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Knowledge by Any Other Name: Alexander Sarch on Wilful Ignorance

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In his book *Criminally Ignorant: Why the law pretends we know what we don't*,[1] Sarch provides a compelling re-conceptualisation and defence of the doctrine of wilful ignorance. Wilful ignorance is a doctrine of criminal law that applies across common law jurisdictions, imputing 'knowledge' to a defendant (D) who has 'wilfully' remained ignorant by 'closing their eyes' or 'burying their head in the sand' when faced with an apparent risk of criminal wrongdoing. For example, D buys a new state-of-the-art laptop from a friend (P) for a nominal fee, knowing that P has been involved in the trade of stolen goods. By not asking P where the laptop comes from, D can avoid *knowing* (in a conventional sense) that it is stolen, and thereby hope to avoid liability for knowingly handling stolen goods.[2] However, the doctrine of wilful ignorance may apply in such cases, allowing knowledge-based liability to be manufactured from D's choice not to self-inform.[3]

A central problem with the doctrine of wilful ignorance is that despite (perhaps because of) its intuitive appeal, its application at common law is typified by imprecision and inconsistency, both theoretical and substantive. This ranges from questions about what precisely D must foresee when choosing not to discover a certain fact, through to the conceptualisation of this prior-choice as a constructed 'form of' or 'equivalent to' knowledge. Various attempts have been made in the theoretical literature to explain and correct these problems,[4] to which Sarch's thesis provides a significant addition. Sarch defends the imputation of knowledge as to a criminal circumstance or result through an accumulation of associated culpability. That is, at a prior point, T0, D must foresee the risk of circumstances or results of future intended or planned conduct, must know she is able to investigate the truth of those risks without undue harms, and must breach a duty to self-inform in deciding not to do so; and D must act subsequently, at T1, with a mens rea of recklessness as to that same circumstance or result.[5]

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[1] Sarch, *Criminally Ignorant: Why the law pretends we know what we don't* (OUP, 2019).

[2] Theft Act 1968, s22.

[3] The leading English authority is *Westminster CC v Croyalgrange Ltd* (1986) 83 Cr App R 155.

[4] See, for example, Yaffe, 'The Point of Mens Rea: The Case of Willful Ignorance' (2018) 12 *CrimL&Phil* 19; Hellman, 'Wilfully blind for good reason' (2009) 3 *CrimL&Phil* 301; Husak and Callender, 'Wilful ignorance, knowledge, and the "Equal Culpability" thesis' (1994) 29 *WisLRev* 40.

[5] Sarch (n1), 11-13; 17.

I provide some specific comment on Sarch's construction of wilful ignorance in what follows. However, crucially, his book does considerably more than reshape and defend a relatively narrow common law doctrine. That is, in providing the necessary theoretical scaffolding for his approach to wilful ignorance, Sarch engages with fundamental questions about the meaning of culpability and its accumulation across related or continuing actions; and putting this construction to use, Sarch extends beyond his wilful ignorance paradigm to support expanded and/or associated approaches to mens rea imputation in general. And it is this rather more expansive ambition within the book that will provide my primary point of engagement.

Sarch's book centres on a clear normative aim, to provide a theoretically defensible account of wilful ignorance and mens rea imputation. Before engaging with this, however, it is important to recognise the practical decisions that Sarch takes in order to focus debate to these ends. Rather than being invited to question whether wilful ignorance should *ever* be available as a doctrine of imputation, Sarch's approach throughout is one that accepts the legal context (i.e., wilful ignorance *is* widely employed within the law), and focuses instead on identifying the *best* theoretically defensible model for it.[6] There is a lot to be said for this choice, and it successfully narrows the focus of the book to the core debates in which Sarch wishes to operate. However, it is also a choice that diminishes and/or jettisons certain points of concern that I wish to address in this article; points of concern that challenge Sarch's core approach to wilful ignorance, and particularly his claims about associated and/or wider imputation doctrines. In this manner, we can accept that Sarch's model provides a best option for the expression of wilful ignorance, but still question the theoretical and practical desirability of any legal fiction of this kind (i.e., mens rea imputation or substitution), and particularly its potential for wider application.

In this short article, I discuss Sarch's approach to wilful ignorance and wider mens rea imputation across three parts. Part 1 focuses on wilful ignorance alone, and our understanding of T0: analysing the construction and capture of prior blameworthy acts, as well as their link to D's subsequent conduct at T1. I am broadly sympathetic with Sarch's approach here, though I note some problems that may require further clarification (and lead to difficulties discussed in Part 3). Despite this broad agreement, our views diverge on the final stage of imputation. Discussed in Part 2, I do not believe that 'equal' or 'equivalent' culpability should ever provide legitimate grounds in law to turn an 'x' into a 'y', and so I challenge the basis for mens rea imputation in general. Part 3 widens to consider associated and comparable doctrines of imputation elsewhere in the law. Where Sarch uses these doctrines to demonstrate the broader application of his theoretical model, I use them to reinforce concerns from Parts 1 and 2, and to contend that models of mens rea imputation should be confined and diminished wherever practically possible.

[6] Sarch (n1), 2.

Part 1: Understanding blame for conduct at T0

Paradigms of criminal law focus on snapshot events at T1, identifying blameworthy conduct and culpability relevant to the definitional elements of an offence. However, in certain circumstances, a narrow focus of this kind can lead to a perceived injustice. For example, where D only lacks mens rea at T1 because she voluntarily intoxicated herself at T0; where D acts in self-defence at T1 only because she intentionally antagonised V into attacking her at T0 as an excuse to use force; and so on. In such cases, in order to avoid the narrow T1 focus that would potentially result in D's acquittal (and would always fail to account for her T0 culpability), the law has developed a variety of prior-fault or imputation rules that allow us to include D's T0 conduct in our legal appraisal of her actions at T1. The doctrine of wilful ignorance is one such prior-fault or imputation rule: D is treated *as if* she possessed knowledge of a fact or circumstance at T1, not because she had such knowledge in reality, but because she intentionally avoided discovering the truth at T0 in order to remain ignorant. The law recognises a fiction of knowledge to prevent D (in a sense) cheating or gaming her legal position in circumstances of accumulated culpability.

Despite the powerful intuitive appeal of such rules however, their substantive expression in law remains inconsistent and problematic. Most importantly, we encounter problems (i) conceptualising what D is doing wrong at T0, and (ii) providing a defensible link to connect D's T0 conduct to the actus reus of her offence at T1. Sarch engages with both, but questions remain.

What D does at T0

Understanding criminal blame for T0 conduct is problematic because, in a legal context at least,[7] it is exceptional: D's conduct and culpability at T0 do not coincide (or immediately manifest[8]) with the actus reus of an offence (i.e., D's later conduct at T1). As a result, our typical understanding of actus reus elements, and definitions of mens rea terms, do not straightforwardly apply. The challenge is to identify and carve out a distinct token of blameworthy conduct that can be traced forward to T1. Sarch's approach here is well constructed, focusing on D's omission to self-inform in breach of a duty to do so.[9] However, at least two potential problems emerge for his approach, both risking over-inclusiveness/over-criminalisation.

First, part of the intuitive appeal of wilful ignorance (and other prior-fault rules) is its ability to trace an accumulation of culpability over (at least) two *distinct* points in

[7] As opposed to a moral context, where arguably aggregated blame is more easily understood.
[8] Sarch (n1), 32.
[9] Sarch (n1), 115.

time; 'adding up' to a more serious culpability state.[10] For Sarch's approach, however, it may be difficult to maintain this separation. As D's conduct at T0 is necessarily characterised as an omission (to self-inform), we do not have a physical (act based) mechanism for individuating events, and there is a risk that they run into one another. For example, D acts at T1, reckless as to a circumstance or result, but knowing that she could investigate that risk *there and then*. Could we analysis this as a T0/T1 event? If yes, and Sarch's approach to wilful ignorance applies, then the implications for mens rea imputation will be significant: D's reckless mens rea will become knowledge whenever she could reasonably stop and investigate a foreseen risk. Where T0 and T1 are effectively con-current in this manner, we might question whether the doctrine is one of prior-fault imputation, or rather a redefinition of mens rea terms.

A second related problem centres to the T0 duty to self-inform, and the culpability associated with a failure to take *reasonable* steps to do so. The duty makes sense for otherwise non-criminal and only potentially dangerous activities, such as transporting potentially criminal goods, where we are encouraged to investigate D's attitudes and circumstances surrounding the potential breach. We are told, importantly, that the 'duty is *pro tanto* in the sense that it can be outweighed by weightier considerations, for example, … if investigating otherwise is unduly harmful or costly.'[11] However, where D's planned conduct at T1 will always amount to (at least) a recklessness based offence, it seems likely that her choice not to investigate at T0 will *always* breach the duty to self-inform (i.e., it will never be reasonable to continue without informing oneself). The concern here (potentially in combination with that of the previous paragraph) is that large amounts of reckless offending could be inappropriately transformed into knowing offending. For example, where D plans to set fire to a building reckless as to its occupancy, do we always treat her as knowing unless she meticulously checks every room?

Linking T0 and T1

Sarch identifies unreasonable failure to self-inform at T0 as culpable, but he (correctly) does not claim that this conduct alone establishes a criminal wrong. Rather, D's T0 culpability must be captured and added to her actus reus and mens rea at T1, establishing a knowledge-based offence through a process of accumulation. This requires a mechanism for linking D's conduct at T0 and T1 within a single transaction.[12] In the context of other prior-fault rules, such as intoxication and prior-fault automatism, links between T0 and T1 are most obviously established through the causing of a loss of capacity; though how we understand this remains challenging and

[10] The mathematics of culpability at play here is usefully analysed in a separate comment article in this volume from Jan Willem Wieland, 'Degrees of criminal culpability'.
[11] Sarch (n1), 115-16.
[12] The challenge is not simply to tally a series of bad acts, but to identify D's T0-T1 conduct as something deserving of accumulative blame.

contested.[13] But in the context of wilful ignorance, external/physical ties of this kind are not apparent. Sarch recognises and engages with this difficulty, to his credit, but the two mechanisms he relies on (i.e., intention-based links and links from a common target of legal rights or interests) raise new problems for his account.[14]

The first (and probably most significant) link between T0 and T1 in Sarch's scheme is contained within his breach of duty model. This is because, at T0, as well as failing to self-inform, D must be 'intending or planning' her future conduct at T1.[15] D's choice to remain ignorant is thereby tied to her commitment to acting at a future point whilst still in the same state of ignorance; in a manner broadly akin to other offences that require an ulterior commitment to future conduct.[16] There is much to be said for this approach in its ability to create a nexus between D's T0 and T1 conduct, essential for Sarch's approach to culpability accumulation. However, requiring intention of this kind at T0 would create a significant hurdle for prosecutors; and in line with this prosecutorial concern, there is reason to doubt Sarch's commitment to it. Despite reference to 'intending or planning' future conduct when discussing the breach of duty model, Sarch does not unpack exactly what this would require in practice (e.g., levels of commitment, proximity, etc[17]). And this is despite recent jurisprudence in the UK Supreme Court that has interpreted ulterior intention in a remarkably broad (and fundamentally problematic) fashion.[18] Indeed, within later sections of the book, Sarch either omits reference to the requirement,[19] or appears to downgrade it to merely 'contemplated' future conduct.[20] Clarification is essential here, both as to the T0 mens rea requirement, and to its precise definition within the ulterior context; and only then can we properly evaluate its nexus forming potential.

The second linking devise proposed by Sarch focuses on the consistency of 'object' between T0 and T1. We are told that 'the culpability of all [D's] actions can be added together to justify imputing the missing elements and punishing X* the same as X *only if* the string of acts X* consists of all manifest insufficient regard *towards the*

[13] See Crombag, Child and Fortson, 'Understanding the 'fault' in Prior-Fault Intoxication: Insights from Behavioural Neuroscience' in Reed and Bohlander (eds) *Fault: Substantive Issues in Criminal Law* (Routledge, 2020).
[14] Sarch also refers to a third 'causation' link (see, eg, fn 33 on page 244-245) where D's omission to self-inform at T0, in failing to generate reasons against action at T1 (i.e. knowledge of the relevant element), provides a causal and/or explanatory link to that later conduct. The problem with this, however, is that such 'causal' links surely exit between all individual actions, and so this form of linking devise does not appear to justify individuating the T0-T1 transaction over any other combination of actions in D's life. As such, it appears supplementary to the other two discussed here.
[15] Sarch (n1), 115.
[16] Including, for example, burglary (Theft Act 1968, s9(1)(a), incomplete attempts, certain conspiracies, and so on.
[17] See Child, 'Understanding Ulterior Mens Rea: Future Conduct Intention is Conditional Intention' (2017) *CLJ* 311.
[18] Conditional intention is interpreted in this case to require, seemingly, little more than foresight of a future risk. Discussed in Krebs (ed.), *Accessorial Liability after Jogee* (Hart, 2020).
[19] For example, when discussing out jury instructions. Sarch (n1),130-138.
[20] Sarch (n1), 183. See also fn 16 on page 114, where Sarch leaves the question 'open' as to a lesser mens rea requirement.

same set of protected interests, rights, and values as X was criminalized to protect.'[21] This is an important limiting devise within Sarch's model, ensuring that unrelated wrongs are not accumulated artificially; and plays a central role within Sarch's general approach to mens rea imputation in Chapter 5. It is also a reason for Sarch to reject wilful ignorance as a substitute for 'purpose', with purposeful 'commitment' to a prohibited circumstance or result identified as qualitatively different from reckless or knowledge-based mental states.[22] I agree with Sarch here, and (in combination with the intentional link just discussed[23]) a test of object is certainly necessary. However, it is in this agreement that a more fundamental problem emerges: just as Sarch recognises purposeful conduct as engaging a different object of blame than reckless or knowledge based conduct, similar differences can be identified between acting in states of recklessness and knowledge. In this manner, Sarch's mechanism for linking T0-T1 wrongs invites a more fundamental criticism about mens rea imputation in general.

Part 2: Legitimate blame, but is it the same?

The issues identified in Part 1 are intended to pull at some of the more problematic threads within Sarch's approach, but they do not deny its overall appeal. Indeed, it was acknowledged from the start of this article that the typical snap-shot focus of the law must sometimes be expanded to avoid unfairness; and classic examples of wilful ignorance certainly fit this intuitive mould. However, we finished Part 1 with a fundamental concern that will be unpacked further here: Sarch's approach gives us a compelling mechanism for blaming D for the totality of her conduct (linking T0 and T1), but can/should we hold this as being the same as or equivalent to a state of 'knowledge'? It is argued here that this final step remains a fiction that, as far as is possible, should be resisted.

Sarch spends relatively little time justifying this final step within his model, reflecting the practical realities discussed earlier (i.e., that wilful ignorance already operates to this effect within the criminal law). However, there are at least two reasons to be sceptical, raising both theoretical and doctrinal concerns.

It is contended that the accumulation of culpability within Sarch's account (i.e., foresight and breach of duty at T0 and recklessness at T1) remains of a fundamentally different kind to acting at T1 with knowledge as to criminal circumstances or results. Sarch attempts to engineer equivalence through a focus on consistency of object: the

[21] Sarch (N1), 160 (original emphasis).
[22] Sarch (n1), 210-212.
[23] Consistency of object is important, but should not be presented as a stand-alone mechanism for linking T0-T1 events. D may foresee a certain risk at T0 with knowledge that she could discover the facts of that risk with minimal effort, but she should only be blamed for not doing so where she intends conduct (i.e., at T1) that risks the manifestation of that potential harm.

'rights and interests' that are consistently targeted across the T0-T1 transaction.[24] However, although the criminal law undoubtedly serves a protective function, we should not to underestimate the importance of the manner and content of the wrong performed. Indeed, this is a primary basis of varying mens rea standards within offences, as well as laddering offences in a manner designed to label and punish offenders accordingly. This is why Sarch is right to identify 'purpose' as of a different kind to the culpability constructed through wilful ignorance, even if the targeted interests are similar and even if culpability levels could be varied to create apparent equivalence.[25]

Our understanding of this criticism will be moderated, at least in part, by the underlying legal definitions of 'recklessness' and 'knowledge' at play. It is noteworthy, therefore, that Sarch employs definitions from the US Model Penal Code where the gap between recklessness (foresight of a *substantial* and unjustifiable risk) and knowledge (true belief) is considerably narrower than we see in other jurisdictions, including England and Wales.[26] The bridging function of wilful ignorance may therefore be less convincing outside of Sarch's paradigm, a point discussed by Dsouza elsewhere in this volume.[27] However, even putting this to one side, *any gap* between mens rea states still establishes a burden for supporters of wilful ignorance doctrines to demonstrate how prior states of bare foresight and breach of duty (T0) can and should translate a later state of reckless into one of imputed knowledge (T1). The point here is that, although potentially blameworthy, hiding from a tough decision whether to break the law (i.e., wilful ignorance) remains distinct from knowingly making that decision. Even in circumstances of repetition and accumulation, the psychological self-narrative and deception associated with the former suggests a distinct moral quality to the explicit disregard of other's rights and interests in the latter.[28] As a result, although it may be correct to criminalise wilfully ignorant harm causers from a policy perspective, and to label and punish them more severely than simply reckless harm causers, treating wilful ignorance as a demonstration of knowledge based offending is to mischaracterise and mislabel.

A second more practical and doctrinal concern relates to the manageable confinement of wilful ignorance as defined by Sarch. This concern engages with general criticisms about common law fictions of this kind, and their effective disguise from legislative and public understanding and scrutiny.[29] But specific issues also arise, where the absence of clarity around the mechanism of men rea imputation can cause difficulty. These occur, for example, where certain mens rea terms are already being used flexibly, such as the use of knowledge as an equivalent to intention in the context

[24] Sarch (n1), Chapter 5.
[25] Sarch (n1), Chapter 7.
[26] Sarch (n1), 7-11.
[27] Dsouza, 'Criminally Ignorant – An Invitation for Broader Evaluation'.
[28] See, for example, Heffernan, *Wilful Blindness: Why We Ignore the Obvious* (Simon & Schuster UK, 2012).
[29] See analogous discussion in Robinson, 'In defence of the Model Penal Code: A reply to Professor Fletcher' (1998) 2 *Buffalo Criminal Law Review*, 25.

of circumstance elements; the division between knowledge and oblique intention; as well as the translation of any mens rea terms into an ulterior context. The first two of these demonstrate a risk of knowledge imputation morphing into a legal state of intention, in a manner Sarch rightly cautions against. The last example, asking how Sarch's imputation works in the context of ulterior mens rea, is something that caused the Law Commission of England and Wales considerable problems when analysing the intoxication rules, leading to recommendations for separate doctrines of imputation within and beyond the actus reus of different offences.[30]

The upshot of these concerns is that despite agreement with Sarch as to the identification of culpability across multiple connected points, it is contended that the law should articulate such blame more honestly than it currently does with the doctrine of wilful ignorance. This can be achieved, where necessary, with new offences designed to explicitly capture conduct across both T0 and T1;[31] or perhaps by varying the mens rea of individual offences to expand the requirement of knowledge to include alternative mental states.[32] I make no claim here that Sarch's conception of wilful ignorance is not similarly culpable to a state of knowledge across many examples, I simply claim that these concepts are distinct and capable of coming apart; and as such, should be separately represented in the law.

Part 3: Beyond wilful ignorance for the grand schemer

It is important to reflect that despite the concerns expressed across Parts 1 and 2, there remains something essentially non-offensive about the doctrine of wilful ignorance (and particularly the doctrine as defined by Sarch). I would want more work to avoid or resolve the issues raised in Part 1, and a new form of legal expression is required to present the doctrine as a separate form of culpability to avoid its fictional presentation as knowledge (discussed in Part 2), but similar levels of criminalisation remain broadly appropriate. So has our discussion been one of pedantry? Should we simply accept Sarch's model as a convenient shortcut to rough or approximate-justice outcomes?

I am confident that the answer to both these questions is 'no', but the main reasons for this take us away from the doctrine of wilful ignorance as our sole point of concern. Where permission is given for the use of legal fictions and imputations in pursuit of policy-driven rough justice outcomes (e.g., where we accept a role for wilful ignorance), there is a danger that such acceptance will open the door to imprecise

[30] See Law Commission, *Intoxication and Criminal Liability* (No 314, 2009), critiqued in Child, 'Drink, Drugs and Law Reform' [2009] CrimLR 488.
[31] We see this, for example, with the growth of corporate 'failure to prevent' offences. See Ashworth, 'A New Generation of Omissions Offences' [2018] CrimLR 354.
[32] This could be an expansion to recklessness, or the constituting of wilful ignorance as a bespoke mens rea standard.

criminalisation by intuition and approximation more broadly, threatening basic rule of law concerns about consistency and fairness. Sarch's detailed theorised approach does much to guard against this concern, deconstructing our intuitive responses into a series of doctrinal mechanisms that provide a clear point for critical engagement and confinement. However, as Sarch broadens his own focus to doctrines of mens rea imputation beyond paradigm wilful ignorance cases, it is interesting to identify the further bending (if not breaking) of his model.

The unique application of Sarch's model of mens rea imputation to corporate defendants is explored elsewhere in this volume by Krebs and Silver,[33] and so that is not pursued further here. In this final Part, I briefly explore three other areas where Sarch endorses the potential for doctrines of imputation based on his proposed model: (i) iterated reckless ignorance, (ii) sub-wilful ignorance, and (iii) intoxication.[34] In each case, we can see how expanding from wilful ignorance engages and exacerbates many of the same problems highlighted in Parts 1 and 2.

Iterated reckless ignorance

Iterated reckless ignorance, within Sarch's scheme, would allow the imputation of knowledge at T1 where D *recklessly* (as opposed to intentionally) breaches a T0 duty to inform herself and then goes on to act at T1 with recklessness as to the relevant circumstance or result. To justify the expansion to reckless ignorance, Sarch here requires at least two T0 events (as opposed to one), each representing a breach of duty to self-inform.[35] For example, where professionals structure their work to make it less likely they will identify problems over multiple checking processes, we should apply the law *as if* they were aware.

As an expansion from Sarch's core doctrine, this is probably the most modest of the three to be explored, but maintaining the elements of his theoretical model is already difficult. This is particularly true with regard to the concerns highlighted in Part 1. First, we have the problem of individuating events at T0 and T1, now exacerbated by the inclusion of a second T0 omission. Unlike Sarch's comparison with 'repeat offenders',[36] where criminal events (and convictions) are more readily identified and counted, we need considerably more information to understand the temporal or opportunity (or other) means for separating T0 failures to self-inform, both from each other as well as from D's T1 actions. Second, concerns arise in relation to the linking devises between T0 and T1. I have highlighted D's intention at T0 to perform certain conduct at T1 as an essential (though problematic) linking devise in Part 1. However, in the context of reckless ignorance, the language of 'intention' and 'planning' gives

[33] Krebs, 'Corporations Keeping Themselves in the Dark'; Silver, 'How the Shape of Corporate Criminal Liability Depends on the Nature of Corporate Agency'.
[34] To its credit, Sarch's approach also rules out certain other imputation doctrines. Sarch (n1), Chapter 5.
[35] Sarch (n1), Chapter 6.
[36] Sarch (n1), 185-7.

way in Sarch's account to 'contemplated' future conduct.[37] The change is perhaps understandable, as those only recklessly remaining ignorant are less likely to have fixed plans for future actions and avoidance, but the concession seems to undermine an essential element justifying the addition of culpability across separate events.

Sub-wilful ignorance

Sub-wilful ignorance arises within Sarch's model where D negligently fails to self-inform at T0 concerning future intended or planned conduct at T1,[38] and then acts at T1 with similar negligence as to the criminal circumstance or result at issue.[39] For Sarch, the law should regard D as acting at T1 with recklessness as to the circumstance or result (i.e. impute recklessness), an outcome that would open up a much greater range of possible offences. Our focus, again, is on the compromises Sarch makes to his model to incorporate this expanded form of mens rea imputation.

Imputing (subjective) recklessness from (objective) negligence stretches Sarch's model considerably further than the degrees of foresight transition from recklessness to knowledge within paradigm cases of wilful ignorance. A case can certainly be made for D's negligence as to future risks at T0 being taken into account when assessing her culpability at T1. However, having stressed the importance of the minimal step from recklessness to knowledge,[40] and the vital commonality of protected rights and interests required to bridge these terms,[41] it is surprising that Sarch is willing to apply the same test to transform multiple inadvertence to risk into imputed advertent risk taking.

With recklessness typically marking the threshold for criminal mens rea, a doctrine of sub-wilful ignorance also has significant potential to adjust the boundaries of criminalisation. The concern here is that it may operate in an over-inclusive manner. Sarch's discussion focuses on corporate and professional organisations that establish negligent models for oversight, influenced by legal avoidance and commercial advantage. But presumably the doctrine would operate outside of this context, where our intuitions to impute subjective mens rea could be weaker. For example, what of a schoolteacher or police officer negligently failing to investigate where they are likely to disrupt violent and potentially criminal behaviour? Negligence of this kind may legitimately result in employment sanctions, and perhaps (for the police) bespoke criminal negligence offence liability, but substituting negligence for recklessness opens up a much greater range of offences, including assisting or encouraging offences, potentially complicity, and others.

[37] See, for example, Sarch (n1),183.
[38] Sarch (n1), 219.
[39] Sarch (n1), Chapter 8.
[40] Though, of course, I take issue with this in Part 2.
[41] Discussed in Part 1. See discussion of 'purpose', Sarch (n1), 210-212.

Voluntary intoxication

The final example of extended imputation that I consider here relates to voluntary intoxication, and the doctrine that imputes subjective mens rea at T1 in circumstances of voluntary intoxication at T0.[42] Sarch does not provide an extended discussion of the intoxication rules, and what he does suggest would limit them in significant and sensible ways (focused on the consistency of protected interests at risk at T0 and T1).[43] However, Sarch's willingness to lend even generalised support to this kind of imputation provides further grounds for concern. As above, the intuitive case for liability seems to direct compromises to the core elements of Sarch's model.

Sarch focuses on the imputation of recklessness from negligence. This raises the same problems of mens rea 'kind' discussed in relation to sub-wilful ignorance. However, although not discussed by Sarch, there is a question whether his approach would go further still in the context of intoxication. For example, where D is acutely intoxicated at T1 to the extent that she no longer acts voluntarily, will the intoxication rules substitute for a lack of intentional movement? This is a core element of the current intoxication rules,[44] but would be difficult to accommodate within Sarch's model.

Second, as with iterated reckless ignorance, accepting the intoxication rules may lead to concessions on the need for an intention-based link to connect T0 and T1 within a single logical transaction. Requiring D to intend her future conduct when becoming intoxicated at T0 would significantly limit the potential application of intoxication rules at T1, effectively narrowing to so-called Dutch-courage cases where D becomes intoxicated in order to commit an offence; which is clearly not intended by Sarch's endorsement of potential imputation of mens rea in this context. But as discussed in Part 1, intentional linking of this kind appears essential to Sarch's model, and so the compromise is significant. Additionally, whether intention or some looser contemplation requirement is preferred here, the context of voluntary intoxication also introduces a new complication for Sarch's model: must D intend/contemplate relevant circumstances or results when sober (i.e., locating T0 at the point prior to any degree of intoxication), or can this be found during the course of becoming intoxicated, despite detreating capacity?

Conclusion

[42] Sarch (n1), Chapter 5, and particularly 166-167.
[43] Sarch (n1), 166.
[44] *Lipman* [1970] 1 QB 152.

It will be clear that I have enduring concerns about the usefulness and desirability of mens rea imputation doctrines, including wilful blindness. My principal worry here is that such doctrines centre on a legal fiction, and the space created within this fiction allows all manner of argument by intuition and approximation, and provides no mechanism for defining and defending models of confinement. This is why I question Sarch's defence of wilful ignorance in Parts 1 and 2, and particularly the potential expansion of and/or equivalences to it in Part 3.

Despite these headline differences, however, it is still possible to appreciate and broadly endorse work done across much of Sarch's book. We certainly agree that the law should, at least sometimes, look beyond D's conduct at T1 to take account of conduct and culpability at T0; and Sarch's book provides one of the most compelling accounts of how such tracing can operate within a theoretically defensible model. I disagree with the Sarch's final step, where culpability states are *transformed* by repetition, but this does not detract from my appreciation of each of the previously worked stages. These stages of Sarch's project remain largely untouched in this short article, but will be of enduring influence.