Mind and Criminal Responsibility in the Anglo-American Tradition
Spring 2017
WCC 3013, Wed. 3:00-5:00 pm

Prof. Elizabeth Papp Kamali
Griswold 304
ekamali@law.harvard.edu

Assistant: Ms. Ashley Nahlen
Areeda 224
anahlen@law.harvard.edu

“Actus non facit reum nisi mens sit rea.” – Justinian’s Institutes (3 Inst. 107)

“I have always thought that most of the difficulties as to the mens rea was due to having no precise understanding of what the mens rea is.” – Oliver Wendell Holmes

Course Description:

This seminar will explore the deep roots of the modern doctrine of mens rea and will consider a variety of related issues, including insanity, infancy, provocation, and duress. Readings will include a variety of primary and secondary sources from a broad time span in Anglo-American history, from the medieval to the modern. Our goal will be to understand the role of mind in defining the bounds of criminal responsibility at various points in time over the long durée of common-law history, relying upon secondary literature as well as close readings of primary source texts. Students will develop a comparative perspective on issues of mind that continue to perplex lawyers today, while also building a set of critical reading skills that are essential to the work of legal historians and practicing lawyers alike.

No Laptop Policy:

In the interest of engaged discussion, please do not use laptops or other electronic devices during class.

Grading:

Grading will be based upon eight response papers as well as class participation. Because the class is a seminar, class participation factors in greatly to the final grade.

The response papers (double spaced, maximum 1,250 words) should contain reflections on one or more of the assigned readings for that day; no outside reading is required. The papers may touch upon all the readings for that class, or focus on one or two. The papers should not be a summary of the readings, but rather should relay your own reflections and analysis. The response papers must be uploaded to the course website no later than 5 p.m. on Tuesday, the day prior to the seminar meeting. A total of eight response papers is required.

Class participation includes regular attendance (email the instructor in advance of an unavoidable absence), meaningful participation in class discussion, and facilitation of discussion at one class meeting (date to be assigned by the instructor). Attendance will be taken at each class meeting.
Class Schedule and Reading Assignments:

1. **Introduction & Ancient Precursors** (1/25/17)
   - Excerpts from Exodus, Numbers, Deuteronomy
   - Excerpts from Robinson, *Criminal Law of Ancient Rome*
   - Excerpts from Frier, *Casebook on the Roman Law of Delict*

2. **Anglo-Saxon Precursors** (2/1/17)
   - Excerpt from Walker, *Crime and Insanity In England*
   - Æthelberht’s Code, in Oliver, *Beginnings of English Law*
   - Excerpts from *Medieval Handbooks of Penance*
   - Jurasinski, “Madness and Responsibility in Anglo-Saxon England”

3. **The Medieval Mind I** (2/8/17)
   - Penitentials of Alain of Lille and Robert of Flamborough
   - Makinen and Pihlajamaki, “Individualization of Crime”
   - Sayre, “Mens Rea,” parts I-III

4. **The Medieval Mind II** (2/15/17)
   - Excerpts from *Bracton*
   - Butler, “Representing the Middle Ages: The Insanity Defense in Medieval England”
   - Buhrer, “Intellectual Disability in Medieval Thought and Culture”
   - Kamali, “Felonia felonice facta”

5. **The Early Modern Mind I: Women and Children** (2/22/17)
   - Brewer, “Understanding Intent: Children and the Reform of Guilt and Punishment”
   - Kesselring, “Bodies of Evidence: Sex and Murder (or Gender and Homicide)”
   - Walker, “Homicide, Gender, and Justice,” in *Crime, Gender and Social Order*

6. **The Early Modern Mind II: Provocation Doctrine** (3/1/17)
   - Horder, “The Seventeenth Century,” in *Provocation and Responsibility*
   - Horder, sections 1-6 of “The Rise of Loss of Self-Control,” 72-89
   - Watts v. Brains (1600)
   - John Royley’s Case (1612)
   - Regina v. Mawgridge (1707)
   - Rex v. George Hayward (1833)

7. **Reading Legal Treatises I: Hale and Blackstone** (3/9/17)
   - Hale, chs. 2 and 4 of *History of the Pleas of the Crown*, 13-15, 29-36
   - Blackstone, *Commentaries*, vol. 4, ch. 2, 17-26, ch. 14, 139-60
   - Eigen, “Diagnosing Homicidal Mania”

SPRING BREAK
8 Reading the Legal Record: Cases from the Old Bailey (3/22/17)
   Case of Frances Stirn (1760)
   Case of Catherine Hughes (1786)
   Case of John Glover (1789)
   Eigen, “Insanity: The Legal Context”

9 Reading Legal Treatises II: Stephen (3/29/17)
   Ibid., excerpts of ch. 19, 124-133, 168-186
   Morse, “Thoroughly Modern”

10 Nineteenth-Century Developments (4/5/17)
   *Classroom visit from Karen Beck (Manager, Historical and Special Collections) to bring
   some original broadsides from the law school library’s collection.
   (http://broadsides.law.harvard.edu/)
   Broadside: “The Life and Execution of John Pegsworth” (1837)
   Broadside: “The Very Extraordinary Trial of Elizabeth Wratten” (c. 1832-1839)
   M’Naghten’s Case (1843)
   Lacey, “Psychologising Jekyll, Demonising Hyde”

11 Philosophy of Mens Rea (4/12/17)
   Hart, “Intention and Punishment,” in Punishment and Responsibility
   Ferzan, “Plotting Premeditation’s Demise”
   Tadros, “The Characters of Excuse”

12 Where Are We Now? (4/19/17)
   Model Penal Code § 2.02
   Morse and Bonnie, “Abolition of the Insanity Defense Violates Due Process”
   Rakoff, “Neuroscience and the Law: Don’t Rush In”

Office Hours:

My office hours are Friday 1-3 pm or by appointment. You may sign up for a time slot on Canvas using the
“Scheduler” function.

Disability Notice:

If you are a student with a documented disability and are requesting academic accommodations, please
contact Accessibility Services in the Dean of Students Office at accessibility@law.harvard.edu or at (617)
495-1880. You may also visit the office in WCC 3039.

Questions? Contact me at ekamali@law.harvard.edu or my assistant, Ms. Ashley Nahlen, at
anahlen@law.harvard.edu.