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

Spring 2008
Law, Psychology and Justice JLS-333-001
2:10PM to 4:50PM Mondays
Ward 101
Faculty: Dr. Jeffrey A. Schaler
Office: Ward 257
Telephone: 202.885.3667
E-mail: schaler@american.edu
http://www.schaler.net
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

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

- Cohen, D. (Ed.) (1990). *Challenging the therapeutic state: Critical perspectives on psychiatry and the mental health system*. Special issue: Volume 11, Nos 3 & 4, Summer & Autumn (one volume). Publisher: Institute of Mind & Behavior. Recommend purchase new or used copies through Amazon.com ISBN: 0930195051
- Cohen, D. (Ed.). (1994). *Challenging the therapeutic state, part two: Further disquisitions on the mental health system.* Special issue, Volume 15, Nos. 1 & 2, Winter & Spring (one volume). Publisher: Institute of Mind & Behavior. Recommend purchase new or used copies through Amazon.com ISBN: 0930195078
- 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. (1988). *Schizophrenia: The sacred symbol of psychiatry*. Syracuse, N.Y: Syracuse University press. ISBN 0-8156-0224-3 paper
- 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

Vocabulary quiz	10 %
Mid-term exam	25 %
Paper	20 %
Final exam	35 %
Class participation	10 %
	Total = 100%

Paper: Five-page, double-spaced, typed paper dealing with any aspect of justice, psychiatry or psychology and the law of your choice. APA format. You are encouraged to meet with Professor Schaler to discuss the topic for your paper. You must email Schaler to set up an appointment. Make appts. early in the semester. You will comment on your paper in class.

Vocabulary quiz: One test on words and terms used in readings and discussion.

Group presentations: You will be assigned to a group and present on various assigned readings, most likely from *Szasz Under Fire*.

CLASS SCHEDULE

Date	Topic	Reading
Jan 17	Introduction	Lecture and discussion
	Read intro and autobiography in	*Szasz Under Fire*
Jan 24	*Schizophrenia*	First half
Jan 31	*Schizophrenia*	Second half
Feb 7	*Fatal Freedom*	First half
Feb 14	*Fatal Freedom*	Second half
	Vocabulary quiz	
Feb 21	*Szasz Under Fire*	Assigned readings
Feb 28	*Szasz Under Fire*	Assigned readings
March 7	**Mid-term examination**	
March 14	Spring Break	Assigned readings
March 21	Cohen et al. Part I (1990)	Assigned readings
March 28	Cohen et al. Part I (1994)	Assigned readings
April 4	Edwards: *Ethics of Psychiatry*	Assigned readings
April 11	Edwards: *Ethics of Psychiatry*	Assigned readings
April 18	Edwards: *Ethics of Psychiatry*	Assigned readings
	Schaler: *Szasz Under Fire*	Assigned readings
April 25	Schaler: *Szasz Under Fire*	Assigned readings
	Last class – **Papers due**	
May 2	Study day, no class	
May 9	**Final examination**	**11:20 A.M to 2:00 P.M.**

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. **You are encouraged to have at least one meeting with Professor Schaler to go over your work in this course**. Make appointments early. Don't wait until the end of the semester. **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."