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

Summer 2009XN
Law, Psychology and Justice JLS-333-N01L
June 29, 2009 to August 6, 2009
Distance Education on BlackBoard
Faculty: Dr. Jeffrey A. Schaler
schaler@american.edu
Teaching Assistant: Ms. Lauren Berkebile
lauren.berkebile@gmail.com
Office: Ward 257
Telephone: 240.460.0987
http://www.schaler.net

Class meets each Sunday evening from 8pm to 10pm, Eastern time.

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. They give expert testimony on any number of matters pertaining to a defendant's mental processes and behavior, state of mind, competence, 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 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 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, etcetera. 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 may be 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." What are the consequences for responsibility if we believe the assertion is true or false? Behavior and reflex are different from one another.

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 (*actus reus*), 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, according to a court of law, when officers of the court agree with expert testimony from psychologists and psychiatrists. In the insanity defense, a guilty person may be 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, recommend 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 (there is no *actus reus*), is deprived of liberty *as if* he committed a crime. Innocent people are deprived of liberty as if they were guilty of committing a crime, when they are committed involuntarily to mental hospitals.

It is important to keep a few things in mind throughout this course: When we assert that mental illness is a myth, we do not deny the existence of abnormal, disturbing, irrational, and/or destructive behavior, either towards oneself or others. The controversial issues we will be addressing in this course include whether or not the state has a compelling interest to protect people from themselves. Most of us would agree that a purpose of government is to protect us from one another.

Keep in mind that 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. This course is not about "anti-psychiatry." The professor believes that people should be free to seek psychiatric and psychological help if they want it. Whether the state has the constitutional right to coerce citizens into receiving psychiatric help and drugs is another matter, one that we will be debating throughout this short but intense course. The U.S. Supreme Court currently holds that involuntary commitment is constitutional. While this is usually done on the basis of a diagnosis of mental illness, a person can now be committed on the basis of abnormal thinking (Cf *Kansas v. Hendricks*, 1997, http://www.oyez.org/cases/1990-1999/1996/1996_95_1649 , a case we will be discussing).

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 and meaning 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 discuss the meaning of "legal fiction," and how it is used for strategic and political purposes. We will examine opposing views on mental illness and criminal responsibility. *Szasz Under Fire* is all about criticism of Szasz's views and his responses to those who take issue with him. We cannot deconstruct the meaning of mental illness and what mental health professionals do, without examining both sides of controversies. This means we must begin by comprehending the conventional wisdom regarding mental illness. Then, using analytic reasoning and empirical methodology, we test the theories that many coercive practices are based on.

Against the backdrop of contemporary psychology, we will examine the validity of eyewitness identification and child testimony regarding sexual abuse; how schizophrenia and other mental illnesses are inventions, social constructions, not scientific or medical discoveries; and the purposes these inventions serve in diverse legal, clinical, social and public policy arenas.

Course Objectives

1. To learn about the nature and function of law and its relation to liberty and justice.
2. 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.
3. To become aware of how psychologists and psychiatrists function in court, and why there is inconsistency in expert testimony among mental health professionals.
4. To comprehend the relationship between freedom and responsibility in public and legal policy.
5. To become familiar with the consequences of state paternalism for individual freedom.
6. To develop a comprehensive understanding of the moral basis of law.
7. To deepen our understanding about psychological theories of memory and perception.
8. To understand the difference between the mind and the brain.
9. To comprehend key issues regarding the ethics of suicide.
10. To acquire skill in debating these and related ethical issues.

Required Texts

- 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. (2007). *The medicalization of everyday life*. Syracuse, NY: Syracuse University Press. ISBN: 13-: 978-0-8156-0867-7

- Edwards, R.B. (Editor). (Feb. 1997). *Ethics of psychiatry: Insanity, rational autonomy, and mental health care*. Amherst, NY: Prometheus Books. 2Rev Ed edition/ ISBN: 1573921130 (Make sure you have this edition and not an earlier one)

- Szasz, T.S. (1997). *The manufacture of madness: A comparative study of the inquisition and the mental health movement* (Paperback). Syracuse: Syracuse University Press. ISBN-10: 0815604610. ISBN-13: 978-0815604617

Plus, articles, chapters, and other readings emailed and posted by the professor.

Course Requirements and Grades

Paper	40%
Final examination	40%
Class participation (CP posts)	20%
Total =	100%

Description of course requirements

You are going to learn an important model in this course that was developed by Professor Schaler. Some of you have used it in my courses on addiction. 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 this course is "mental illness." 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 mental illness. 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.

Paper: **Due one week after the last day of class and final exam, August 13, 2009.**
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. It 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. I will try to post a link to this for you. 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.
- 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 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.

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.

- 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.***

<u>Final examination</u>: 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 final exam is given on the last day of class, August 6, 2009. Your papers are due one week later, August 13, 2009. Instructions for how you will take the exam and how you will submit your papers will be sent to you by email, and placed on BlackBoard. The final exam is taken based on an honor system. This will all be explained.

<u>Class participation (CP)</u>: 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.

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 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 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*.

You complete this by Wednesday, midnight, of each week. 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. Our teaching assistant, Ms. Lauren Berkebile, Lauren.Berkebile@gmail.com , keeps track of your CP posts.

You are also welcome to **send me emails privately at any point**. Send all questions to me privately at schaler@american.edu . Lauren Berkebile's email address is Lauren.Berkebile@gmail.com .

You're welcome to call me on that old-fashioned but incredibly sophisticated device called "the telephone." Sometimes, that's easiest.

Final examination: You take the test on-line. You must take the exam at the time announced. **By taking this course, you promise to keep all your books and notes away from your desk while you are taking the exams.** The primary focus is on comprehension of concepts and their application in policy domains of law, clinical, public, and social arenas. There may also be some philosophical questions. Again, you write the answers to the exam on line.

CLASS SCHEDULE

Read at your own pace. When in doubt, read more than assigned for that specific date. At the start of each week, usually a Monday, I will post a lecture.
Remember: Our "class meetings" are on Sunday evenings from 8pm to 10pm EDT (New York time) in the Discussion Board for that week. It is best if you have questions written beforehand. Try to keep your posts brief so that as many people can be answered as possible. We have a lot of ground to cover in a very short amount of time. Please keep up with the reading and CP posts.

Date	Topic	Reading
June 29, Monday	Introduction, Three-step model applied "mental illness"; issues in legal policy	*Manufacture of Madness;* Lecture
July 5, Sunday	Scapegoating History: Witches, Homosexuality; Masturbation; Negritude and Pharmakoi today	*Manufacture Of Madness* *Medicalization of Ever-Life.*
July 12, Sunday	Scapegoating; the threat of public Health movement; what is private? Moral management masquerading as medicine	Finish both books\
July 19, Sunday	Critics of Szasz Logically Identity theft Indifference	Readings Assigned From Schaler
July 26, Sunday	Critics and related ideas Empirical "evidence?" Control of ideas by government and in academia	Readings assigned From Rem Edwards
August 2, Sunday	The Therapeutic State today and its Future	Assigned readings
August 6, last class	**Final exam**	
August 13, 2009	**Papers due**	

Ask a Librarian – Note embedded links
Librarians can help you identify, locate, evaluate, and incorporate pertinent information into your course assignments. There are many ways to contact a reference librarian at American University:

Visit the Reference Desk on the main floor of the Library during its open hours.
Use the IM Reference service (AIM: AskAULibrary), which is staffed by AU reference faculty and staff. IM reference is ideal for getting recommendations on the best print

and Web-based resources for your research needs. Online librarians can explain how to navigate the ALADIN catalog and databases, and they can show you how to formulate effective search strategies to save you time.

Email an AU reference librarian by completing this online form. Librarians respond to email questions within 48 hours Monday-Friday. Allow extra response time for questions submitted over weekend and holiday time periods.

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."