

Department of Justice, Law and Society
School of Public Affairs
The American University

Fall 2007

JLS-333-001 – Law, Psychology and Justice

Thursday 5:30 PM to 8:00 PM

McKinley Building 108

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Office hours: (by appointment)

Course Description

[From the AU catalogue: “Examines psycho-legal research related to evidentiary issues in the criminal and civil justice process. Areas covered include accuracy of childhood testimony, eyewitness identification, judicial use of social science research, impact of non-adversarial versus adversarial expert testimony. Usually offered every spring.”]

Law: “That which is laid down, ordained, or established. A rule or method according to which phenomena or actions co-exist or follow each other. Law, in its generic sense, is a body of rules of action or conduct prescribed by controlling authority, and having binding legal force. . . . That which must be obeyed and followed by citizens subject to sanctions or legal consequences is a law. Law is a solemn expression of the will of the supreme power of the State.” (*Black’s Law Dictionary, 6th Ed.*)

Psychology: The study of mental processes and behavior.

Justice: “Proper administration of laws. . . . Commutative justice concerns obligations as between persons (e.g., in exchange of goods) and requires proportionate equality in dealings of person to person; Distributive justice concerns obligations of the community to the individual, and requires fair disbursement of common advantages and sharing of common burdens; Social justice concerns obligations of individual to community and its end is the common good.” (*Black’s Law Dictionary, 6th Ed.*)

Course description by Professor Schaler: Psychologists and psychiatrists are now major players in the game of law. The state recognizes their ability to give expert testimony on any number of matters pertaining to a defendant’s mental processes and behavior, guilt and innocence. In many ways, psychology and psychiatry have become extensions of law. Thus, do we live in what psychiatrist Thomas Szasz termed a “therapeutic state,” the union of medicine and state that came to replace the theocratic state, the union of church and state. These “mental health professionals” testify about a defendant’s competence to stand trial, testamentary capacity, ability to differentiate between right and wrong, ability to conform his or her behavior to the dictates of law, memory and eyewitness identification, the likelihood of committing crimes and suicide, to name just a few areas.

If psychologists and psychiatrists are truly experts on the study of mental processes and behavior, we should be clear about what the words “mental processes” and “behavior” actually mean. The expertise of a psychologist or psychiatrist is different from expertise regarding toxicology, building design, the effects of tar on the lungs, pathology and brake failure of an automobile.

What are mental processes? We cannot help but think about what the mind is when we try to define mental processes. Our inquiry necessarily becomes philosophical. Mind is different from brain. For example, the mind is invisible. We use metaphors and symbols to describe and define the mind. The mind is not a tangible entity. We cannot touch it, see it, smell it, etc. In fact, there is no such *thing* as the mind. Think of this yet another way: The mind and behavior cannot be found in a cadaver at autopsy.

So what do people mean by mind and mental processes? Usually they mean what people do and the reasons for their behavior. Or, they mean the manipulation of symbolic representations of the world, what we call thinking. They mean the voices in one’s head that we normally refer to as cognition, deliberation, contemplation, problem-solving, and conscience. Desires, aversions, aspirations, duties and values are the reasons people do or do not do this or that.

What is behavior? Deportment, mode of conduct. Volitional activity. Just as we cannot define mind and mental processes independent of behavior, we cannot define behavior without speaking of mind and mental processes, in this case, “volition.” What is volition? “Voluntariness.” What we choose to do. What we want to do. Consider the truthfulness of the following statement: There is no such thing as an involuntary behavior.

Why are these definitions so important when it comes to studying law and justice? Because if there is no such thing as an involuntary behavior, or, if behavior is always volitional, then the meaning of responsibility stays more or less constant. If behavior can be involuntary, the meaning of personal responsibility changes.

In terms of the criminal law, two things must exist for a person to be held responsible for a crime: *Mens rea*, or “guilty mind,” “intent”; and *actus reus*, or “guilty act.” The *actus reus* is the physical aspect of a crime, whereas the *mens rea* involves the intent factor. Both must be present for a crime to occur. Psychologists and psychiatrists have been instrumental in asserting that *mens rea* can be absent when a crime is committed, because of “mental illness.” (Insanity is a legal term, not a medical one.) Thus, we have the insanity defense and its variations. In other words, we may know for a fact that someone did something that most of us would consider a criminal act, yet psychological and psychiatric testimony can erode or nullify the element of intent or *mens rea*. A crime is committed and a person is regarded as not guilty by reason of insanity. In the insanity defense, a guilty person is declared innocent because of testimony regarding mental illness.

Similarly, the intention to commit a crime is not sufficient for culpability (conspiring to commit a crime notwithstanding). *Actus reus* must be present for a person to be found guilty of a crime. Psychologists and psychiatrists, testifying that a person is likely to harm himself or others before the fact, facilitate involuntary commitment to a mental hospital, again due to the idea of mental illness. This time a person who is obviously not guilty of a crime, is deprived of liberty *as if* he or she committed a crime. In involuntary commitment to mental hospitals, innocent people are deprived of liberty as if they were guilty of committing a crime.

The state deprives persons of liberty and justice, not psychologists and psychiatrists alone. There is a difference between consensual or contractual psychology and psychiatry, and institutional psychology and psychiatry.

These actions by psychologists and psychiatrists are significant when it comes to comprehending liberty and justice in our free society. Yet, many people do not understand how the idea of mental illness is used in such strategic ways, ways that ultimately circumvent basic constitutional protections. In this course, you will learn how the idea of mental illness is used in such strategic ways.

We will examine the nature of “mental illness” and how its legal corollary, “insanity,” is used by psychologists, psychiatrists and the courts, to deprive people of liberty and justice. We will examine opposing views on mental illness and criminal responsibility. Against the backdrop of contemporary psychology, we will examine the validity of eyewitness identification and child testimony regarding sexual abuse. We will discuss how schizophrenia and other mental illnesses are inventions, social constructions, not scientific or medical discoveries, and the purposes these inventions serve in diverse areas of society. We will examine the right to suicide and the ethics of suicide prevention. We will analyze how social science is used in the legal setting, examining conflicting claims about scientific and clinical findings, with particular attention paid to consequences for individual freedom and responsibility.

Course Objectives

- To learn about the nature and function of law and its relation to liberty and justice.
- To understand psychological and psychiatric ideas about abnormal behavior and their relation to the criminal justice system, with particular emphasis on predicting harm to others and harm to self.
- To become aware of how psychologists and psychiatrists function in court, and why there is inconsistency in expert testimony among mental health professionals.
- To comprehend the relationship between freedom and responsibility in public and legal policy.
- To become familiar with the consequences of state paternalism for individual freedom.
- To develop a comprehensive understanding of the moral basis of law.
- To deepen our understanding about psychological theories of memory and perception.
- To understand the difference between the mind and the brain.

- To comprehend key issues regarding the ethics of suicide.
- To acquire skill in debating these and related ethical issues.

Required Texts

Edwards, R.B. (Ed.). (1997). *Ethics of psychiatry: Insanity, rational autonomy, and mental health care*. Amherst, NY: Prometheus Books. ISBN: 1573921130

Schaler, J.A. (Ed.) (2004). *Szasz under fire: The psychiatric abolitionist faces his critics*. Chicago: Open Court. ISBN 0-8126-9568-2 paper

Szasz, T. S. (1997). *The manufacture of madness: A comparative study of the Inquisition and the mental health movement*. Syracuse, New York: Syracuse University Press

Szasz, T.S. (2002). *Fatal freedom: The ethics and politics of suicide*. Syracuse, NY: Syracuse University Press. ISBN: 0815607555

Plus, articles, chapters, and other readings handed out by the professor.

Course Requirements and Grades

Mid-term exam	30 %
Paper	20 %
Final exam	35 %
<u>Class participation</u>	<u>15 %</u>
Total = 100%	

Paper: Five-page, double-spaced, typed paper dealing with the current state of involuntary commitment to mental hospitals (minimal discussion of history). You are to define and describe what involuntary commitment is, how many people are either sent to mental hospitals involuntarily or admit themselves voluntarily and cannot get out right now (closest figures to date); or are sent to mental hospitals because they are declared incompetent to stand trial – even though they have met the legal criteria for competency to stand trial; and the various legal justifications/rationalizations for such practices, in your opinion; the Supreme Court case(s) upholding the practice of involuntary commitment; and a detailed discussion of the tensions (real or imagined) between involuntary commitment and constitutional conceptions of rule of law and due process of law. It doesn't matter whether you think involuntary commitment is a good idea or not: You are to argue against it so that you understand the essence of the extent to which involuntary commitment occurs, the rationale for it, and formulate your own ideas about it. Note: the issue of whether “mental illness” is a brain disease or not is minimally relevant to this paper. Do cite any statistics that prove that dangerousness to others can be predicted with an accuracy beyond that expected by chance. If you can't find any evidence, state that. APA format.

Group presentations: You will be assigned to a group and present on various assigned readings, most likely from *Szasz Under Fire*. This counts toward your class participation grade.

Description of course requirements

Paper:

- Your paragraphs must neither be too short nor too long. Each paragraph should be able to stand alone.
- Make sure you have smooth and logical transition from sentence to sentence and from paragraph to paragraph.
- Make sure you keep people, possession, and time parallel. For example, if you begin a sentence speaking in the plural and present tense, don't follow up in the same sentence using the singular and past tense.
- Make sure each sentence is a complete sentence.
- Make sure you differentiate between factual material and your opinion. Your opinion is fine, however, do not express your opinion as if it is fact.
- If you cite a source within the text, make sure you use APA format. If you don't know what APA format is, go to the library or purchase the APA Manual of Style. In-text citation is like this (Smith, 1969), and only like that. Not, (Smith, p. 46). It's always author's last name, year of publication, and if necessary, the page numbers, like this (Smith, 1969: pp. 12-15).
- Do not use footnotes.
- Do not cite material in the reference section that you did not cite in-text. Do not cite material in-text that you do not cite in the reference section. The reference section is on its own page.
- Make sure your name is on the first page. Give your paper a short and descriptive title. Make sure each page is numbered, centered, at the bottom of the page.
- Do not quote more than two lines of material. Paraphrase material in your own words, then reference it from the source it came from.
- Keep your writing and language formal, no colloquialisms.
- Use the following headings: Introduction (make sure you state the purpose of your paper here); Operational terms and definitions (list and define any that may be relevant and unfamiliar to a reader); Literature review (list what other people have found); Discussion (clearly state your opinion, don't present it as fact; in this case, you are arguing AGAINST involuntary commitment for LEGAL reasons, not medical reasons); Conclusion: (Summarize, list limitations and possible biases); References: APA style. Important

Mid-term examination: The mid-term examination will consist of multiple choice and/or essay questions focused on all readings, lectures and discussion in class.

Final examination: The final examination will consist of multiple choice and/or essay questions focused on all of the material covered in this course. You will be given the opportunity to express your own point of view on the many controversial issues we addressed.

Class participation: Make sure you come to each class with some news item or current article that is related to what we are covering in class. You may be called upon at anytime to describe via summary the news item, and then asked to give your opinion. This means that you have to read the newspaper or something similar each week to find any news item that is related to what we cover in class. You may be called upon twice or

more; you may never be called upon. Be prepared. If you are not prepared your grade for class participation will suffer. You will be assigned to a group periodically to present material from the readings.

Readings and notices regarding class will be sent to you by the professor via email. Please make sure you are receiving the emails and reading them. Make sure you have configured your au email address to forward mail to an account other than your au account in order to receive email via Blackboard.

Note: Clear and accurate writing—including accurate spelling on exams and papers—will be taken into account in assigning grades, as well as **participation in class discussions**. Material discussed in class, or in films, and not in any of the readings, may form the basis for questions on the examinations. **Exams must be taken on the dates assigned. One grade reduction for over three class absences.** No fault absence policy: This means no note is required for your absence, however, the penalty applies for over three absences, regardless of reason. Save the three you have without penalty in case you get sick or have a family emergency. Students are responsible for anything covered in class during their absence. Readings must be completed by the session to which they are assigned. Additional readings may be assigned during the course. Students are encouraged to form study groups on their own. Grades: A-=90, B+=89, B-=80, C+=79, C-=70. **Check your email for class readings, announcements, etc.** Check Blackboard for announcements.

Academic Integrity Code

"Standards of academic conduct are set forth in the University's Academic Integrity Code. It is expected that all examinations, tests, written papers, and other assignments will be completed according to the standards set forth in this code. By registering, you have acknowledged your awareness of the Academic Integrity Code, and you are obliged to become familiar with your rights and responsibilities as defined by the Code. Violations of the Academic Integrity Code will not be treated lightly, and disciplinary action will be taken should such violations occur. Please see me if you have any questions about the academic violations described in the Code in general or as they relate to particular requirements for this course."

CLASS SCHEDULE

Date	Topic	Reading
August 30	Introduction How to study psychology, psychiatry and the law; Synthetic and analytic truth; Schaler's "Three-Step Model of Policy Analysis" (TSMAPA);	Lecture and discussion
Sept. 6	Read intro and autobiography in Essay by Slovenko and reply by Szasz Start reading <i>Manufacture of Madness</i>	<i>Szasz Under Fire</i> (SUF) pp. xiii to 28 + Appendix SUF 139-178 As much as you can
Sept. 13	<i>Manufacture of Madness</i>	Part I
Sept 20	<i>Manufacture of Madness</i>	Part II
Sept 27	<i>Szasz Under Fire</i> And/or handouts – to be determined	Assigned readings
Oct 4	<i>Szasz Under Fire</i> And/or handouts – to be determined	Assigned readings
Oct 11	<i>Szasz Under Fire</i> And/or handouts – to be determined Review	Assigned readings
Oct 18	Mid-term examination	
Oct 25	<i>Fatal Freedom</i>	ix to 62
Nov 1	<i>Fatal Freedom</i> Essay by Battin and Spellecy and reply by Szasz	63-138 SUF 277-300
Nov 8	Edwards: <i>Ethics of Psychiatry</i>	Assigned readings
Nov 15	Edwards: <i>Ethics of Psychiatry</i>	Assigned readings
Nov 22	Edwards: <i>Ethics of Psychiatry</i> Schaler: <i>Szasz Under Fire</i>	Assigned readings Assigned readings
Nov 29	Schaler: <i>Szasz Under Fire</i>	Assigned readings
Dec 6	Last class – Papers due	
Dec 13	Final examination	5:30 P.M. to 8:00 PM

