

METAPHYSICS OF THE GUILTY MIND A CRITICAL REEVALUATION OF THE DOCTRINE OF MENS REA

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Actus reus non facit reum nisi mens sit rea (“an act is not culpable unless the mind is guilty”) is a maxim represented in some form in most modern legal systems. It is “a sacred principle of criminal jurisprudence that the intention to commit the crime is the essence of the crime”. To our modern framing of morality, this seems fairly intuitive. *Mens rea* (“the state of mind or inattention that, together with its accompanying conduct, the criminal law defines as an offense” – Latin for “guilty mind”) is thus required to be shown in the vast majority of criminal cases. However, a critical reevaluation of the doctrine reveals not just concerning weak justifications for the doctrine’s implementation, but inseparable ties between the doctrine and the racialized system of violent incarceration and imperialism it developed to facilitate.

First, a survey of its historical origins casts doubts on the universality of criminal systems operating under this framework and contextualizes the maxim in its current form as a product of Christian theology and its institutionalization within imperial British law. Drawing on historical archives and works of legal history, I trace the doctrine from its surprisingly recent origins to its formalization in the U.S. Model Penal Code in 1962 and explore the violent systems of oppression it arose from and the problematic worldview it prescribes.

Second, to meet the doctrine as it is, I conduct an examination of the potential philosophical justifications for the doctrine in its present state. I identify three broad categories of metaphysical accounts for what *mens rea* is offered in available literature:

(1) *An inherent property*, which is further broken down into two sub-categories. The first is what I call soul alteration – that at the time of a guilty act, the perpetrator’s soul gains a property; this is the metaphysical account that religious thinkers like St. Augustine would have been supportive of. The second is that *mens rea* is truly separated from moral accountability, and that we ought to think of it as a factual determination of whether one held a specific brain state during the commission of an unlawful act. The second is much more compelling in modern times, and the account that I would wager is predominant among jurists, but I will argue that this is a disastrous misunderstanding of the nature of the human mind and decision-making.

(2) *A mental breach of moral duty*, where I consider both Kantian & Utilitarian justifications. Strains of both Kantian and utilitarian ethics derive objective moral rules from rational arguments. Here, the theory of *mens rea* is an evaluation of whether the perpetrator had a mental state in conflict with rational moral law. For opposite reasons, both accounts fail to provide a reasonable justification for the legal existence of *mens rea*.

(3) *A useful social construct*. Several formal sources justify *mens rea* as “merely a convenient label” and rely on practical needs within our modern justice system. I evaluate these reasons and ultimately conclude that while *mens rea* is indeed a useful social construct, it is one that is useful exclusively for perpetuating injustice. I also explore its connections to racial pseudo-science.

Finally, I look to reimagine what a legal system without *mens rea* could look like. I pull from past and current indigenous groups who practice non-carceral systems of community justice, as well as corners of institutionalized criminal law that operate through “strict liability” – crimes without mental requirements.

Keywords: *Legal Doctrine; Guilty Mind; Mens Rea; Mental Breach; Moral Duty; Social Construct; Neuroscience and Law.*

Introduction Glossary of Research

This is an interdisciplinary project that uses terms from both the worlds of analytical philosophy and legal theory. Many of these are phrases of art and have precise meanings outside of social use. Refer to the following glossary:

- *Mens Rea*: “The state of mind or inattention that, together with its accompanying conduct, the criminal law defines as an offense” [1, p. 995-996]. Translated from Latin to “guilty mind”;
- *Actus Reus*: “The voluntary act or omission, the attendant circumstances, and the social harm caused by a criminal act, all of which make up the physical components of a crime”. Translates from Latin to “guilty act” [2];
- *Culpability*: Moral blameworthiness that must be proved for a defendant to be held liable for a crime [2; note 1]. The Model Penal Code breaks culpability down into four levels (from most to least culpable) [3]:
 1. *Purposeful*: Intent to engage in unlawful conduct and/or to bring about an unlawful result (§ 2.02(2)(a));
 2. *Knowing*: Awareness that one’s conduct is unlawful and/or practical certainty that conduct will have an unlawful result (§ 2.02(2)(b));
 3. *Reckless*: Conscious disregard of a substantial and unjustifiable risk that unlawful conduct will result (§ 2.02(2)(c));
 4. *Negligently*: Failure to perceive a substantial and unjustifiable risk that grossly deviates from the standard of care that a reasonable person would observe in the actor’s situation (§ 2.02(2)(d)).
- *Strict Liability*: Culpability for a crime that has no mens rea element – liability occurs with the performance of an unlawful act independent of the mental state of the offender [4];
- *Consciousness*: The ‘what is likeness’ of one’s experiences [5; note 2];
- *Brain States*: “Patterns of synchronous neural firing, which reflects the electrical face of the brain; states of the brain are the gating and modulating of neural activity and reflect the chemical face of the brain” [6].

Main Provisions Historical Origins of the Doctrine

Actus reus non facit reum nisi mens sit rea (“an act is not culpable unless the mind is guilty”) is a maxim represented in some form in most modern legal systems [7]. It is “a sacred principle of criminal jurisprudence that the intention to commit the crime is the essence of the crime” [8]. To our modern framing of morality, this seems fairly intuitive. However, a survey of its historical origins casts doubt on the universality of such a belief and contextualizes the maxim in its current form as a product of Christian theology and its institutionalization within imperial British law.

Despite the maxim and term being in Latin, the concept does not have its roots in the justice systems of the Roman Empire. The *Codex Justinianus*, a codification of judicial practices, makes no reference to such an idea [9]. In fact, the historical record shows that most historical legal systems did not consider mental intent in the guilt phase, or often at all, through the justice system. ‘Crimes’ were rarely substantively separated from ‘torts’ (civil actions). For example, in historical Irish society, violent crimes and civil wrongs were generally adjudicated through the same system and punished by an *eiric* – a reparation, usually monetary [10]. In most societies throughout human history, if you harm another, your responsibility was to fix the harm as best as you could – independent of whether it was intentional, reckless, negligent, etc. Pagan Anglo-Saxon traditions enforced homicide as simply whether the actor had caused the deceased to be “nearer to death or further from life” [11].

The courts (for the societies that even had such a concept) were to determine what was owed, to whom, and how it ought to be paid. Questions of morality were generally deferred to religious institutions and local communities [11]. Outside of restitution, or if one was unable to properly retribute, punishment was generally physical punishment, public humiliation, death or slavery [12]. The institutional prison is a

capitalist creation of the 19th century [13]. And these punishments were often reserved for actions where you harm the state as a whole, like treason or sedition – a concept that modern prosecutors extend to every crime [14; note 3].

The earliest traces of mens rea can be found in ancient Hebrew codes where distinctions were made between mental states. Exodus 21:12–14 states: “If a man strike another so that he die, the manslayer shall be put to death. If a man lie not in wait but God deliver him into his hand then I will appoint a place to which he may flee. If a man attack another maliciously, to slay him by treachery, thou shalt take him from mine altar that he may be put to death” [10, p. 123].

And from Deuteronomy 19:16–21: “If a malicious witness stand up against a man to accuse him of treason ... and should it prove that the witness is a false witness, and hath testified falsely against his fellow countryman, then shall you do to him what he purposed to do to his fellow countryman. Thou shalt show no pity; life for life, eye for eye, tooth for tooth, hand for hand, foot for foot” [10, p. 126].

In these passages, we see the beginnings of the shape of mens rea. Albert Levitt, a 20th century American jurist, Unitarian-Universalist minister, and the author of “The Origin of the Doctrine of Mens Rea,” writes on these passages, “[t]here is no punishment for inadvertent sin ... but he who willfully sins cannot have atonement ... [m]ens rea cuts the offender off from priestly intercession. He has blasphemed against Jehovah and is to be wiped out from the land of the living” [10, p. 127].

This concept is continued into the New Testament, most notably in Jesus’s Sermon on the Mount, which had a strong influence on the molding of the current legal doctrine [10, p. 128]. In this speech to His disciples [15; 16; note 4], He proclaims, “[t]hou shalt not commit adultery; but I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart” [10, p. 128; 15].

A few hundred years later, St. Augustine of Hippo builds on this idea. His highly influential works merged Neo-Platonist ideals of morality and Christian conceptions of sin. Most notably, he writes in a sermon on perjury (lying under oath) that if a witness speaks with the inclination towards truth, then he has committed no sin. As he put it in his native Latin “*reum linguam non facit, nisi mens rea* 25F” – the language is not guilty unless the mind is. [10, p. 130–131] This is the primitive version of the modern maxim.

However, the conflation of these moral values and state jurisprudence would not be institutionally considered until several centuries later, when St. Gregory the Great assumed the papacy in 590 [16]. Gregory was deeply influenced by the writings of Augustine of Hippo and institutionalized many of his moral teachings – which to that point had been controversial at best [17]. One of those ideas being that God leaves no sin unpunished and that blessedness is achieved through penance for ones sins [10, p. 132].

In 596, the pope sends St. Augustine of Canterbury to England as a missionary who spurs the regions readoption of Catholicism [18]. In this transitional period, we see the adoption of penitential books from the Irish Catholic church in jurisprudence. These texts prescribe specific punishments for various sins and were used to enforce practical morality and to curb lawless and immoral activities [18]. A passage from the Penitential of Vinnian reads, “if he has thought on a sin and determines to commit it, but is prevented in the execution, so is the sin the same, but not the penance” [17, p. 374–376]. Another section states: “If a cleric has planned in his heart to smite or kill his neighbor, he shall do penance half a year on bread and water according to the prescribed amount, and for a whole year abstain from wine and the eating of meat, and then may he be permitted to approach the altar” [10, p. 132]. And, on serving alcohol, “whoever out of malice makes another drunk, let him do penance 40 days” [10]. Within these codes for moral living, the absence or presence of a ‘guilty mind’ was of supreme importance [10].

Due to the heavy conflation of the church and state in this period, these penitential books slowly transitioned into legal codes and these moral conceptions were brought into the courts [10, p. 136]. When the state takes over all the punitive functions of the church, “as the evildoer is at one and the same time criminal and sinner he must make all compensations at once” [10, p. 137]. Eventually, in the *Leges Henrici Primi* in 1118, and the English legal system built upon it, we finally see the modern maxim, “*actus reus non facit reum nisi mens sit rea*” [19].

This legal system was then forcibly installed across the globe through centuries of European colonialism. Levitt writes, “[w]herever the church exercised any authority the penitential books were used, both as a means of control and for the purpose of securing revenues for the church” [10]. Indian legal scholar Upendra

Baxi writes that the history of colonial law “stands marked by the law and politics of violent exclusion ... the history of [legal] ‘inheritance’, when not fully genocidal, disinherits the ‘people’ at least doubly by divesting them of any epistemic capability to know/create ‘law’ and by imposing upon them forms of law that, instead of proceeding from domination to liberation, proceed ‘from donation to domination’” [20; 21] The idea that mens rea is a universal cross-cultural conception is only true when said by those, many of whom there are, who see Anglosphere imperial Christianity and its roots as the extent of the universe.

The theological history is deeply reflected in modern American, supposedly secular, statutes. Note the use of the term ‘malicious’ in the Deuteronomic codes and the penitential books. That exact terminology, through layers of translation but conceptually consistent, is littered through mens rea elements in criminal statutes across the legal system. The Model Penal Code (MPC) removed the specific phrasing of ‘malice aforethought’ in 1962 [22], but the terminology remains in many statutes, including the homicide statutes of California [23], Georgia [24], Oklahoma [25], and more. But even within the MPC and the codes based off it, the metaphysical concept of what it means to commit a crime remains rooted in same theological conception of the mind.

The last thing to note is that the doctrine of mens rea is explicitly tied to this idea of penance. The use of establishing that one held a guilty mind is a punitive one [10, p. 136]. The root of our concept of ‘guilt’ is tied to physical or financial punishment to make up for the harm that was done – often in a ‘penitentiary.’ Levitt notes: “The punishment to be imposed, the penance to be done, depends upon the presence or absence of mens rea. That is the effect of Augustine upon the secular law, through the medium of the penitential books ... [t]he phrases “wickedly and feloniously,” “with malice aforethought,” “premeditated assault” [indicate that the] plaintiff wants his opponent punished. The greater his wickedness the greater the punishment. The more the malice and hatred the greater the indemnity to be secured” [10, p. 136].

Criticisms of Predominant Metaphysical Accounts

As outlined in the previous section, the historical record is clear that our current conception of mens rea comes from Christian theology. That does not mean, however, that mens rea is inherently unjustified or does not have a place in our current system, irrespective of its origin. In order to make that case, which I wish to, I will need to meet the doctrine at its present justifications. There are three broad categories of metaphysical accounts for what mens rea is: an inherent property of the soul/mind, a mental breach of moral duty, or simply a useful construct. This section will outline each category, and subcategories where applicable, and my critiques of them. Ultimately concluding that mens rea is an unjust social construct.

Inherent Property. The argument that mens rea is an inherent property can be broken down further into two subcategories. The first is what I will call soul alteration – that at the time of a guilty act, the perpetrator’s soul gains a property, which is the metaphysical account that religious thinkers like St. Augustine would have been supportive of. The second is that mens rea is truly separated from moral accountability, and that we ought to think of it as a factual determination of whether one held a specific brain state during the commission of an unlawful act. The second is much more compelling in modern times, and the account that I would wager is predominant among jurists, but I will argue that this is a disastrous misunderstanding of the nature of the human mind and decision-making.

Soul Alteration. Under a soul alteration account, the act of doing an act that is objectively guilty under moral law assigns your mind or soul a property of ‘being guilty.’ Imagine a little girl, Sally, is reaching her hand into a cookie jar to steal a cookie. Under this account, at some instance where she has committed the objectively morally wrong action, something changes about her physical or spiritual makeup that gives her a quality that will need to be repented for. Criminal law, under this account, is simply about identifying who has or had that property and giving them their due punishment. Soul-alteration arguments are often implied by religious arguments. They are a continuation of the metaphysical account described in the theological theory from which the doctrine arose.

One of the fundamental inconsistencies of the Western legal canon is that our morality and view of human nature come from a theological worldview – yet we pretend that our system remains secular [26: 27]. If we do agree that our judicial system is to remain secular and not rely on religious speculation about the nature of our souls, then this argument, in the absence of evidence that there is such a thing, should fail to be convincing.

Brain State. The second branch of this account is a truly secular one, and it seems to represent the predominant opinion among current legal scholars. Appended to the definition of mens rea in Black's Law Dictionary is a quote from Paul H. Robinson stating that "the mens rea of an offense consists of those elements of the offense definition that describe the required mental state of the defendant at the time of the offense" [2]. This is the version of the doctrine that I was taught in my Criminal Law course and which is reflected in many modern legal textbooks. Here, what a juror is considering at the trial of Sally Cookiestealer is simply whether she had a mental state at that time that we have forbidden under the law.

A damning critique of this proposal is that the idea that jurors would be able to identify what brain state the perpetrator had at the time of the crime, often several years before the trial, based on circumstantial evidence, is quite simply preposterous. Significant evidence supports that jurors are unable to make such determinations with any degree of reliability. I will discuss this further in Section III, but such an argument does not actually invalidate this metaphysical account of mens rea. Jurors' inability to determine these brain states is a question of practicality, which will be chiefly important later, but not of metaphysical reality. If we are to believe that these brain states exist, then maybe we just need to change the way that our courts evaluate mens rea. I wish to question their very nature and/or existence.

People's mental states are not nearly as separated and neatly categorized as jurors are made to distinguish between when determining levels of culpability. Not only is there absolutely no evidence that these neat distinctions exist at all, but there is significant evidence that our brains work in a completely different fashion than the law describes. Professor of Neuroscience at the University of Arkansas, Edgar Garcia-Rill, writes that "the law still operates on outdated nineteenth-century assumptions about how human beings function. As a result, the categories into which some of these human actions belong are porous and indeterminate" [28].

Garcia-Rill, writing with the late legal scholar Erica Beecher-Monas, explains that "[t]he law mostly ignores the basic premise that decisions and choices are contextual – that they are responses to conditions in the social and physical ... environment" [28]. Mental processing is not one continuous conscious stream as it seems from our perception, but rather the post hoc conflation of a wide range of biological processes that lead to action – many, if not all of them (depending on your view of free will), being entirely autonomous [29]. Daniel Dennett, in *Consciousness Explained*, contends, "there is no Cartesian Theater; there are just Multiple Drafts composed by processes of content fixation playing various semi-independent roles in the brain's larger economy of controlling a human body's journey through life" [30]. Garcia-Rill illustrates a similar idea through a compelling metaphor: "[T]he mind is to thought and action as the orchestra is to music; that is, an emergent property. Just as an orchestra is made up of sections of instruments with individual cooperating players generating music, the brain is made up of groups of cells, each with individual cooperating neurons that generate thought and action" [28; note 5]. Coloring and guiding the orchestra (like a conductor) is homeostasis – the recursive loop. If the conductor is absent or malfunctioning the music of the orchestra will tend toward cacophony [28, p. 274].

It should not be a surprise that modern conceptions of mens rea are in tension with scientific evidence – in fact, the drafters of our modern conceptions openly admitted it. Legal scholar Herbert Wechsler, the Chief reporter and principal drafter of the MPC, explicitly rejected "science-first approaches" [31]. The drafting committee chose folk psychology and unsubstantiated societal beliefs about mental states over scientific evidence and reality [31]. The codes were intended to simply collate the contemporary approaches to mens rea to be more consistent, even while understanding that these ideas were logically and scientifically problematic [31; note 6].

Mental Breach of Rational Moral Duty

There are also non-religious theories that support objective accounts of morality. Strains of both Kantian and utilitarian ethics derive objective moral rules from rational arguments. Here, the theory of mens rea is an evaluation of whether the perpetrator had a mental state in conflict with rational moral law. For opposite reasons, both accounts fail to provide a reasonable justification for the legal existence of mens rea.

Kantian Ethics. Kantian ethics tends to see morality as objective and deriving moral authority from the normativity of practical reason [32]. Under the categorical imperative, Kant argues that moral duty is an obligation binding all moral agents, without exception [33]. Criminal conduct is determined here

by the jury by asking whether a duty to the political freedoms of others existed and whether that duty was violated [34]. Under this account, Sally Cookiestealer had a duty not to steal cookies that did not belong to her, and the jury would be asked simply if that duty has been breached, which there is an objective answer to, and which includes a requisite mental state. This account is essentially the inverse of strict liability. Not only is the *mens rea* chiefly important, but the *actus reus* is nearly unimportant – the immorality of the action was the irrational mental conduct [33, *supra* note 60]. If one were to accept the categorical imperative and Kantian ethics, *mens rea* indeed seems to have a logical place in jurisprudence.

I do not, however, accept the categorical imperative. Many philosophers have, by my estimation, successfully challenged the theory, even from an internal perspective [35]. Hegel dismisses the notion as “empty formalism” [36; 37].

Utilitarian Ethics. As a utilitarian ethicist, this line of thought was among my initial pulls when considering this topic. Like Kantians, many utilitarians argue that their ethical beliefs are not subjective moral claims, but objective arguments naturally derivable using logic [38]. If we have a system in which there is objective morality, it initially seems to imply that one can formulate *mens rea* as the moment at which the perpetrator has the immoral mental state.

However, this fails when we consider utilitarianism as a consequentialist theory. If we are identifying the moment where the immoral mental conduct occurs, most utilitarian ethicists would hold that we would have no moment to identify. In utilitarian ethics, the immorality occurs at the bringing about of suffering or impeding of pleasure; the mental state of the perpetrator has no bearing on the ethical value of the action and is not an immoral action itself [39].

One could potentially make the argument that mentally choosing to commit a crime is an act that is mentally harmful to one’s own well-being by breaking one’s personal code of conduct. After all, many theorists have pushed the minutiae of where utility is created [40]. But that immoral consequence does not describe the same relationship to culpability that traditional *mens rea* intent does. One meets their standard, or they do not; the level of one’s conscious experience while failing to meet their standard is irrelevant to utility.

Further, if we were to live under a utilitarian legal regime, the very use of *mens rea* and the criminal system would need to be evaluated for its societal utility. Just because we could make an argument for *mens rea* using a utilitarian framework does not mean that any optimal course of action involves the usage of the concept. Any moral benefit from the concept’s usage would have to outweigh any harm. A justice system aimed at maximizing pleasure and reducing suffering would be so radically different in form and theory from any modern court system’s use of *mens rea*. Most notably, many utilitarians are determinists and would divorce consequential pragmatism from personal blameworthiness entirely [41].

Useful Social Construct. The selected comments to the definition of *mens rea* in Black’s Law Dictionary include the following quote: “[*Mens rea* is] to be considered merely as a convenient label which may be attached to any psychical fact sufficient for criminal guilt (in connection with socially harmful conduct). This includes a field too complex for any brief self-explanatory phrase, and since it is important to have some sort of dialectic shorthand to express the idea, this time-honored label will do as well as any” [42; 2].

My disdain for such an explanation cannot be adequately noted.

In principle, it is perfectly sensible to create and use terminology that is not perfectly descriptive of nature in jurisprudence. We don’t have any concrete answers to any of these questions, so why not use terms as filler to ensure clear communication? And if we already have a term from the common law development of our justice system, then why wouldn’t that term ‘do as well as any’? I have three responses.

The Law in Practice Does not Treat Mens Rea as a Social Construct. It’s all well and good to describe *mens rea* as a social construct in a doctrinal textbook, but what matters is how the term is actually used and treated in the legal system. It certainly does not seem to be treated as a mere social construct.

Look at a few excerpts from model jury instructions (guidelines judges follow when explaining the law to a jury):

The Commonwealth [of Massachusetts] must prove beyond a reasonable doubt ... the defendant intended to kill [victim’s name], that is the defendant consciously and purposefully intended to cause [victim’s name] death [43].

Under [New York] law a person is guilty of Assault in the First Degree when, with intent to cause serious physical injury to another person, he or she causes such injury to that person [or to a third person] by means of a deadly weapon [or dangerous instrument] [44].

To prove that the defendant is guilty of [reckless driving], the People [of California] must prove that ... the defendant intentionally drove with wanton disregard for the safety of persons or property [45].

In all of these examples we can clearly see that our legal system talks about these mental states as if they are real things that happen and not just a construct. Associate Professor of Law at the University of Alabama Jenny E. Carroll writes, “mens rea must contemplate the actor’s state of mind at the time of [their] act – not in the abstract but in actuality”. Even going back to the quote in the definition, it refers to a “psychical fact” [42; 2]. These are much more in line with the brain state arguments that we previously dispelled.

If mens rea doesn’t actually exist, then what are they evaluating? How could they possibly make a well-reasoned determination of whether a social construct existed at some point in the past? This is an incoherent argument. When we tell juries to definitively evaluate whether something happened or it did not, we can’t just turn around and then argue that this is actually just a vague social construct. The doctrine is trying to have its cake and eat it too. The law, in practice, treats mens rea as if it is a material occurrence.

Mens rea is a legal fiction, and the scholars know it, but we continue to implement it as if it is real anyway. To the idea that this legal fiction is useful, I have further critique.

Mens Rea is not Useful Towards a Just Legal System. One could imagine an argument that it is unjust to restrict someone’s liberties based on a social construct. Kantians in particular might object that this would be treating people as a ‘means to an end’ [46]. I will raise no such objection. As a utilitarian, my question is whether a construct is useful. If we are to say that mens rea is a useful construct, useful towards what end? What evidence do we have that such a conception is/has been actually useful towards creating a more just society? Why is it that we *need* mens rea to be conceived as it is in order to fulfil the purposes of our criminal justice system? I am unconvinced that it is useful towards any just ends.

Mens rea is an unworkable concept that is famously difficult to understand or adjudicate fairly because it is a logically incoherent concept. In the very definition of mens rea in Black’s Law Dictionary, it mentions how confusing and poorly understood the concept is multiple times [2]. Scholars have noted that the concept seems to be internally inconsistent and is caught and twisted between competing legal and moral philosophies [47]. Supreme Court Justice Robert Jackson famously described the various American jurisdictions as being in a state of “disparity and confusion [over the] definitions of the requisite but elusive mental element [of crimes]” [48].

There’s a reason that the concept is notoriously one of the most difficult to grasp for first-year law students taking criminal law [note 7]. It’s not that the concept is difficult to understand; it is quite literally impossible to understand because it is a logically incoherent doctrine.

Empirical studies have shown that jurors are unable to reliably distinguish between certain mental states. Test subjects in a New York University School of Law study were only able to correctly identify a knowing mental state 50% of the time, negligent 48% of the time, and reckless 40% of the time [49]. The study went on to say that the subjects had a “high degree of accuracy” in identifying purposeful/intentional scenarios, but the data shows that it was only 78% of the time [49]. Are we supposed to accept that it’s okay to wrongfully convict, at the very best, 22% of defendants? And even the modest findings of that study were fairly harshly critiqued by some subsequent publications for resting its conclusions on dubious methodology and making logical leaps about mental intention [31]. Add to this baseline unfairness that our justice system is supposedly not able to find a conviction unless there is certainty of guilt beyond a reasonable doubt.

Jurors are highly sensitive to the language of their instructions and often conceptualize the concepts significantly differently than the penal codes do [50]. They struggle to parse arbitrary distinctions in the law like acting knowingly vs acting recklessly [See Shen et. al., supra, note 86]. Evidence suggests that jurors are much more likely making determinations based on their own sociopolitical biases than they are based on a deep theoretical conception of legal doctrine [51; 52]. Jenny E. Carroll writes that “[a]cts are judged and minds are read based on each juror’s expectations fueled by [their] own belief system and

experiences ... no matter how 'truthful' a defendant's counternarrative may be, if it fails to comport with the fact finder's own perception of the world, it risks failing as a defense" [53].

And it's not like we should turn to judges as impartial arbiters. 74% of American judges are white, 67% are male [54]. Less than 1% of judges identify as queer [55]. 68% of circuit court judges are former corporate attorneys and 28% are former prosecutors [56]. The judiciary is an appendage of the ruling class, its ranks are filled from top to bottom with affluent capitalists personally incentivized to protect systems of injustice. Their work is heavily tainted by their sociopolitical biases [57]. But even outside of overt bias, the very concept that people are able to make these types of decisions rationally is unsupported by any evidence. Evidence shows that judge's decisions are materially swayed by things like whether their local football team has lost recently or whether they're hungry at the time of sentencing [58; 59].

We are often concerned about the number of people who are wrongfully convicted because they did not commit the act for which they were accused. What of the hundreds of thousands subject to state violence because the courts mischaracterized their mental state? This is arguably an even greater moral injustice going largely unnoticed. And due to the nature of the appeals process, those decisions are very difficult to overturn [60]. We defer an impossible task to lay people and then dig our heels in the ground that whatever they concluded is the factual reality of our world.

Zooming out to see the larger picture, we can see that mens rea acts as a central cog in a justice system that is wildly inadequate towards accomplishing its purported goals. A host of sociological and criminological data shows the carceral system is totally incapable of solving or preventing violent crime [61; 62].

There is quite simply nothing about the way our current criminal justice system is run, or that mens rea is evaluated, that should lead us to believe that this theoretical framework is effective and worth maintaining. Especially when the historical record shows that large-scale societies were able to maintain order for centuries before the fiction was created. Thus, even if we were to accept that mens rea is treated as a social construct, it is not useful towards a just society. But on this topic, I wish to take my analysis one step further.

Mens Rea is a Conduit for Injustice. Note that I never said that the concept is not useful at all. From a more cynical perspective, mens rea is incredibly useful towards *unjust* ends. It is a core theoretical foundation of the prison-industrial complex and the violent systems of racial subjugation and slavery that it enforces. The desperate impacts of its implementation are not a bug; they're a feature.

Mens rea, at its darkest, is a formalization of white supremacist and colonial conceptions of the mind. Its fundamental logic is that there is something *wrong* with the minds of people who commit crimes. It is okay to separate millions of people from their families and put them in chains to be tortured for profit because there is something about the nature of their minds that justifies it. Criminals are defective, mentally lesser, and deserving of whatever happens to them. And, by the way, it just so happens that Black Americans are five times more likely to have this defect than White Americans [63].

An apt comparison is phrenology – the "science" of interpreting mental qualities and potential based on the external appearance of the skull [64]. Today, we generally look back at this practice as an example of the perversion of science to justify racial supremacy and eugenics. But phrenology researcher Courtney E. Thompson notes that "phrenology echoes into the present, shaping our assumptions about other heads, minds, and groups of people" [64]. Technologies like fMRI and facial recognition software are shaped by a long tradition of eugenicist research. Mens rea, like phrenology, is an unscientific, illogical argument that exists to excuse violence from the ruling class and echoes from the darkest annals of global history. It is rooted in a white supremacist, imperial conception of how people think and what the causes are for our societal ills. We speculate about the internal mechanics of the minds of those that commit crime because it is more in our benefit to assign blameworthiness to their thinking than it is to fix the systemic causes for crime, let alone to reckon with the truth that the comforts of our free lives are often directly at the expense of the incarcerated and the oppressed [65; 66].

And this should come as no surprise. The resistance to the idea that our legal doctrine is rooted by white supremacy always confounds me. Who do you think wrote our laws? The vast majority of our legal cannon, including almost all of the modern conception of mens rea, was written and formalized by wealthy, white, colonial men who shaped the law towards their benefit. That is uncontested within any rational reading of the history of our legal system.

Reference back to Section I, and the various thinkers and institutions from which these doctrines arose. St. Augustine wrote on dark skinned Africans, “For you were once shadows, but now, [you are] light in the Lord [Ephesians 5.8]. They are by all means called ‘black,’ but let them not remain black. ... [I]t is said, ‘Who is that who climbs who has been whitened?’” [note 8]. Gregory the ‘Great’ not only tolerated slavery, he viewed it as a fact of God’s dispensation bestowed on humanity after ‘the fall’ and that humble obedience was required by God [17]. The British legal tradition was created and implemented through several centuries of genocide, colonialism, and institutionalized slavery [17]. Herbet Weschler (principal drafter of the Model Penal Code) oversaw the legal defense of the Japanese internment camps in WWII and publicly criticized the landmark desegregation case *Brown v. Board of Education* [Note 9].

The theoretical foundation behind the concept is sourced from a larger worldview that sees the non-wealthy and the non-white as immoral actors who are biologically and mentally defective – and thus it is justifiable to commit horrors upon them for the benefit of the ruling class. A colonial legal system that seeks, as Baxi and Foucault called it ‘domination to domination’. Our default affect towards legal doctrines should always be with a critical lens, evaluating where they came from and who benefits from their continued enforcement.

Material conditions and systemic pressures cause crime [67]. If the ruling class cared about solving crime, there are evidence-based approaches that are significantly more effective towards that end [68]. But instead, we position crime as a moral failing. As Nietzsche put it in *Beyond Good and Evil*, “the longing to bear the entire and ultimate responsibility for your actions yourself and to relieve God, world, ancestors, chance, and society of all burden” [69]. Our societal ills are not because of the hoarding of resources from the wealthy, the warmongers that roam our congressional halls, or the corporate leeches who monetize every aspect of our existence. No, it’s because the very way that racial minorities, the queer, the disabled, the different are thinking and living their lives is “guilty.” This is expeditiously useful in an institutional war to consolidate power, not towards creating a just system. Mens rea is a social construct that serves the role of perpetuating injustice and thus ought to be abolished.

Mens Rea Reimagined

The natural question when faced with a call for the abolition of a system of power is to ask what would take its place. It’s important to keep in mind, as Angela Davis wrote on prison abolition, “to let go of the desire to discover one single alternative ... an abolitionist approach ... require[s] us to imagine a constellation of alternative strategies and institutions” [70]. But there are several assertions we can make about what a post-mens rea jurisprudence may look like.

A system beyond mens rea would ideally be one where we critically analyze the causes for harm in our communities and respond with evidence-based and compassionate actions. In this system, we could deal with crime from a much more rational and pragmatic approach. If faced with an instance of intentional homicide, that case ought to be treated differently than someone who loses control of their car and strike a pedestrian. But the relevant difference has nothing to do with the blameworthiness of the actor – both individuals reached their positions by the happenstance of existence. The difference in their mental states is relevant towards addressing the causes.

If someone intentionally murders a member of a community, that should be seen as a host of societal failures bubbling to a specific tipping point. That community needs support, remediation, and grace. Whereas, for the driver, maybe the solution is making adjustments to road designs to prevent future crashes and then mediation and support to attempt to resolve the interpersonal trauma causes by the pedestrian’s death. This is stark contrast to our current system where we would just throw the driver in prison and let the pedestrian go bankrupt from medical bills.

What this means practically for our judicial system, is that our criminal law statutes (if even such a concept should exist) should be strict liability. The question, properly conceived, is not whether the person acted with criminal intent, but whether that action warrants state intrusion to correct harm – independent of their mental state. The purpose of trials and fact finders ought to be to determine things like identity. We want to know if you are the person who did it not to punish you but to ensure that we can properly address the systemic failures that have led to intercommunity violence.

Under this legal framework, *mens rea* would be demystified and moved towards a more just version of the sentencing phase. The mental state of an actor is only relevant towards understanding why they acted in such a way to determine the material causes for their harmful conduct so that they ought to be addressed. These mental motivations can be accessed in a way consistent with science-based understandings of the mind. Instead of deferring to lay jurors to distinguish between imaginary levels of culpability, we could rely on psychological professionals in a nonadversarial setting to evaluate why those involved in a harm acted and what sorts of treatments might be most effective.

To resolve conflicts and form plans for restitution, we need not reinvent the wheel. As the doctrinal history showed, other conceptions of justice have existed, but also, alternative systems continue existing to this day. Namely, indigenous groups in occupied America and around the world are continuing restorative practices of justice and peacemaking that they have been practicing for centuries [71].

The Penobscot Nation's Healing to Wellness Courts are structured through four stages: east tobacco (introduction to the program), cedar (taking responsibility), sage (treatment), and sweetgrass ("making a difference for yourself, your family, your community, and the Penobscot Nation") [72]. Tribal Prosecutors in the Confederated Salish and Kootenai Tribes spend hours interviewing those who committed crimes and connect them with resources as best they can to resolve the root causes of community strife and connect defendants with resources instead of pushing them through the carceral system [71]. Ojibwa communities use healing circle initiatives (where individuals involved in community harms sit in a circle and have discussions about how they were affected, their motivations for how they acted, and how they can work together in everyone's collective benefit), which have been proven effective at mitigating violence, even for issues as serious and pervasive as sexual assault [73].

These systems also have their flaws, and no single approach holds all the answers to how we ought to proceed. Any solution must be properly situated within a broader socioeconomic reform that, as Arthur Waskow articulates, "put[s] out the hidden fire of burning envy that now flames up in crimes" and provides "a decent sense of community that can support, reintegrate and truly rehabilitate those who suddenly become filled with fury or despair, and that can face them not as objects .. but as people" [74].

Conclusion

People, especially those situated within the legal institution, want to believe that criminals deserve the suffering that we inflict upon them. We need to believe that lest the fantastical delusion fade from the foreground. The screams for help echo through the halls of our judicial system, but it's simply easier to cover our ears than to face the ever-mounting moral weight of what our system has become.

As an abolitionist, I see the criminal justice system as an extension of the chattel slavery economy into our present day [Note 10]. Abolition of our current justice system and liberation for the incarcerated and their communities is the central goal of my work. But I am not ignorant to the fact that no matter how compelling this argument is, it will almost certainly not sway the state of the law. The courts have shown an incredible capacity to see themselves as rational actors while openly defying logic and evidence [Note 11]. I have no naïve delusions that such a change would be within our capitalist system or that liberation is possible through incremental progress. But I think we have an obligation to believe that a better world and a more just legal system are possible.

The path to liberation is through a reconstruction of every aspect of our moral worldview. The role of the liberatory academic, necessarily alongside community organizing and civic action, is to put forth challenges to our intellectual status quo and chip, no matter how painstakingly, at the rational foundation of our shared oppression. With this work, I hope to show that even ideas as fundamental to our institutional morality as mental culpability are modern fictions. While it is difficult to accept that our system is so logically fraught, it is liberating to know that the cruelty of our criminal justice framework is not inherent to the human condition. For thousands of years, human civilizations rose and fell without such a conception as *mens rea*, and a world beyond it is within our grasp.

Notes

1. Some may object to the use of the term ‘moral’ in this definition. However, I argue this is a more accurate description of the term in practice and through the doctrinal canon. See *infra* *Historical Origins of the Doctrine*.

2. A definition under great debate. I am pulling this partially from Nagel’s argument that consciousness is “what it is like” to be a creature. See: Philosophical Review. 1974. Vol. 83. P. 435–456.

3. The Romans called this *maiestas populi Romani minuta* (the diminution of the majesty of the Roman people). Dean Hammer. *Between Sovereignty and Non-Sovereignty: The Maiestas Populi Romani and Foundational Authority in the Roman Republic*. *Sovereignty: A Global Perspective*. 58. Christopher Smith ed., 2022. Historian Dean Hammer critically evaluates this concept, arguing that “foundational authority emerges as a discursive framework within which the collectivity is imagined, laws and institutions created, political obligations defined, decisions made and actions justified, and from which there is no appeal.” *Id.*

4. Some argue that this sermon was not meant as instructions to Christians but actually a criticism of old strict Jewish practices. See Jay Lehman, *The Sermon on the Mount Is NOT a Guide to Christian Living*, Fanning the Flames (Mar. 18, 2024), <https://jaylehman.com/2024/03/the-sermon-on-the-mount-is-not-a-guide-to-christian-living/>. I can’t find any evidence for that claim beyond unsourced evangelical blogs. The evidence, at the very least, indicates that the Catholic church, through its progression relevant to our discussion, understood it as a guide for moral living. See generally William C. Mattison. *The Sermon on the Mount and Theology*, 2017.

5. Daniel C. Dennett. *Consciousness Explained*. Little, Brown & Co. 1991 (describing the mind as an emergent property of the brain).

6. *Id.* For why they (white affluent men in the 1950s) might take such an approach, see *infra* Section C.

7. See this humorous Reddit post as one example, along with my own personal experience both learning and teaching the doctrine. SonderRoamer, I. Am. So. Confused. *Mens Rea/Statutory Interpretation Questions. Help.*, Reddit (December 17, 2019), https://www.reddit.com/r/LawSchool/comments/ebr08/i_am_so_confused_mens_reastatutory_interpretation/.

8. A colorist/xenophobic sentiment being that Augustine was half North African himself and was described as having dark skin. Nathaniel Hunter, *Augustine’s African Heritage Matters*, U.S. CATHOLIC (Apr. 28, 2023). URL: <https://usatholic.org/articles/202304/augustines-african-heritage-matters/>. But, at the time, the distinction between ‘Roman African’ and darker-skinned Sub-Saharan African was intensely socially enforced – especially in the religious context. Rebecca Kennedy, *Colorlines in Classical North Africa, CLASSICS AT THE INTERSECTIONS*, <https://rfkclassics.blogspot.com/2017/10/colorlines-in-classical-north-africa.html> (last visited Dec. 12, 2025). Song of Songs 8:5. J.P. Migne, *Patrologiae Cursus Completus* (Paris 1844), <http://archive.org/details/patrologiaeкурс146unkngoog>.

9. Although he claimed to have justification for both – don’t they all. Eric L. Muller, *Government Lawyers, Ethical Dilemmas: The Case of Herbert Wechsler and Japanese American Incarceration*. *Fordham Law Review*. 2025. Vol. 93 (1197); Anders Walker. “Things Cannot Go on as They Are”: Contextualizing Herbert Wechsler’s Critique of the School Segregation Cases. *St. Louis University Law Journal*. 2008. Vol. 52 (1211).

10. See Michelle Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Penguin Books 2019 (Alexander draws the historical and political connection between modern prisons and the institution of slavery).

11. For example, in *Commonwealth v. Eldred*, the Supreme Judicial Court of Massachusetts ignored the recommendations of the Massachusetts Medical Society and the American Society of Addiction Medicine and ruled that it is legal for judges to order people suffering from Substance Use Disorders to remain sober as a parole condition – a decision criticized for ignoring medical reality and scientific consensus for the judges own illogical prejudices about substance use. See *Commonwealth v. Eldred*, 480 Mass. 90, 101 N.E.3d 911 (2018); Corinne Zucker, *Commonwealth v. Eldred: Denying a Medical Reality*, 92 TEMP. L. REV. 673 (2020).

References:

1. Paul H. Robinson. *Encyclopedia of Crime & Justice*. "Mens Rea". P. 995–996. Joshua Dressler ed., 2d ed. 2002.
2. *Black's Law Dictionary*. 12th ed. 2024.
3. U.S. Model Penal Code 1962.
4. *Strict Liability*. Legal Information Institute. URL: https://www.law.cornell.edu/wex/strict_liability (17.04.2026).
5. Thomas Nagel. What is it Like to be a Bat? *Philosophical Review*. 1974. Vol. 83. P. 435–456.
6. Richard Brown, What Is a Brain State? *Philosophical Psychology*. 2006. Vol. 19(6). P. 729–742.
7. Actus Reus Non Facit Reum Nisi Mens Sit Rea. *A Dictionary of Law*. Jonathan Law & Elizabeth A. Martin eds., 7th ed., 2014.
8. *Duncan v. State*, 7 Humph. (Tenn.) 148, 150.
9. Code of Justinian. 529–1453.
10. Albert Levitt. Origin of the Doctrine of Mens Rea. *Illinois Law Review*. 1922. Vol. 17. Iss. 119.
11. A.E. Funk Jr. Mens Rea in the Early Law of Homicide. 33 KY. L.J. 1945. Vol. 33, 4, 7 (citing 2 William Holdsworth. *A History of English Law*. 52. Methuen & Co. 3d ed. 1923)).
12. Michel Foucault. *Discipline and Punish: the Birth of the Prison*. Pantheon Books 1977.
13. The Howard League. *History of the Penal System*. URL: <https://howardleague.org/history-of-the-penal-system/> (last visited Dec. 12, 2025).
14. Dean Hammer. *Between Sovereignty and Non-Sovereignty: The Maiestas Populi Romani and Foundational Authority in the Roman Republic*. *Sovereignty: A Global Perspective*. 58. Christopher Smith ed., 2022.
15. Jay Lehman. *The Sermon on the Mount is not a Guide to Christian Living, Fanning the Flames* (March 18, 2024). URL: <https://jaylehman.com/2024/03/the-sermon-on-the-mount-is-not-a-guide-to-christian-living/> (17.04.2026).
16. William C. Mattison. *The Sermon on the Mount and Theology*, 2017.
17. *Encyclopedia Britannica*. Last updated March 8, 2026. URL: <https://www.britannica.com/biography/St-Gregory-the-Great> (17.04.2026).
18. Philip Schaff. *History of the Christian Church*. 211. Charles Scribner's Sons 1910.
19. St. Bede. *The Ecclesiastical History of the English Nation*. London: J.M. Dent, 1916.
20. Ayer page 626. Cf. Schaff p. 374–76.
21. Sayre. Mens Rea. *Harvard Law Review*. 1932. Vol. 45. P. 974, 978.
22. Upendra Baxi. The Colonialist Heritage. *Comparative Legal Studies: Traditions and Transitions*. Pierre Legrand & Roderick Munday eds., 2003. Referencing Michel Foucault. *Nietzsche, Genealogy, History*. The Foucault Reader. 85. Paul Rabinow ed., 1984. Translated from the French by Donald F. Bouchard & Sherry Simon.
23. Paul H. Robinson & Markus D. Dubber. The American Model Penal Code: A Brief Overview. *New Criminal Law Review*. 2007. Vol. 10. 319.
24. GA. CODE ANN. § 16-5-1–16-17-10 (2024).
25. OKLA. STAT. tit. 21, § 701.7 (2024).
26. Eduardo Mendieta. Rationalization, Modernity and Secularization. *Jurgen Habermas: Key Concepts*. 222. Barbara Fultner ed., 2011.
27. Mark Modak-Truran. Secularization, Legal Indeterminacy, and Habermas's Discourse Theory of Law. 35 FLA. ST. U. L. REV. 2007. Vol. 73.
28. Erica Beecher-Monas & Edgar Garcia-Rill. Actus Reus, Mens Rea, and Brain Science: What Do Volition and Intent Really Mean? 106 KY. L.J. 2017. Vol. 274.
29. Michael S. Gazzaniga. *Who's in Charge? Free Will and the Science of the Brain*. HarperCollins 2011.
30. Daniel C. Dennett. *Consciousness Explained*. Little, Brown & Co. 1991.
31. Andreas Kuersten & John D. Medaglia. Neuroscience and the Model Penal Code's Mens Rea Categories. 71 *Duke Law Journal Online*. 2021. Vol. 53.
32. Anne Jeffrey & Kelsey Maglio. A Kantian Approach to Objective Morality and God's Existence. *Religions*. 2025. Vol. 16. Iss. 1268.

33. Singer Marcus G. The Categorical Imperative. *The Philosophical Review*. 1954. Vol. 63. № 4. P. 577–591.
34. Jason R. Steffen. Criminalization: A Kantian View. *Washington University Juridical Review*. 2019. Vol. 12. Iss. 027.
35. Michael Huemer. *A Critique of the Kantian Ethics*. URL: <https://spot.colorado.edu/~huemer/papers/kant1.htm> (last visited Feb. 1, 2026).
36. Georg W.F. Hegel. B. Kant. *Critique of Pure Reason. Hegel's Lectures on the History of Philosophy*. URL: <https://www.marxists.org/reference/archive/hegel/works/hp/hpkant1.htm> (last visited Jan. 31, 2026).
37. Sally S. Sedgwick. Hegel's Critique of Kant's Empiricism and the Categorical Imperative. *Zeitschrift fur Philosophische Forschung*. 1996. Vol. 50. Iss. 563.
38. Katarzyna de Lazari-Radek & Peter Singer. The Objectivity of Ethics and the Unity of Practical Reason. *Ethics*. 2012. Vol. 9. Iss. 123.
39. Sandra G. Mayson. A Consequentialist Framework for Prevention. *Law & Philosophy*. 2022. 41 (219).
40. Evan Tiffany. Utilitarianism and Personal Relationships. URL: https://www.sfu.ca/~etiffany/teaching/phil120/utilitarianism_love.html (last visited Feb. 1, 2026).
41. Peter Singer. Are We Responsible for Our Choices? *Oman Observer* (March 11, 2025). URL: <https://www.omanobserver.om/article/1167511/opinion/international/are-we-responsible-for-our-choices>
42. Rollin M. Perkins & Ronald N. Boyce. *Criminal Law*. 3d ed. 1982.
43. Mass. *Model Jury Instructions on Homicide: IV. Murder in the First Degree*. URL: <https://www.mass.gov/info-details/model-jury-instructions-on-homicide-iv-murder-in-the-first-degree> (last visited Dec. 10, 2025).
44. N.Y. *Criminal Jury Instructions*. URL: <https://www.nycourts.gov/judges/cji/2-PenalLaw/120/art120hp.shtml> (last visited Dec. 15, 2025).
45. *Judicial Council of Cal. Criminal Jury Instructions*. Calcrim. 2018. No. 2200. Reckless Driving. URL: <https://www.justia.com/criminal/docs/calcrim/2100/2200/> (17.04.2026).
46. Kant I. *Grounding for the Metaphysics of Morals*. James W. Ellington translated. Hackett Publ'g 1993.
47. Martin R. Gardner. The Mens Rea Enigma: Observations on the Role of Motive in the Criminal Law Past and Present. *Utah Law Review*. 1993. 635, 640.
48. *Morissette v. United States*, 342 U.S. 246, 252 (1952).
49. Francis X. Shen, Morris B. Hoffman, Owen D. Jones, Joshua D. Greene & Rene Marois, Sorting Guilty Minds. *New York University Law Review*. 2011. Vol. 86. P. 1306, 1341-43.
50. Matthew R. Ginther, Francis X. Shen, Richard J. Bonnie, et al., The Language of Mens Rea. *Vand. Law Review*. 2014. Vol. 67. Iss. 1327.
51. Brian H. Bornstein & Edie Greene, Jury Decision Making: Implications For and From Psychology. *Current Directions in Psychology Science*. 2011. Vol. 21. Iss. 63.
52. Dennis J. Devine, Laura D. Clayton, Benjamin B. Dunford, Rasmy Seying & Jennifer Pryce, Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups. *Psychology, Public Policy & Law*. 2001. Vol. 7. Iss. 622.
53. Jenny E. Carroll. Brain Science and the Theory of Juvenile Mens Rea. *N.C. L. REV.* 2016. Vol. 94 (539).
54. *American Bar Association, Judges*. URL: <https://www.americanbar.org/news/profile-legal-profession/judges/> (last visited Dec. 11, 2025).
55. Ctr. for Am. Progress, Examining the Demographic Compositions of U.S. Circuit and District Courts (Feb. 13, 2020). URL: <https://www.americanprogress.org/article/examining-demographic-compositions-u-s-circuit-district-courts/>.
56. All. for Just., Economic Justice, Judges, and the Law (May 1, 2024). URL: <https://afj.org/article/economic-justice-judges-and-the-law/> (17.04.2026).
57. NAACP Legal Def. Fund, How Racism in the Courtroom Produces Wrongful Convictions and Mass Incarceration. URL: <https://www.naacpldf.org/racism-wrongful-convictions-mass-incarceration/> (last visited Dec. 11, 2025).

58. Tom Jacobs, Football Team Losses Can Affect Prison Sentences. PAC. STANDARD (June 5, 2018). URL: <https://psmag.com/news/football-team-losses-can-affect-prison-sentences/>.
59. Justice Is Served, but More so After Lunch: How Food-Breaks Sway the Decisions of Judges, National Geographic (Dec. 11, 2025). URL: <https://www.nationalgeographic.com/science/article/justice-is-served-but-more-so-after-lunch-how-food-breaks-sway-the-decisions-of-judges> (17.04.2026).
60. Baez Law Firm, The Standard of Review in Criminal Appeals: How Courts Evaluate Errors. URL: <https://www.baezlawfirm.com/the-standard-of-review-in-criminal-appeals-how-courts-evaluate-errors/> (last visited Dec. 15, 2025).
61. Shima Baradaran Baughman, How Effective Are Police? The Problem of Clearance Rates and Criminal Accountability. *Alabama Law Review*. 2020. Vol. 72 (47).
62. Paul H. Robinson, Jeffrey Seaman & Muhammad Sarahne, Our Troubling Failures in Solving Crimes: Rethinking Legal Limits on Crime Investigation, 74 CASE W. RES. L. REV. 2024. Vol. 74 (693).
63. NAACP, Criminal Justice Fact Sheet (May 24, 2021). URL: <https://naacp.org/resources/criminal-justice-fact-sheet> (17.04.2026).
64. Courtney E. Thompson, Phrenology. *Encyclopedia of the History of Science*. 2021. Vol. 4.
65. Worth Rises, Prison Labor Agriculture: Cotton on Plantations (June 18, 2025). URL: <https://worthrises.org/blogpost/2025/6/18/prison-labor-in-agriculture-people-in-prison-are-picking-cotton-on-former-plantations-in-dangerous-conditions-for-no-pay> (17.04.2026).
66. Smart Asset, The Economics of the American Prison System. URL: <https://smartasset.com/mortgage/the-economics-of-the-american-prison-system> (last visited Dec. 11, 2025).
67. Eran Itskovich, Economic Inequality, Relative Deprivation, and Crime: An Individual-Level Examination. *Justice Quarterly*. 2025. Vol. 42 (637).
68. Ronald C. Kramer. *Critical Criminology, Traditional Crime, and Public Policy*. *Journal of Society & Social Welfare*. 1984. Vol. 11 (252).
69. Nietzsche F. *Beyond Good and Evil*. Dover Publ'ns 1998.
70. Davis A. Y. *Are Prisons Obsolete?* 107. Seven Stories Press 2003.
71. Mont. Innocence Project, Indigenous Justice Advocates on Restoring Traditional Peacemaking Systems in Montana (Nov. 27, 2020). URL: <https://mtinnocenceproject.org/indigenous-justice-advocates-on-restoring-traditional-peacemaking-systems-in-montana/> (17.04.2026).
72. Michelle Chen, Restorative Justice in Indian Country, DISSENT MAG. URL: https://dissent-magazine.org/online_articles/restorative-justice-in-indian-country/ (last visited Dec. 14, 2025).
73. Ministry of the Solicitor Gen. of Can., *Issues in Urban Corrections for Aboriginal People: Report on a Focus Group and an Overview of the Literature and Experience* (1998).
74. Arthur Waskow, *Saturday Review*, Jan. 8, 1972, quoted in Fay Honey Knopp et al., *Instead of Prisons: A Handbook for Abolitionists*. 15-16. Prison Research Educ. Action Project 1976.

Для цитирования и библиографии: Lucio T. Maffei *Metaphysics of the Guilty Mind: A Critical Reevaluation of the Doctrine of Mens Rea* // *Право и государство*. № 2(111), 2026. – С. 6-19. DOI: 10.51634/2307-5201_2026_2_6

Материал поступил в редакцию 29.05.2026