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

Fall 2009

JUSTICE, MORALITY AND THE LAW – JLS.308.001

Wednesdays, 11:20 AM to 2:00 PM
Ward 202

Faculty: Dr. Jeffrey A. Schaler
schaler@american.edu
http://www.schaler.net
Office: #255, Dept. of Justice, Law and Society, Ward Building, 2nd floor
Telephone: 202.885.3667
Office hours: (Please send an email to make an appointment --no walk-ins)
Ms. Stefanie Jamela Parker, stefanie.parker@american.edu
Mr. Andrew Lewis, andy.lewis@american.edu

Use Blackboard

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?"
- Is your body your property? Or does it belong to the state?
- Does the right to life, liberty and property include the right to suicide and death?
- 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?
- Do animals have rights?
- What is "speciesism?"
- Do we have a right to make animals suffer?
- Should vegetarianism be law?
- 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.*

Note: This course is heavy on discussion, and heavy on independent reading. It is your responsibility to read the assigned readings, and bring in any question you have. The professor does not go over the readings verbatim. We will cover issues such as mental illness and "speciesism," including vegetarianism. If you have trouble with this format, this course is not for you.

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
  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; It is often available on the Internet.

- Kaufmann, W. (2000). The faith of a heretic. New York: Doubleday. ISBN-10: 0385066511 ISBN-13: 978-0385066518 This book is likely out of print, however, try to get it used some place NOW. If you can get a version that has an Index in the back, get that one. If you cannot get it used, I will put it on reserve in the library. Available free, completely legitimate and legal, at http://www.archive.org/details/faithofaheretic012669mbp

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

Course Requirements and Grades

Paper	40 %
Final exam	40 %
Class participation	20%
	Total = 100%

Description of course requirements

Paper:
You are free to write about anything you want, as long as it is somehow related to what we read and discuss in the course. You must follow the instructions regarding format, though.

No page limit. You decide how long your paper should be. Most students submit papers between six and ten pages long. Your paper must have the following sections in it: A title page, an introduction – containing your thesis, or the purpose of your paper. A section containing operational terms and definitions, if needed. A literature review (your opinion must be absent from this section. You include only the opinion of others). A discussion section, where you analyze and interpret your findings in the literature review (your opinion is appropriate for this section—no colloquialisms, or "casualisms," please). A summary/conclusion followed by your references, which begin on a separate page at the end. Note: Each of the other sections do not begin on a separate page, except for the title page and your introduction. You must use American Psychological Association style/format. (Find APA format guidelines on the web. There is only one version of APA format. If someplace suggests a different version, it is not the correct version. We will go over all of these requirements the first week of class.

Keep the following points in mind regarding your paper:

- Take into consideration the relationship between liberty and responsibility, a positive correlation as discussed in class, not a negative correlation.
- All references to literal disease are consistent with the definition of disease by pathologists and nosologists, that is, disease is a lesion of the physical body, cellular abnormality, defined primarily by signs, not symptoms. Disease is

defined as by Rudolf Virchow in his nineteenth century classic Cellular Pathologist. Behavior is a metaphorical disease, not a literal disease. You must differentiate between metaphorical and literal disease if you are ever to refer to behavior as disease.

- 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. Use qualifiers like "in my opinion," to be clear to your reader.
- 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 each 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.
- Keep a copy of your paper.
- Your paper may be selected to be run through turnitin.com, to check for originality. This can also lead to suspicions regarding plagiarism. You may use turnitin.com to check your own paper.
- You may not use past papers written for other classes, in part or whole. Doing so violates the academic integrity code.
- Avoid using the pronoun "I".
- Do not cite Professor Schaler. You may address ideas in class, of course, but neither praise nor attack persons in your paper. Focus on ideas.

This is a short 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.

- You may not use *Wikipedia* for research.
- 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 we study throughout the whole course. You will be given the opportunity to express your own point of view on the many controversial issues we addressed. The primary focus is on comprehension of concepts and controversies we have studied, and their application in policy domains of law, clinical, public, and social arenas. There may also be philosophical questions.

Class participation (CP): 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.

You may also be called upon by name to answer questions throughout the course, and especially to give your opinion. This is a time for everyone to be involved. You are perfectly free to disagree with me, your professor, and the authors of material we are reading together. Do not, however, attack anyone's character to try and win an argument. Stick with ideas.

CP Directions: Each week you post one CP assignment for the appropriate week on the 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 the name of the news item along with the url. 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.*

CP assignment begins September 2. You complete this by Sunday evening, midnight. Remember: This counts for twenty percent of your final grade. This means that your final grade can drop by twenty percent if the CP assignment is not completed perfectly.

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. The exam must be taken on the date assigned. 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.

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. The schedule for readings below is approximate.

Date	Topic	Reading
August 26	Introduction Handout: *Job* by Herbert Fingarette A world of pain and suffering The purpose of law and the state	Szasz: *Fatal Freedom*
September 2	Suicide CP assignment begins Handouts: Problems in therapeutic laws	Szasz
September 9	Against physician-assisted suicide	Szasz
September 16	Moral and ethical controversies	Finish Szasz

September 23	Chapter One	Kaufmann *Without Guilt and Justice*
	Chapter Two	Kaufmann:WGJ
September 30	Chapter Three	Kaufmann: WGJ
	Chapter Four	Kaufmann: WGJ
October 7	Chapter Five	Kaufmann: WGJ
	Chapter Six	Kaufmann: WGJ
October 14	Chapter Seven	Kaufmann WGJ
	Chapter Eight	Kaufmann: WGJ
	And The Serpent's Promise	
October 21	Movie, hand out, catch up as needed	
October 28	The Two Moralities	Fuller
November 4	The Two Moralities	Fuller
	Papers due	
	The Morality The Makes Law Possible	Fuller
November 11	Papers discussed	
	The Concept of Law	Fuller
	Papers discussed	
November 18	The Substantive Aims of Law	End Fuller
November 25	Faith of a heretic	Kaufmann
	The irrelevance of religion	
December 2	Faith of a heretic	Kaufmann
	Morality, ethics, and atheism	
December 4	Classes over	
December 14	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. The final exam has to be on taken on the date assigned, based on the date assigned by the university registrar's office.

Remember: Class discussion is a major part of this course. You will be tested on material discussed in class, not necessarily in the readings. We may not go over the readings verbatim, however, you will be tested on anything in the readings.

Punctuality

It is very important to be punctual, or on time, when you have an appointment with Professor Schaler. If you set up an appointment with our graduate assistant, you must be on time. If you skip the appointment, you may not be seen again, or, you may be seen at a later date, at the Graduate Assistant, or Professor's convenience. Sign in at each class.

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."

Three-step model of policy analysis

You are going to learn an important model in this course that was developed by Professor Schaler. Some of you have used it in other courses of mine. It is called the "three-step model of policy analysis." Throughout the course, refer back to this model. Whatever it is that you are reading in books, articles that I post for you to read, lectures, discussions, the topic and what we are focusing on fits somewhere in this model. The three-step model is an intellectual compass. It will help you not only in this course, but in other courses you are and will be taking.

First, there is what I call a "phenomenon of interest." The phenomenon of interest for the course could be anything, "mental illness," "addiction," and so on. We are learning about, comprehending, explaining, and determining the efficacy of policy in light of how the three steps relate to one another → all concerning the phenomenon of interest. So, with the phenomenon of interest "mental illness," the model looks like this:

Step One: We must describe and define mental illness. Describe is different from define. Describe and define are different from "explain." Never confuse explanations for mental illness with description and definition of mental illness. We are concerned with the description and definition of mental illness. We do not want to confuse description and definition with theories about why mental illness occurs, or what we call "explanations for mental illness." We are interested in explanations for mental illness, they are tremendously important to comprehending and evaluating policy, we just don't want to confuse explanation with description and definition. How do the drugs get into the body? Are we talking about behavior or disease? Study the meaning of behavior. We are using the Virchowian definition of disease → Disease = cellular abnormality. This is also the definition that pathologists use. We are *not* using the definition of disease frequently used by members of the mental health profession. To the extent that we are concerned with medicine in this course we are concerned with, and differentiate, scientific medicine not/from clinical medicine. Everything that is in the Diagnostic and Statistical Manual of Mental Disorders (DSM) is part of Step One. This is because the DSM describes many diverse behaviors. It does not explain why the behavior occurs.

We will also discuss and you will learn about the difference between public and private health. Both are concerned with disease. One way of remembering the difference is that a true

public health problem is phenomena whereby you can contract a disease simply by being in the vicinity of another. Private health problems are the result of a consensual relationship where contracting a disease is a potential risk of the relationship. Catching *herpes genitalis* from having consensual sex with someone is a private health problem or risk. Catching *swine flu* virus simply by breathing the air in a contagious person's vicinity is a public health problem or issue. You didn't do anything to contract the disease but be in the vicinity, be near a person who was contagious. We will discuss many other examples.

Step Two: Explanations. Why does mental illness occur? We will examine four domains of explanation: Religious or theological; Biological/genetic; Psychological; and Sociocultural. The biological and genetic explanatory paradigms are most popular here, however, this has not always been so, and it is unlikely to remain this way. Much of what you may have learned elsewhere regarding the truth about neurotransmitters and genes or mutations of genes as causes of mental illness may not be true. We will examine the evidence supporting claims regarding each of these explanations. It is up to you to decide what you think makes the most sense.

Step Three: Policy. What do we do about mental illness. Keep in mind that one of the policies can always be doing nothing, that is, leaving people alone. Policy here means what we do about mental illness and the people who are labeled as mentally ill.

We are concerned with policy in four domains: The legal domain, meaning, to what extent does mental illness exculpate criminal behavior? Here we are concerned about involuntary commitment, the insanity defense, testamentary capacity, the right to refuse treatment, competency to stand trial, and so on. The second domain is concerned with clinical treatment. If we regard mental illness as a "treatable disease," or even just a treatable problem in living, what approaches are best? Do any treatment approaches actually work? The third area of policy is concerned with what we call "informal social control," in sociology, or what we shall refer to here as "social policy." There are two areas we are especially concerned with here: relational forms of social control and self control. Remember that when it comes to social policy, or informal social control, we are not talking about the involvement of the state. And finally, the fourth area of policy that we are focusing on in this course is referred to as "formal social control" by sociologists, or public policy. Here we are talking about the involvement of the state in controlling mental illness. Does the State have any business "inside a citizen's head?"

So, this is the three-step model that we will constantly return to in terms of comprehending mental illness, explaining it, and comprehending the relationship between explanations and policy in each of the four domains mentioned. If you are ever lost in terms of material we are covering, always go back to this three-step model and find out where you are stuck in the model. Then ask the professor or teaching assistant for help if you need more assistance. The three-step model makes learning this very new and different perspective easy and fun.