

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

Spring 2008

JLS-352.001 – Psychiatry and the Law

Thursdays, 2:10 PM to 4:50 PM

Ward 302

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Course Description

Mental illness. The words suggest that the mind can be diseased, just as the brain can be diseased. Psychiatrists, psychologists, family members of the “mentally ill,” lawyers, jurists, policymakers, public health experts, scholars and others frequently assert that mental illness is as real as the world is round. Denying, even questioning, the existence of mental illness is tantamount to denying the existence of God among the most devout theists. Questioning psychiatric faith can mean trouble.

Most people accept as fact not only that mental illness is real, but that it is also treatable. Undergraduate and graduate students alike are frequently taught that mental illness is caused by a “chemical imbalance in the brain,” specific genes or their mutations, and that it is characterized by abnormal brain structure and function, detectable through CT and PET scans. Those scholars—often scholars of law—who recognize that there are no signs of mental illness, assert that mental illness is best understood as irrational thinking, speech, claims, and most important, abnormal or irrational behavior. One thing is certain among those who believe that mental illness is real: They often consider those who disagree with them—that is, those who say that mental illness is a myth, a metaphor, a strategy, an invention—are ignorant, wrong, unscientific, evil, dangerous, bad, and lacking in compassion (among other flattering characteristics). The stakes are high when it comes to believing in and questioning the existence of mental illness and its treatment.

Professors who question the claims made by psychiatric authorities, those who teach their students to think critically about mental illness and its consequences, often run serious risks to their career in doing so, despite alleged protections of academic freedom: They may not be hired to teach at a college or university because they questioned psychiatric dogma. They may be fired or not have their teaching contracts renewed because they taught their students to question the existence of mental illness. They may be ostracized, ridiculed and shunned by their colleagues. Many researchers know they run the risk of not having their research funded if they dared to question the existence of mental illness. There are many stakeholders when it comes to believing in “mental illness.”

These are serious matters, especially within the academe, where critical and independent thinking is allegedly valued, if not encouraged. What is the evidence to support such accusations? The fact that few students have ever been introduced to the kind of thinking you will be encouraged to cultivate in this course. The fact that mental illness and its various and diverse offspring are not listed in standard

textbooks on pathology. The fact that as far as pathologists are concerned, mental illness does not meet the nosological criteria for disease classification.

This is an advanced course. Students who have been introduced to the controversies concerning mental illness and its treatment will have an opportunity to further and fine-tune their comprehension of issues related to the idea of mental illness, regardless of which side they are on in the debate and controversy.

We will examine, through lecture, reading, and discussion, the basis on which scholars argue that mental illness is a metaphor, not a literal disease—and we will examine, in detail, the diverse consequences for legal, clinical, social and public policy when it comes to believing in or rejecting the existence of mental illness. Students will become thoroughly versed in the criticism by scholars directed at those who question the existence of mental illness. Topics include: empirical and analytic reasoning on both sides of the debate; identical twin studies; deconstructing operational terms and definitions; the evaluation of biological, psychological, and sociocultural explanations for mental illness; the relationship between description and explanation for mental illness, and the relationship between explanation and policy; determinations of competency to stand trial; the insanity defense; involuntary commitment and due process; institutional versus consensual/contractual psychiatry; ethics in psychotherapy; the right to suicide, suicide prevention, and physician-assisted suicide; deinstitutionalization; the history and consequences of various labels for abnormal behavior; Popper's "falsification" of scientific theory; the effect of pharmacological agents, electro-convulsive therapy, and "psychosurgery" – and more.

You will learn *how* to think about these and related ideas, and their implications for law, liberty, and justice—not *what* to think.

Course Objectives

- To comprehend diverse descriptions, definitions, and meanings of "mental illness"
- To deconstruct terms such as mental illness, abnormal behavior, schizophrenia, bi-polar disorder, depression, personality disorder, and anxiety-based disorders
- To understand the various explanations offered for why abnormal behavior and "mental illness" exists—or what is meant by "mental illness"—including theological, biological, psychological, and sociocultural explanations
- To understand the relationship between various explanations for mental illness (and mental health) and legal, clinical, social and public policy
- To understand the relationship between ideas concerning mental illness/insanity and due process of law
- To understand why a theory must be falsifiable in order to be scientific
- To understand the relationship between medicine and the state, the therapeutic state, its structure and function, and how it has come to replace the theocratic state
- To evaluate the criticism of those who question the existence of mental illness and the treatment of those labeled "mentally ill"
- To understand philosophical perspectives on the relationship between mind and brain
- To understand the difference between scientific and clinical medicine, and its relation to law
- To understand existential perspectives on what is called mental illness
- To understand the relationship between liberty and responsibility

Required Texts

- Edwards, R.B. (Ed.). (1997). *Ethics of psychiatry: Insanity, rational autonomy, and mental health care*. Amherst, NY: Prometheus Books. ISBN: 1573921130
- Szasz, T.S. (1989). *Law, liberty, and psychiatry: An inquiry into the social uses of mental health practices*. Syracuse University Press; Reprint edition (October 1, 1989) ISBN: 0815602421 Reprint edition.
- Szasz, T.S. (1997) *Insanity: The idea and its consequences*. Syracuse, N.Y.: Syracuse University Press. Reprint edition. (Buy this together with *Cruel Compassion* below at Amazon for a better price.) ISBN: 0815604602
- Szasz, T.S. (1998). *Cruel compassion: Psychiatric control of society's unwanted*. Syracuse, NY: Syracuse University Press. ISBN: 0815605102 Reprint edition. (Buy this together with *Insanity* above at Amazon for a better price.)
- Plus, articles, chapters, and other readings handed out by the professor.

Course Requirements and Grades

Paper	35 %
Final exam	35 %
Class participation	30 %
Total =	100%

Paper: Double-spaced typed paper dealing with any way that psychiatry and the ideas of mental illness and mental health are used in the practice of law. You base your paper primarily on the material in the first two books by Szasz, and add research from other sources as you deem appropriate. Use Szasz's view of mental illness, that is, mental illness can not exist. It does not matter whether you agree or disagree with Szasz personally, you are to write your paper based on the idea that mental illness can not exist as a real disease for the reasons we have gone over, that is, analytic and synthetic truth re mind, behavior, disease, and "mental illness." Pick a topic and explore it. 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.

NOTE: You use any of the readings assigned in the course for your paper, plus any additional readings. Use as much material that is critical of Szasz and Schaler's views on mental illness and institutional psychiatry as you please, however, you must use Szasz and Schaler's view of what constitutes a disease, that is, disease as defined by pathologists based in Virchow's definition of disease as cellular pathology. In addition, your paper must incorporate the following operational terms as defined here and throughout the course: Behavior is defined as voluntary, deportment, mode of conduct. There is no such thing as an involuntary behavior. There is no such thing as a "mental" illness or disease. There is a difference between theory and fact. There is a difference between description and explanation. Hypotheses and theories must be falsifiable.

The final exam covers everything in the course. There is no length set for the paper. You decide what is appropriate in terms of length. You must have the sections listed as indicated. Meet with Professor Schaler to discuss your topic of interest. You will discuss your paper in class. Hand your paper in on the date listed below.

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.
- 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: While the final exam is cumulative, the majority of questions will deal with material we focus on during the second half of the course. This means at the very least *Cruel Compassion* and *Law, Liberty and Psychiatry*. You will be given the opportunity to express your own point of view on the many controversial issues we addressed.

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

Class participation (CP): Further instructions or clarification for the assignment below will be presented in class. We start next week. Two posts per week. This must be posted in the Blackboard discussion board.

Again, each week you post two CP assignments on Blackboard discussion board: Title each the following way and put your name as listed on the roster in the subject heading:

CP #1: 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 opinion of the article. Thus, CP #1 your name in the title
Title of article:

URL of article:
Opinion of article/issue

CP #2: You post a response to the opinion written by someone else in class—their opinion in any post of theirs. Please stay polite and respectful. *Argumentum ad rem, no argumentum ad hominem*. Thus, CP #2, your name. Next line: Jones responds to Smith’s posting of . . . (and put date of his/her post or use “reply to.”)

Each week, two posts for CP credit. Remember, thirty percent of your grade.

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. Make appointment by email to come in to talk to Professor Schaler about anything. Get to know the professor so the professor gets to know you.

Teaching Assistant: Hilary Kimball is my graduate teaching assistant for this course. She is finishing her masters degree in justice and has been in classes with me before. She understands these ideas very well and will be able to help you with tutoring, should you feel the need to get some more help. You are always, of course, welcome to make an appointment and come and see me. Contact her by email for any tutoring or assistance.

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
Jan 17	Introduction: Schaler’s Three-Step Model (of policy Analysis); synthetic and analytic truth; basic arguments and counter-arguments; what is “mental illness” and why is it important to study? What do we do about “it”? Why weren’t you ever taught about this before? Who is Thomas Szasz and why do people say such nasty things	Lecture <i>Insanity</i> Part I

	about him? Why do Szasz and Schaler reject the label “anti-psychiatry”?	
	Involuntary commitment and the insanity defense; sin, crime, and sickness; masturbation and homosexuality as popular diseases of the 19 th and 20 th century; what is a disease, what is a behavior, and why does it matter? What is the mind and what is its relation to the brain? Why do people get so upset about a course like this? And more . . .	
Jan 24		<i>Insanity I and II</i>
Jan 31	Some Myths About “Mental Illness” by Moore; Edwards book	
	The right to refuse treatment by Winick; Duty to protect by Applebaum; Controversial behavior Control therapies – Intro by Edwards 4; Psychosurgery by Isaac and Armit; Ethical issues in forensic psychiatry – Intro by Edwards 6); APA view on Insanity; Nature of competency by McGarry; Ethical issues in deinstitutionalization – Intro by Edwards 7; Crazy in the streets by Applebaum; Make sure you read each intro by Edwards to each section;	
Feb 7	Szasz	<i>Insanity III</i>
Feb 14	Szasz	<i>Insanity IV</i>
Feb 21	Assigned reading	Finish readings
Feb 28	Review and present your papers	
March 6	Turn in your papers; present your papers	
March 13	Spring break	
March 20	Szasz	<i>Cruel Compassion</i>
March 27	Szasz	<i>Cruel Compassion</i>
April 3	Szasz	<i>Law, Liberty, Psych.</i>
April 10	Szasz	<i>Law, Liberty, Psych.</i>
April 17	Assigned readings and review	
April 24	Last class	
May 1	Final exam	2:10 P.M. to 4:40 P.M.

Readings are subject to change. The final exam must be taken on the date assigned by the university registrar.