationship between heritable traits, sex, and increased risk, Glannon argues that its magnitude is insufficient to absolve someone of responsibility for their drinking (1998). This fails to acknowledge the compounding effects of multiple forces.

As alcohol is widely used as coping mechanism, we ought to consider what a person is coping with. Saunders' family cites the recent murder of her sister as a precipitating factor of her recent bout with excess alcohol consumption (Meloney, 2017). While many PWAUD could identify unfortunate life circumstances contributing to their alcohol use, the case of Saunders' needs to be considered within the context of her Indigeneity in colonial Canada. To be an Indigenous person in present-day Canada means experiencing racial discrimination on personal and systematic scales. Intergenerational trauma from historically racist events interact with current inequitable institutional policies to create precarious and marginalizing conditions for Indigenous persons which may be severe enough to necessitate coping mechanisms. Saunders' Indigenous rights activism (Meloney, 2017), implies that she was aware and likely affected by these contextual factors. For Saunders'; the powers that oppressed Indigenous persons during initial colonization may manifest in present authorities to reproduce racial inequities, such as the transplant policy that disregard factors reducing autonomy.<sup>1</sup>

Next, punishing Saunders' is retribution for an act when she did not commit a crime. Saunders' waitlist access was denied on the basis that her recent alcohol consumption was a contraindication for eligibility (Meloney, 2017; Payne, 2017). A

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<sup>1</sup> This paragraph merely references the complex histories of Indigenous people in Canada. For more information, I recommend Chelsea Vowel's book 'Indigenous writes: a guide for First Nations, Metis, and Inuit Issues in Canada'.

crime is typically defined as an unlawful act, yet in the Canadian context, drinking is not a crime but instead alcohol is widely available for purchase and consumption. Rather, alcohol consumption is rooted and celebrated as part of mainstream culture, as demonstrated by the allowance of alcohol advertisements and its representations in the media. As such, there are few regulations to limit overall alcohol consumption, leaving consumption decisions to the individual to assess, whereas other substances that known to have adverse health effects such as narcotics are tightly regulated and restricted from use. In effect, it is impossible to deny society's influence on consumption.

Kant's second principle of retributivism is violated because the severity of Saunders' punishment is disproportionate to the severity of the action (though treated as a crime). In Saunders' case, her alcohol use has been deemed a crime and yet the punishment is suffering and hastened death due to lower chance of survival (Meloney, 2017). Even if liver failure is the biological result of excessive alcohol consumption, this punishment is not proportionate. For arguments sake, *if* we accepted that people with ARESLD are morally responsible for their alcohol use disorder so that they merit a punishment, Cohen & Benjamin note that it remains impossible to assess what penalties various crimes deserve (2011). Kant's retributivism supports capital punishment where if a person commits murder, the proportionate punishment is death in return (Rachels, 2010). For Saunders, transplant denial inflicts extreme suffering and a hastened death (Meloney, 2017). In examining this punishment in reverse, the severity of Saunders' death as punishment cannot be equated to the severity of her drinking behaviour. Thus, to deny Saunders access to the waitlist is an unethical punishment disproportionate to her actions.

Lastly, Kant's categorical imperative asks individuals to act only according to principles that they would accept to become universal law (Rachels, 2011). Therefore, if we accept that moral judgments prevent ARESLD patients from receiving transplants, then to judge the moral responsibility of ARESLD patients we ought to judge the moral responsibility of *all* potential recipients. However, in addition to the challenge of achieving consistent judgments across hospitals and physicians (Cohen & Benjamin, 2011), assessment is problematic and undesirable. To assess the moral behaviours of all patients for all medical resources, a hierarchy of moral offenses would need to be established in order to distribute resources (Cohen & Benjamin, 2011).

People may critique my argument on the premise that natural consequences are not punitive. They may equate Saunders' case to a person punching a wall and

complaining that they are not responsible for their bruised knuckles because the forces that drove them to punch the wall were beyond their control. In this example, the person is fully aware of the consequences that will inevitably occur and have the capacity with control their actions. Thus as autonomous agents they should be responsible for the natural bruising that result from the impact.

My argument is valid because denying Saunders a liver transplant is not merely a consequence but it is a punishment. As alcohol consumption results in decreased liver function, without intervention, a person with liver failure will die sooner than someone in full health. This would be a natural consequence of their actions. However, natural consequences no longer reflect the current state of medicine. Biomedical advancements enable human intervention by replacing failing livers with healthy transplants to increase survival rates. Yet liver scarcity and their constant demand results in inevitable competition. Hence, health systems such Ontario's devised methods to distribute the resource by establishing exclusion criteria which effectively denies people with conditions deemed immoral. This deliberately lower valuation of the lives of PWAUD compared to others actively and unjustly punishes people who are not fully responsible for their condition.

In the wall-punching example, the patient is responsible for their condition yet will still receive care because no moral judgment was passed. Treating people regardless of their condition's origin is essential so as not to undermine the physician-patient agency relationship. Patients seek physicians to restore their health, which requires the patient to trust the physician to disclose relevant personal information so accurate diagnoses and treatments can be made. Ho claims that if ARESLD patients know that what they share will affect their survival, they may withhold pertinent information (2008). Since it is difficult to accept that a fully autonomous person would volunteer information if they knew it would negatively affect their survival, it is plausible that Saunders' physicians were aware of her alcohol use disorder because she unknowingly shared information that ultimately compromised her care. Thus, a medical system based on moral responsibility disadvantages people of low socioeconomic status, especially ethnic minorities who are less likely to be able to manipulate the system to receive better care, thus perpetuating health inequities that conflict with the fundamentals of the Canadian health care system (Ho, 2008).

It was unethical for TGLN to deny Delilah Saunders a liver because Kant's principles of punishment were violated: Saunders was issued an unwarranted punishment disproportionate to her actions that were not autonomous nor a crime. Assessing moral responsibility in the allocation of medical resources ought does not

occur universally, as it perpetuates health inequities that conflict with the aims of the Canadian health care system.

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