CRI2140H: GUILT, RESPONSIBILITY AND FORENSICS
Fall 2019

Schedule: Thursdays, 2pm to 4pm

Course Description:

This course considers the barriers to establishing a defendant’s guilt in common law jurisprudence. It is particularly concerned with questions of criminal responsibility and forensics, and with the interaction of medical, social scientific and legal expertise in criminal contexts. The focus throughout is on the mind: How do we distinguish between disease and depravity, truth-telling and lies, bad luck and bad character? What kinds of technologies and expertise do we rely on to make these determinations? Common law jurisdictions have placed issues of mental capacity and culpability at the centre of their criminal justice systems. From assessing a defendant’s fitness to plead to the criminal trial, from sentencing to evaluating a prisoner’s eligibility for parole, the quality of a person’s mind, and our ability to know it, is essential. This course approaches the concept of the ‘guilty mind’ from a critical perspective, emphasizing the roles of culture, context and history in informing our understandings of the self, moral agency and sinfulness. The reading list privileges historical, literary and sociolegal works, especially monographs. These are paired with legal and policy-oriented articles that help us to bridge the gap between the past and the present, and to consider how recent developments in psychology and neuroscience affect how we approach the criminal mind today.

Learning Outcomes:

This course functions both as an introduction to the literature on law and the mind, and as an engagement with sociolegal methodology. By the end of the course, students will have developed a critical apparatus for identifying and analysing ideas about the mind and the self in a criminal law context. Students will also have developed a familiarity with sociolegal and, especially, historical research practices and major theoretical approaches. They will have the opportunity to write a research paper thematically connected to the course but within the scope of their own research interests.
Evaluation:

Weekly Responses: 10% (5 over the course of the semester, worth 2% each)
Oral Presentation: 20% (variable due dates beginning in week 3)
Primary Source Analysis: 20% (Due: 31 October 2019, 4pm)
Final Research Paper: 40% (Due: 19 December 2019, 5pm)
Participation: 10%

Assignment Details:

**Reading Responses:** 10% (1 short paragraph each; 2% per response; 5 responses in total)

You will be asked to submit a discussion question or prompt related to the themes and readings for **five weeks** of the term. You can submit a response for any week(s) you choose. The response should take the form of a short paragraph in which you identify an interesting or troubling issue, or raise a question or series of questions for consideration by the class. The prompts should be posted to the Quercus site for the course **at least 24 hours before we meet** (i.e. by 2pm on the Wednesday before class).

Grading: Discussion questions can be submitted for any week of the course, and all will be graded. A thoughtful response will receive the full 2% (most responses should, if submitted on time and with reasonable care, get full marks); a superficial or late response will receive 1%. Responses will be considered late if they are received less than 24 hours before the class for which they are due. Responses not submitted at all, or submitted later than 1 week from the class in question will receive 0%. You may not submit more than one response for any given week (i.e. you can’t submit two on the same week’s readings in an effort to double up).

**Oral Presentation:** 20%

Each week, beginning in week 3, one or more students will be asked to produce a mini-lecture (15-20 minutes – but no longer!), to be delivered to the class. For the presentation, you should identify a statute, case or government, police or other report – either recent or historical – that intersects with the themes up for discussion in that week’s class. You should describe the source to the class, explain the context in which it was produced or decided, and comment on how it complicates, elucidates, reinforces or contradicts questions and arguments that came up in that week’s readings.

Feel free to bring printed copies of the source to class, to circulate the source beforehand via pdf or a link on Quercus, and/or to use audiovisual materials. Do not, however, assume that the rest of the class will have read/watched/heard your source before we meet – part of your task in the mini-lecture will be to provide a brief, effective summary of the source and its content, and to explain why it enriches our understanding of the week’s themes.
Primary Source Analysis: 20% (750-1000 words)

The purpose of the primary source analysis is to help you to lay the groundwork for your final research paper. For the analysis, you will choose a primary source (i.e. not a piece of academic scholarship) related to the topic of your final research paper. Possible types of primary source include, but are not limited to: a case, statute, journal article, transcript of a speech, interview or parliamentary debate, report, or other government or policy document. You can also choose a source that is not primarily text-based, such as an object, a museum exhibition, or an artwork. You should describe the source, and analyze its context, the circumstances of its production, its language (if any), audience, intended function and consequences (if any). You should also explain how you intend to use the source in your final research paper: What questions will it help you to answer? How will it fit into your argument?

Final Paper: 40% (3500-4000 words, not including notes/references)

The final paper is the capstone of the class, and is your opportunity to pursue your own interests within the general confines of the course themes. Your topic should deal, in some way, with questions of guilt, responsibility or forensics. The paper must be within the general realm of ‘sociolegal’ research – papers are welcome to include quantitative methods and analysis, but should include significant engagement with at least one of the major issues of the course (problems of epistemology, doubt and certainty in the law; personhood; the self; the ‘mind’; expertise; culture and identity; questions of objectivity). The paper does not need to be about Canada – although it certainly can be, no place or time is off limits. We will discuss your chosen topic briefly before you get started, to ensure that it meets the course requirements.

The final paper is not a literature review, although it should include a discussion of the field in which you’re intervening and will rely to a significant degree on secondary sources. It should be based to some degree on original research/the analysis of primary sources or data, although the scope of that research will necessarily be limited by the nature of the class and the assignment. Students are encouraged to use online resources – reported cases, statutes and Hansard are all available digitally. Toronto is also the home of the Archives of Ontario and other excellent archives, if your interests tend in that direction.

Participation: 10%

The success of the seminar depends on the quality of your engagement in the intellectual life of the class, which will be reflected in your participation mark.

There are 5 tiers of participation grade:

Exceptional (90-100) participation: You regularly contribute to class discussion, listen attentively to your peers, and consistently demonstrate superior insight into the material. Your contributions generally build on aspects of the course material and other students’ comments – you actively shape the ongoing conversations of the course. Students with exceptional participation work toward enriching the classroom experience for everyone.
Excellent (80-89) participation: You contribute at a similar level and with similar engagement to students with ‘exceptional’ participation, but less consistently or with slightly less depth.

Good (70-79) participation: You often contribute to class discussion and are an attentive and conscientious member of the class, while occasionally demonstrating superior insight into the material.

Average (60-69) participation: You occasionally contribute to class discussion, and at times demonstrate insight into the material. You are somewhat engaged in the intellectual life of the course, but your contributions are either intermittent or lack thoughtfulness.

Poor (below 60) participation: You make little to no contribution to class discussion, or fail to abide by the standards of consideration, respect and active listening that we expect from students in the course.

In order to excel, you will need to attend class regularly and – critically – to have completed and thought about the week’s assigned readings.

**However,** please note that merely attending class (or, conversely, having to miss class occasionally) is not the primary determinant of your participation mark. Instead, your success will depend on your contributions, as assessed holistically across the whole course. It is also important to remember that being an active and thoughtful listener can be just as valuable as your oral contributions – emphasize quality and thoughtfulness over simply filling the silence.

Finally, students who are anxious about speaking in class can boost their participation marks by contributing extra (more than the required 5) weekly responses and/or by contributing to class discussions via the ‘Discussions’ tab in Quercus. This additional written participation is NOT required and students can excel without it; it is just another avenue for students who do not feel that their in-person contributions will adequately reflect their engagement with the course.

**Statement on Academic Integrity**

Plagiarism and other academic offences will not be tolerated at the University of Toronto. Academic discipline ranges from a mark of zero on an exam or assignment to dismissal from the University. For important information see UofT’s Academic Integrity website at [http://academicintegrity.utoronto.ca/](http://academicintegrity.utoronto.ca/). See also these academic integrity websites: School of Graduate Studies at [http://www.sgs.utoronto.ca/facultyandstaff/Pages/Academic-Integrity.aspx](http://www.sgs.utoronto.ca/facultyandstaff/Pages/Academic-Integrity.aspx) and Faculty of Arts and Science at [http://www.artsci.utoronto.ca/osai](http://www.artsci.utoronto.ca/osai).
READINGS

Introduction to the Course (week 1) – 12 September 2019

Optional:


Part I: Concepts of Guilt and Truth Technologies

Origins: Reasonable Doubt and the Reasonable Man (week 2) – 19 September 2019


-Introduction (pp. 1-8); Chapter 1: “Of Factual Proof and Moral Comfort” (pp. 9-26); Chapter 3: “The Decline of the Judicial Ordeal: From God as Witness to Man as Witness” (pp. 51-90); Chapter 5: “Salvation for the Judge, Damnation for the Jury: England,” (pp. 125-158); Chapter 7: “The Eighteenth Century: The Rule Emerges” (pp. 185-200); Conclusion (pp. 201-212).

Optional:


Forensics (week 3) – 26 September 2019


*NB. The book was first published in German as *System der Kriminalistik* in 1893. Available online at: [https://archive.org/details/criminalinvestig00grosuoft/page/n3](https://archive.org/details/criminalinvestig00grosuoft/page/n3)

Optional:

Introduction (pp. 1-8), Chapter 3: “Experts and Expertise” (pp. 46-71).

**Criminology (week 4) – 3 October 2019**

-Introduction (pp. 1-7); Chapter 1: “Criminal Man” (pp. 9-45);

Optional:
Chapter 2: “The Female Offender” (pp. 53-89)

-Edition 1 (1876), “Criminal Craniums (Sixty-Six Skulls)” and “Anthropometry and Physiognomy of 832 Criminals” (pp. 45-57)


**Confession (week 5) – 10 October 2019**

-Introduction (pp. 1-7); Chapter 1: “Storytelling without Fear? The Confession Problem” (pp. 8-34); Chapter 2: “Confessor and Confessant” (pp. 35-64); Chapter 3: “The Overborne Will – A Case Study” (pp. 65-87)

**Part II: Troubling Responsibility**

**Insanity (week 6) – 17 October 2019**


Optional:

-Chapter 1: “July the Second” (pp. 1-12) and Chapter 3: “The Prisoner, Psychiatry, and the Law” (pp. 43-74)

Intoxication (week 7) – 24 October 2019

-Introduction (pp. 1-22); Chapter 1: “Disease or Habit? Alcoholism and the Exercise of Freedom” (pp. 23-42); Chapter 8: “Judicial Diagnostics: Intoxicated Automatism and the Resurrection of the Will” (pp. 190-205).

DROP DATE – 28 October 2019

Provocation (week 8) – 31 October 2019; Primary Source Analysis DUE


Optional:


FALL BREAK – No classes on 7 November

Slavery, Race and Selfhood (week 9) – 14 November 2019

-Introduction: “How a Slave Was Made a Man” (pp. 1-50); “How Freeman was Made a Madman: Race, Capacity, and Citizenship” (pp. 206-251)
Women and Infanticide (week 10) – 21 November 2019


Optional:


Culture and Pluralism (week 11) – 28 November 2019


Mestre, Ruth M. and Sara Johnsdotter, “Court Cases, Cultural Expertise, and ‘Female Genital Mutilation’ in Europe, in Sarat, Austin, ed. *Cultural Expertise and Socio-Legal Studies: Special Issue.* Bingley, UK: Emerald Group Publishing, 2019. (pp. 95-112)

Optional:


Juvenile Justice (week 12) – 5 December 2019


Optional: