A Consistent Approach to Assessing *Mens Rea* in the Criminal Law of England and Wales

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Submitted by Jason Richard Furey, to the University of Exeter as a thesis for the degree of Doctor of Philosophy in Law, August 2010.

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I certify that all material in this thesis which is not my own work has been identified and that no material has previously been submitted and approved for the award of a degree by this or any other University.
Abstract

The current criminal law of England and Wales does not assess mens rea in a consistent manner. The law applies two distinct methods of assessing mens rea – subjectivism and objectivism – which are based on conflicting principles of criminal liability. A subjective test depends upon what the defendant himself foresaw, believed or intended whereas an objective test will label the defendant culpable for what a hypothetical ‘reasonable person’ would have foreseen or how he would have reacted. This thesis will show that, if the law is ever to take a consistent approach to assessing mens rea, both subjectivism and objectivism must be cast aside. As they place undue importance on foresight of the consequences, neither of these doctrines are capable of providing an accurate reflection of an individual’s moral culpability. Subjectivism is too narrow because it ignores any other states of mind that, although inconsistent with subjective foresight, may be considered to display a high degree of moral culpability. Objectivism is too broad because, by labelling all who fall below the reasonable standard as culpable, it takes no account of those individuals who lack the capacity to foresee what the reasonable person would have foreseen.

It will be shown that an approach based on the defendant’s attitudes and reasons for acting will allow for a much more accurate inference of an individual’s moral culpability than is achieved by either subjectivism or objectivism. Accordingly, this new approach is one that could be applied across the scope of the criminal law without the need for any special exceptions or illogical deviations from the norm. As a result, the way in which the English and Welsh criminal law assesses mens rea would achieve a consistency that it currently lacks.
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