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

Spring 2009

JUSTICE, MORALITY AND THE LAW – JLS.308.001

Mondays and Thursdays, 11:20 AM to 12:35 PM
Ward 107

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Course Description

[From the catalogue: "Moral issues involved in administering justice in society, emphasizing the nature of human rights and the ideal of justice. Moral consequences of official control actions of lawmakers, justice system careerists, and others involved in the definition of crime and deprivation of liberty, stressing 'moral offenses.' Offered irregularly."]

Morality: "Ethical wisdom, knowledge of moral science."
Mores: "The shared habits, manners, and customs of a community or social group; *spec.* the normative conventions and attitudes embodying the fundamental moral values of a particular society, the contravention or rejection of which by individuals or subgroups is liable to be perceived as a threat to stability."
Moral: "In early use: a person's moral qualities or endowments. Later: a person's lifestyle or self-conduct (esp. in sexual matters) considered with regard to morality; a set of personal standards relating to right and wrong conduct."—Oxford English Dictionary

Behavior formerly considered good and bad is now "diagnosed" and "treated" by psychiatrists and members of the mental health establishment—"self-appointed engineers of the human soul," as Robert Jay Lifton once used the term. Good and bad are now referred to as "healthy" and "sick." Thus, morality masquerades as medicine, in the eyes of certain powerful people in our society. Members of the mental health profession, and those who are part of the new public health movement, are empowered by the state to enforce mental and public health laws. The purpose of these laws and policies is to protect people from themselves, in addition to protecting people from each other.

A consequences of this change in language—good and bad to healthy and sick—and the simultaneous shift in power from religious to medical bodies, is dramatic. Consider the "war" on drugs, tobacco, obesity, suicide, violence, etc. Suicide and crime are called "public health problems." The effect of the "therapeutic state"—the union of medicine and state that has come to replace the theocratic state—on liberty and responsibility is profound. This includes social, legal, and public policies, as well as clinical policies, that is, that actual practice of medicine. Innocent people are treated as if they are guilty of committing crimes, for example, involuntary commitment and court-ordered "treatment" for mental illness and addiction.

Guilty people are treated as if they are innocent of committing crimes, for example, the insanity defense. Moral management masquerades as medicine and medicine, especially psychiatry and what now passes as public health, has become entangled with justice, morality, and law in new and confusing ways. The moral aspect of law and action by the state is often hidden and denied, in the name of medicine, compassion, and science. When good health practices become a social responsibility, acting in unhealthy ways is viewed as socially irresponsible behavior.

What questions do such activities lead us to ponder? Consider the following:

- What does it mean to say that a person is a "moral" person? What are "values"? Where do they come from? Where do they "go?"
- We hear so much today about "family values." What does this mean? Whose values? Whose families?
- People say we must have an economy with a conscience. Whose conscience?
- Can a person with no values exist? If we say that a person has no conscience, what do we mean? What is the difference between a "sociopath," someone who is said to have "no conscience," and, say, your family dog, who seems to experience guilt at having eaten something off the kitchen counter that he "knows" he shouldn't have eaten—in terms of consciousness? What does it mean to be human?
- Are laws "real"? In other words, are there such "things" as laws? Or, is all law "socially constructed," the expression of prevailing mores or morality? Or are their "natural," "God given laws," true or false like the laws of gravity and physics?
- Is a law forbidding bad behavior different from a law of gravity? Which is good or bad? Which is true or false?
- Who decides what is right and wrong, good and bad?
- Is there such a thing as a "victimless crime?"
- Who "owns" your body? Do you have the "right" to put whatever substances you want into your body, just as you have a right to put whatever ideas you want into your mind?
- How should we live, how should we behave and why?
- Are men and women "moral agents," or are they machines, reducible to electrical and chemical interactions—things?
- And finally, what role, if any, should the state play in dictating morality, rules of conduct, enforcing morality, via law? How is this consistent or inconsistent with the rule of law and the rule of man, and our understanding of freedom and responsibility, free will and determinism?

These are the kinds of questions we are going to examine together in class—and more. *Lecture and discussion format.*

Course Objectives

- To learn about various theories of moral development, from childhood through to adulthood.
- To understand the relationship between medicine and the state—the therapeutic state—and its evolution from a theocratic state.
- To become aware of how the contemporary public health movement is a form of moral management masquerading as medicine.

- To comprehend the relationship between freedom and responsibility in public and legal policy; and the relationship between the individual and the state.
- To develop a comprehensive understanding of the moral basis of law
- To deepen our understanding of the difference between the rule of man and the rule of law.
- To become familiar with various concepts and criticisms of the meaning and experience of liberty.
- To know the difference between formal and informal social control.

Required Texts

Corwin, Edward S. *The "Higher Law" background of American constitutional law* (paperback). Publisher: Liberty Fund Inc. (February 26, 2008). ISBN-10: 0865976953. ISBN-13: 978-0865976955.

Fuller, L. L. (1969). *The morality of law.* New Haven, CT: Yale University Press. , ISBN 0-300-01070-2

Kaufmann, W. (1975). *Without guilt and justice*. New York: Delta. ISBN 440-06128 205
Note: This book is out of print. You can purchase it used on Amazon or elsewhere.

Reich, W. *Listen little man.* Publisher: Farrar, Straus and Giroux; 1 edition (January 1, 1974) ISBN-10: 0374504016 ISBN-13: 978-0374504014. (Paperback)

Szasz, T.S. (2004). *Faith in freedom: Libertarian principles and psychiatric practices*. New Brunswick, NJ: Transaction Publishers: ISBN: 0-7658-0244-9

Course Requirements and Grades

Paper	50%
Final exam	50%
Class participation	20% →
Total =	100%

Note: You **must** do the CP assignment. There is no grade for it. It is a required part of the course. If the assignment is not completed, the final grade is reduced by twenty percent.

Note: Throughout this course, if you are going to address the issue of mental illness at all, you must abide by Rudolf Virchow's definition of a disease; meaning it refers to cellular abnormality, a physical lesion (wound). In other words, you must abide by a pathologist's definition of disease, not that of a mental health professional. This has nothing to do with denying the existence of disturbing, abnormal, or irrational behavior. We are simply abiding by the gold standard when it comes to defining and describing disease in the literal sense. A behavior cannot be a disease. Or, a behavior can be a disease only as a metaphor.

Paper: Double-spaced typed paper dealing with how any current behavior or substance, buying or selling is currently governed by formal social control and why you think it should be moved to the realm of informal social controls. You may also focus your paper on how some policymakers are attempting to move certain behaviors and substances, buying or selling of a commodity is within the domain of informal social control and should be, according to some people, moved to the realm of formal social control. Further, your paper may be focused on anything that has to do with the origin of law, victimless crimes, state licensure, the relationships between liberty and responsibility, and so on—anything that we have covered in class or in the readings. Look to any number of issues in the readings, lectures, and

discussions in class to expand and write your paper on. You may want to focus on psychiatry, religion, the free market, licensure, government versus relational and self control, and so on.

This is a research paper. You must have the following sections clearly indicated with these headings: Introduction; Operational Terms and Definitions (if needed); Literature Review; Discussion; Summary/Conclusion. Do not put your opinion in the literature review. Your opinion goes in the second half of the Discussion section, plus, Summary/Conclusion. You must use APA (American Psychological Association) format. Make sure your in-text citations are correctly cited as per APA, and your references in the end are EXACTLY APA format. No paper length—you decide—however, you must use the section headings. Further instructions will be handed out or talked about in class, if needed. There should be little need for further discussion. Everything is here. **Remember though: If you are going to address the issues of "mental illness," its "diagnosis" and alleged "treatment," you must use the definition of disease as established by Virchow, and used as the gold standard by pathologists all over the world. The definition of disease used by mental health professionals is not the definition of disease used by pathologists based on Virchow's work. You must use the definition used by pathologists, not the definition used by mental health professionals. This means that disease is of the body and consists of cellular abnormality, lesions, signs.** There is no such thing as the mind, therefore the mind cannot be sick, ill, or diseased.

The brain can obviously be diseased. Brain and mind are different. Disease is something literal. Differentiate between literal and metaphorical disease. Metaphorical disease can only be "treated" metaphorically. The difference between metaphorical and literal disease is one of the most difficult concepts in this course, and it is one of the most important concepts to comprehend. Use your dictionary. Ask questions. Work to understand the difference. Once you "get" the difference, everything "comes together." It doesn't matter whether you want to continue to believe that the mind can exist in a literal sense or not. You must use the gold standard when it comes to defining disease, that is, a disease is something physical, characterized by cellular abnormality and tissue destruction, and found in the cadaver during an autopsy.

NOTE: There is no length set for the paper. You decide what is appropriate. You must have the sections listed as indicated. You will discuss your paper in class. You hand your paper in on the date listed below. Always keep a back-up copy of your paper.

Please keep the following in mind when you write your paper:

- Your paragraphs must neither be too short nor too long. Each paragraph should be able to stand alone.
- You may not use *Wikipedia* for research.
- 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 use www.dictionary.com and the link to the *Oxford English Dictionary* provided on BlackBoard.
- 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); Conclusion: (Summarize, list limitations and possible biases); References: APA style. Important.

- **Final examination**: The final examination will consist of multiple choice and/or essay questions focused on the material throughout the whole course. It is cumulative.

Group presentations: You will occasionally be assigned to a group and present on various assigned readings.

Class participation (CP): Further instructions or clarification for the assignment below will be presented in class. One post per week. This must be posted in the BlackBoard discussion board for the week indicated or labeled in the margin on the left of your BlackBoard home page for this course.

Directions: Each week you post one CP assignment for the appropriate week BlackBoard discussion board. There are three parts to one CP assignment or post. Title each CP post the following way and make sure your name is listed as it appears with the registrar: CP post, date, your name.

Inside your post you do this: You post a news item you've found on the Internet that is related to anything we've discussed in class or in the readings. You summarize the article briefly, put the url there so that fellow students can read the article you found, then you give your brief opinion of the article. Thus,

1. CP, your name, the date, in the subject area.
Title of article in the text area with the
URL of article, followed by

2. Your opinion of article/issue. You decide the length. You should present enough to establish a clear statement of your opinion.

3. Then, underneath this you write "Reply to (name of student you are replying to)." Here you post a response to the opinion written by someone else in class—their opinion in any post of theirs for that week. Please be polite and respectful. *Argumentum ad rem,* no *argumentum ad hominem*.

The CP assignment counts for twenty percent of your grade. It is a requirement for the course. If you do not do the assignment, your final grade drops by twenty percent of the average for your paper (fifty percent) and final exam (fifty percent).

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 four class absences**. Sign in at each class. Please be on time.

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. You do the readings. You write down questions for discussion from the readings and lectures. I lecture on various points from the readings. I do not lecture on everything you read. You are responsible for the readings. This is different from high school. You could be tested on something that is part of the readings that I did not lecture on in class. Grades: A-=90, B+=89, B-=80, C+=79, C-=70. **Check your email for class readings, announcements, etc**. Check BlackBoard for announcements.

Make sure you receive email through BlackBoard. If a class is cancelled because I have to give a talk out of town, or because I am sick or have to have surgery, I will make every effort to present a lecture for that class on BlackBoard. You are responsible for that lecture. I will send out an email directing you to the lecture on BlackBoard in place of my face-to-face lecture. I do have at least one important speaking engagement this semester that I must participate in, and I am scheduled for knee surgery in January. I'm not sure whether those events will fall on the date of one or two of our classes, however, if they do, I will either schedule a guest speaker, a movie, or a lecture on BlackBoard.

If you know someone who disagrees with much of what we are studying, and you think he or she would be interested in speaking to the class, please let me know. I like to invite speakers from "the other side." I would be happy to talk to him or her about coming in and speaking to our class. College is a lot about exploring and debating new ideas, new ways of viewing oneself and the world. I welcome diversity and different points of view. In order for me to present alternative ways of viewing law, morality, and behavior, I must present the "other side," that is, the conventional side or politically correct side.

Teaching Assistant

Our graduate teaching assistant is Mr. Nafis Islam. His email address is ni8955a@american.edu. Nafis will introduce himself to you through Blackboard and in class. He worked with me last semester. He may have time to help you with the process of the course, especially your papers. Contact Nafis if you (a) have a problem with BlackBoard and doing the CP assignment; (b) need help with the structure of your paper (Please do not wait until the last moment to ask Nafis for help.) He is not available for reading your paper carefully before you turn it in. He will help you with making sure you understand what goes under which heading, APA format, etcetera. If you are worried about writing a good paper, you should first meet with Nafis to make sure you have the headings correct, and the APA style correct. Then meet with someone in the university writing center. You must make an appointment at the writing center well in advance. Do not expect to get an appointment right away. Again, book your appointment in advance. When you get an appointment with someone be sure to take along a copy of your syllabus so they know what is expected of you. Not everyone has to do this. I strongly encourage you to use the writing center if you are not confident in your writing.

Punctuality

It is important to be on time, when you have an appointment with Professor Schaler, Mr. Islam, or someone at the writing center. It is also important that you be on time for class. Please sign in at each class.

CLASS SCHEDULE

Any topic is subject to change. Additional readings and articles will be sent out by email or be available to download on BlackBoard.

Date	Topic	Reading
January 12	Introduction	Lecture
January 15	Part I	Szasz
January 19	No class – Read Part II, A	Szasz
January 19	Martin Luther King, Jr. Day	No classes
January 20	Inauguration Day	No classes
January 22	Part II, B Begin your CP assignment starting this week. Please have it completed two days after each date to do part three of the CP assignment.	Szasz
January 26	Part II, C	Szasz
January 29	Chapter One	Kaufmann
February 2	Chapter Two	Kaufmann
February 5	Chapter Three	Kaufmann
February 9	Chapter Four	Kaufmann
February 12	Chapter Five	Kaufmann
February 16	Chapter Six	Kaufmann

February 19	Chapter Seven	Kaufmann
February 23	Chapter Eight And The Serpent's Promise	Kaufmann
February 26	Movie, hand out, catch up as needed	
March 2	The Two Moralities	Fuller
March 5	**The Two Moralities** **Paper due**	**Fuller**
March 8 to 15	**Spring break;**	**No classes**
March 9	**No class**	
March 12	The Morality The Makes Law Possible Papers discussed	Fuller
March 16	The Concept of Law Papers discussed	Fuller
March 19	The Substantive Aims of Law	End Fuller
March 23	Corwin	
March 26	Corwin	
March 30	Corwin	
April 2	Corwin	
April 6	Listen Little Man	Reich
April 9	Listen Little Man	Reich
April 16	Listen Little Man	Reich
April 23	Review **Last week for CP assignment**	
April 30		
May 4	**Final examination**	**11:20 AM – 1:50 P.M.**

Note: Try to get the readings done by the dates shown. We may spend more time on one chapter than another. The reading is your responsibility. We will have discussions about points related to the readings, to illustrate ideas in the readings, however, we may not necessarily discuss in class every part of the readings. You will share in presenting parts of Proctor, assigned in class. The final exam has to be on taken on the date assigned, based on the date assigned by the university registrar's office.

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."