Mind and Criminal Responsibility in the Anglo-American Tradition
Spring 2019
WCC Room 3036, Wed. 3:00-5:00 pm

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

Assistant: Ms. Brenda Bee
Areeda 224
bbee@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

Please note that changes may be made to this syllabus during the semester.
The latest version will be posted on Canvas.

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.

Laptop Policy:

In the interest of engaged discussion and because extensive notetaking is unnecessary in this class, please do not use laptops or other electronic devices during class unless you need to access the readings. Hard copy course packs will be available in the copy center.

Grading:

Grading will be based upon:

1) Class participation, including leading discussion one day.
2) Seven response papers.
3) A written analysis of a crime broadside and brief classroom presentation.

Because the class is a discussion-based seminar, class participation factors greatly into the final grade. 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.
The response papers (maximum 1,000 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 seven response papers is required. You may choose to write a response paper in any seven weeks of the class, with the exception of weeks 10 and 11, when we will have classroom presentations.

More information will be provided regarding the crime broadsides assignment later in the semester. The written portion of the assignment will be due on the day of your presentation.

Class Schedule and Reading Assignments:

1 **Introduction & Ancient Precursors** (1/30/19)
   - Excerpts from Exodus, Numbers, Deuteronomy
   - Excerpts from Gaius’ *Institutes* (§§183-208)
   - Excerpts from Justinian’s *Codex* (Ninth Book, Titles 16-18)
   - Excerpts from Justinian’s *Institutes* (Title III, Of the Lex Aquilia)

2 **Anglo-Saxon Precursors** (2/6/19)
   - Æthelberht’s Code, in Oliver, *Beginnings of English Law*
   - Penitential of Theodore, Book I
   - Walker, ch. 1 of *Crime and Insanity in England*
   - Jurasinski, “Madness and Responsibility in Anglo-Saxon England”

3 **The Medieval Mind I** (2/13/19)
   - Penitentials of Alain of Lille and Robert of Flamborough
   - Makinen and Pihlajamaki, “Individualization of Crime”

4 **The Medieval Mind II** (2/20/19)
   - Excerpts from *Bracton*
   - Butler, “Representing the Middle Ages: The Insanity Defense in Medieval England”
   - Kamali, ch. 2 of *Felony and the Guilty Mind in Medieval England*

5 **The Early Modern Mind I: Women and Children** (2/27/19)
   - 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** (3/6/19)
   - 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 (3/13/19)  
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  
King, ch. 4 of Crime and Authority in Victorian England (for procedural background)

SPRING BREAK

8 Reading the Legal Record: Cases from the Old Bailey (3/27/19)  
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: James Fitzjames Stephen (4/3/19)  
M’Naghten’s Case (1843)  
Ibid., excerpts of ch. 19, 124-133, 168-186

10 Crime Broadsides Presentations I (4/10/19)

11 Crime Broadsides Presentations II (4/17/19)

12 Where Are We Now? (4/24/19)  
Model Penal Code § 2.02  
NYT article, “When ‘Not Guilty’ is a Life Sentence”  
Rakoff, “Neuroscience and the Law: Don’t Rush In”

Office Hours:

My office hours are Mondays and Tuesdays 3:30-4:30 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.