

HEALTH AND HUMAN RIGHTS SEMINAR

LAWJ-183-08
Fall Term, 2006
Tuesdays: 1:20 – 3:20 P.M.
Hotung Building, Room 5021
Georgetown University Law Center
Professor Lawrence O. Gostin

SYLLABUS

This seminar provides opportunities for research, writing, and discussion on health and human rights. Participants will conduct independent research and scholarly writing on important problems at the intersection of population health and the human rights. This seminar examines the interrelationships between modern concepts of public health and international human rights. The first relationship is the impact of health policies, programs, and practices on human rights (e.g., compulsory public health interventions such as isolation or quarantine). The second relationship is the health impacts resulting from violations of human rights (e.g., torture, inhumane and degrading treatment, and rape). The third relationship is the inextricable linkage between health and human rights (i.e., the synergistic relationship between health and human rights). The seminar will use the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, as the dominant legal instruments in the analysis. We will carefully consider the meaning of the right to health and the material differences between civil and political rights, on the one hand, and economic, social, and cultural rights on the other.

This is a class that will emphasize research and writing. Consequently, I will devote considerable time to the research and writing process. I will particularly concentrate on the idea of stating, developing, and defending a thesis as part of a scholarly project. See below for a detailed description of my expectations.

I. Course Requirements

- A. **Time and Place.** This three (3) credit course will meet once a week on **Tuesday**, from **1:20 to 3:20 p.m.** in the Hotung Building, Room 5021.
- B. **Class discussions** showing rigorous thought and an informed understanding of the subject matter will be an integral part of the learning process. *Please read all of the assigned materials before class to facilitate discussions.* All students will be expected to actively participate in class discussions.
- C. **Readings.** The Syllabus contains a list of readings for each class. The required text is **PUBLIC HEALTH LAW AND ETHICS: A READER** (Berkeley: University of California Press, 2002). It is recommended that you purchase **PUBLIC HEALTH LAW: POWER, DUTY, RESTRAINT** (Berkeley: University of California Press, 2000). These books are available from the Georgetown University Law Center Book Store. A package of handout materials will be distributed in class as needed for particular lectures. Students are responsible for reading all assignments and familiarizing themselves with the appropriate materials before each class.

- D. **Papers and Presentations.** Students will be assigned to make a presentation in class on a relevant subject in health and human rights, which should also be the subject of the student's scholarly paper prepared for the course. Presentations should be thoughtful and well prepared. An imaginative method of presentation is strongly encouraged to aid in the pedagogic process.

Dates for submission of a thesis proposal, outline of the paper topic, and the first draft of the paper are set forth below. Please review these various dates and requirements concerning the paper writing process. Students will be expected to **meet all deadlines**. The objective is to produce papers of sufficient quality that they can be published in a law, medical, or health policy journal. Many students taking this course in the past have published their papers in a scholarly journal. I am happy to provide additional assistance for students who wish to have their papers published, even after the class has ended.

- E. **Peer Learning.** Students will be assigned to work with one another during the course of the writing process. Student peers should assist each other with the research and thought processes of their paper topics and be prepared to offer commentary of their assigned student's presentation. My experience is that peer relationships are an important part of the learning process. Each student will be expected to provide written proof of the nature and quality of the assistance provided and received through the peer learning process.
- F. **Grading.** The grade for the course will be based on class participation, the in-class presentation of the student's paper, and your role as a student peer (25%); and the final paper (75%). Class participation will be assessed on a qualitative rather than quantitative basis.
- G. **Lectures and Discussions.** Most class sessions will be based on lectures, or a student presentation in the latter classes, followed by class discussion of the issues raised by the lecture, presentation, and readings. **Note** - students who wish to hand out materials for the class to facilitate discussion of their proposed topics must do so the week prior to delivering their presentation.
- H. **Attendance.** Attendance for all classes is strongly encouraged. Students *must* attend classes in which they are presenting their topics or serving as student peers.

II. Administrative Details

- A. **Instructor Availability.** I want to be fully available to help students whenever they need assistance with the content and readings in the class, as well as with the research and writing process. I will hold office hours on Tuesday from 3:30-5:30. I am also available to students by appointment. My office at Georgetown University Law Center is McDonough Hall, Room 508 (Dean's Office Suite). My office telephone number is (202) 662-9038; (202) 662-9055 (fax). You can also reach me via e-mail: gostin@law.georgetown.edu.

My administrative assistant is Micah Thorner, who can be reached at thornerm@law.georgetown.edu and (202) 662-9038. Benjamin Berkman, (202) 662-9777, is a fellow at Georgetown University Law Center and will be assisting me in teaching this course. His office is located in the Hotung Building in room 5029. He will have office hours on Tuesdays from 3:30-5:30 pm or by appointment. His email address is: beb26@law.georgetown.edu.

- B. **Final Thoughts.** I have long been fascinated by the subject matter of this course. I co-taught (with the late Jonathan Mann) what we believe was the first ever course in health and human rights in the early 1990s. I hope you will share my enthusiasm for the intellectually challenging ideas presented in the readings and the class work. I look forward to getting to know you and to many thoughtful discussions. If I can ever be of assistance, please come by and see me at any mutually convenient time. If you are interested in pursuing the ideas in this course in great depth, the Law Center has launched a prestigious LL.M in Global Health Law. Students who wish to discuss the LL.M should talk with me.

III. Advice on Writing Papers

- A. **Substance.** Your papers need to have a central integrating argument, or thesis, which is systematically developed throughout. The thesis should be logically developed, building up your arguments point by point, and display a critical and analytical approach to the subject. Descriptive material should normally be avoided unless it contributes to the argument or is necessary background. It is not enough simply to summarize the collection of books and articles that you have read about the topic. A good paper needs to analyze the critical question(s), provide an assessment of the existing knowledge about the topic, the significant contributions which you have made to that knowledge through research and analysis, and express your own original thoughts and conclusions.

It follows that you are required to examine the evidence (normative, empirical, etc.) critically. Do not commit the fallacy: the proposition that something must be true simply because Professor X said it or wrote it. Nor should you reason by example. First state the claim, give your reasoning for the claim, and then, if helpful, provide examples. Your task as a writer is to examine the evidence and the arguments, and then provide a orderly analysis and come to your own conclusions.

Your argument must have depth and balance. Avoid making superficial claims, which will not stand up to scrutiny. Do not make the mistake of regarding all possible counter-arguments as ‘irrelevant’. Important alternative views must be met. Refute them if possible. If not, take them into consideration in your final assessment and give your reasons for having doubts about their validity. Similarly, do not ignore evidence that does not support your case. Examine all the available evidence. Superficiality is a common defect in papers. If you adopt a single perspective, you must demonstrate a critical awareness of its strengths and weaknesses.

Your paper should be organized systematically: (1) state clearly your thesis (a proposition laid down or stated, especially as a theme to be discussed and proved, or to be maintained against attack), (2) explain how you will systematically develop your thesis (forms of reasoning—e.g., logical argument, empirical evidence, case studies), (3) provide a roadmap (statement of how the paper will be organized), (4) proceed to systematically develop the thesis throughout your paper. Be sure to write *clearly* with thesis paragraphs, topic sentences, and transitions—all necessary for lucid writing.

- B. **Planning and Guidance.** Plan your research and start your reading and writing well in advance. This syllabus lists assignments and when they are due. This is intended to help guide your approach to research and writing. You should pick a topic that closely interests you, but make sure that it fits with the course material. Remember, it is your paper, so I will not propose topics for you. But I will be happy to talk with you about your ideas. You should discuss the general scope and approach of your paper with me.

Once you have selected and defined your topic, and done some initial reading, draw up a draft plan. In the first instance, the plan is likely to be simply a list of research questions. You will add new aspects as you do more research, while others will be eliminated as irrelevant. Do not expect your first plan to remain fixed; completing any project is a dynamic process and it is likely to change as you develop your reading and research. Often your paper will develop with a cyclical process: you begin with a rough idea of what might be found or argued, you modify this idea as you get into the topic, discard some ideas and concentrate on others, refine the research question, and so on.

Your thesis statement at the beginning of your paper (which should not be confused with the “topic” [“This paper discusses...”] or a “roadmap” [“This paper will cover, first, second...”]) is particularly crucial. Spend a great deal of your conceptual efforts in constructing a lucid and well-reasoned thesis statement.

I will help you plan and outline the paper, but the project needs to be an independent piece of work. The purpose of the paper is to give you a chance to show your capacities for independent work, and to contribute to academic discussion and debate. It should be your own unaided effort. You should find the process and ultimate completion of the paper to be one of the best experiences of your academic

career—something that you can be proud of.

- C. **Abstract.** At the start of your paper you should include an abstract (approximately 300 words). The abstract should outline your topic, the main thesis, the methodologies, and your final conclusion.
- D. **Length.** The paper can be of any reasonable length, subject to Law Center requirements (see below). I am looking for quality, not quantity. A good estimation is 25-35 pages maximum—and not longer.
- E. **Footnote/Endnote Style.** The preferred form is Bluebook (see below), but I am prepared to accept any recognized, consistent style with prior permission—University of Chicago, JAMA, etc.
- F. **Upperclass Legal Writing Requirement.** Georgetown University Law Center has the following requirements: (1) use legal forms of citation unless you get prior approval (see above); (2) submit an outline and a first draft, in accordance the instructions in this syllabus; (3) submit a revised final paper based on the Professor’s comments; and (4) both the first draft and the final paper must be at least 6,000 words (excluding notes), which is approximately 25 typed pages using customary margins and spacing. All work must be yours in consultation with the Professor or must be cited for attribution to others.

PLEASE FOLLOW ALL THESE INSTRUCTIONS CAREFULLY

Good luck with the writing process, which I hope you will find rewarding.

<u>WEEKLY READING ASSIGNMENTS</u>		
<i>Public Health Law and Ethics: A Reader</i> [<u>“Text”</u>] Supplemental Readings [<u>“SR”</u>] Paper Related Assignments [<u>“WR”</u>]		
Sept. 5 Class 1	Introduction to the Course and the History and Context of Human Rights	
	Intro:	Students will be given an overview of upcoming lectures, the paper writing process, the method of grading, and other course requirements. The research and writing expectations for students will be described to prepare students for the eventual task of drafting and presenting a publishable-quality article. Students may be asked to share their interests in the subject matter and to begin thinking about potential paper topics.
	<u>Text:</u>	Pgs. 1-19: Chapter 1 (“Public Health Law, Ethics, and Human Rights”) Pgs. 98-116: George Annas, “Human Rights and Health—The Universal Declaration of Human Rights at 50”; Jonathan Mann, et al, “Health and Human Rights”; Jonathan Mann, “Medicine and Public Health, Ethics and Human Rights” Twenty-Five Questions and Answers on Health and Human Rights. July 2002. WHO. Available at: http://www.who.int/hhr/activities/en/25_questions_hhr.pdf

<p>Sept. 12 Class 2</p>	<p>Core Principles of Human Rights and the International Bill of Human Rights</p>	
	<p><u>SR:</u></p>	<p>Universal Declaration of Human Rights.</p> <p>International Covenant on Economic, Social, and Cultural Rights.</p> <p>International Covenant on Civil and Political Rights.</p> <p>Marks, Stephen P. Jonathan Mann’s Legacy to the 21st Century: The Human Rights Imperative for Public Health. <i>Journal of Law, Medicine & Ethics</i> 29:131-138.</p> <p>Gostin, Lawrence O. 2001. A Vision of Health and Human Rights for the 21st Century: A Continuing Discussion with Stephen P. Marks. <i>Journal of Law, Medicine & Ethics</i> 29:139-140.</p> <p>Alicia Ely Yamin. 2005. The Right to Health Under International law and Its Relevance to the United States. <i>American Journal of Public Health</i> 95:1156-1161</p> <p>Washington Post Editorial Board. A Service to Human Rights? March 17, 2006. <i>Washington Post</i> A18.</p>

<p>Sept. 19 Class 3</p>	<p>Evaluating the Impact of Public Health Policies and Programs on Human Rights: The Public Health/Human Rights Impact Assessment</p>	
	<p><u>WR:</u></p>	<p>Preliminary discussion of potential paper topics</p>
	<p><u>Text:</u></p>	<p>Pgs. 377-379: Introduction to Chapter 12 (“Biological Interventions to Control Infectious Disease”)</p> <p>Pgs. 415-416: Introduction to Chapter 13 (“Restrictions of the Person”)</p> <p>Pgs. 407-413: Mandatory Treatment; Ronald Bayer and David Wilkinson, “Directly Observed Therapy for Tuberculosis: History of an Idea”</p> <p>Pgs. 428-431: City of New York v. Antoinette R., 630 N.Y.S.2d 1009</p>
	<p><u>SR:</u></p>	<p>Gostin, Lawrence, and Jonathan M. Mann. 1994. Towards the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies. <i>Health and Human Rights</i> 1: 59-80.</p> <p>ECOSOC. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. U.N. Doc. E/CN.4/1984/4: 1-6.</p> <p>Farmer, Paul. 1999. Pathologies of Power: Rethinking Health and Human Rights. <i>American Journal of Public Health</i> 89: 1486-1496.</p> <p>Case Study: Biological Interventions to Control Infectious Disease: Directly Observed Therapy. Applying the Health and Human Rights Impact Assessment</p>

<p>Sept. 26 Class 4</p>	<p>The Realization of Economic, Social & Cultural Rights: The Right to Health</p>	
	<p><u>WR:</u></p>	<p><u>PAPER TOPIC PROPOSALS DUE:</u> Students must submit their initial paper topics for the consideration and approval of the Professor. The topic must be relevant to the subject matter of the course, touching on health law and ethics. Once approved, students are strongly encouraged <i>not</i> to consider changing the nature of the topic, although changes in the thesis are expected.</p> <p><u>ASSIGNMENT OF STUDENT PEERS:</u> Each student is assigned a “student peer” on the basis of the student’s chosen topic. Assignments attempt to combine students with similar topics. Student peers help each other with researching and writing throughout the remainder of the course. They are encouraged to assist with any questions their assigned peer may have, exchange research suggestions, outlines, and first drafts, and assist with presentations.</p>
	<p><u>Text:</u></p>	<p>Pgs. 116-125: Toebes, Brigit. 1999. Towards an Improved Understanding of the International Human Right to Health. <i>Human Rights Quarterly</i> 21: 661-679.</p>
	<p><u>SR:</u></p>	<p>United Nations Committee on Economic, Social, and Cultural Rights. 2000. <i>General Comment No. 14: The Right to the Highest Attainable Standard of Health</i>.</p> <p>Gostin, Lawrence O. March-April 2001. The Human Right to Health: A Right to the “Highest Attainable Standard of Health.” <i>Hastings Center Report</i>.</p> <p>Paul Hunt, Special Rapporteur, <i>Economic, Social and Cultural Rights</i>, U.N. Doc. E/CN.4/2004/49 (Feb. 16, 2004)</p> <p>Case Study: International Right to Health.</p>

<p>Oct. 3 Class 5</p>	<p>AIDS Policies and Practices</p>	
	<p><u>WR:</u></p>	<p><u>SHORT THESIS PROPOSAL DUE:</u> A well-crafted thesis is integral to the development of a high quality research paper. Students must present a written document of several paragraphs stating the thesis which the student expects to systematically develop through research and argument. The thesis is the theory or main idea of the paper—the principal point the paper advances. The thesis is not the same as the topic (“this paper will cover X”) or “roadmap” (“this paper will first cover, second discuss...”), but the central theme (i.e., what the paper seeks to demonstrate, the method of argumentation, and why it is important).</p> <p><u>DISCUSSION OF PAPERS AND METHODOLOGIES:</u> This class serves to allow students the chance to discuss issues relating to the final paper. Research methods, thesis and subject refinement, substantive problems, as well as any other queries may be brought up in an effort to aid students in producing a final scholarly paper of publishable quality. Each student should come prepared to talk substantively about his or her paper and the problems and challenges posed.</p>

	<u>SR:</u>	<p>Gostin, Lawrence O. <i>The AIDS Pandemic: Complacency, Injustice, and Unfulfilled Expectations</i>. University of North Carolina Press. [Ch. 4: Human Rights and Public Health in the HIV/AIDS Pandemic].</p> <p>Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS. 2002. <i>HIV/AIDS and Human Rights International Guidelines. Revised Guideline 6</i>.</p> <p>Robert Steinbrook. 2004. The AIDS Epidemic in 2004. <i>New England Journal of Medicine</i> 351:115-17.</p> <p>David Satcher, "Ethical Complexities of Conducting Research in Developing Countries," <i>New England Journal of Medicine</i> 337 (1997): 1003-1005.</p>
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Oct. 17	Health and Humanitarian Emergencies	
Class 6	Guest Lecturer: Irene Jillson	
	Note: No class on Oct. 10 due to Columbus Day Holiday	
	<u>SR:</u>	<p>Convention Relating to the Status of Refugees.</p> <p>Roberts, Les, et al. 2004. Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey. <i>Lancet</i>. 364:1857-64.</p> <p>Medecins Sans Frontiers. 2006. Murky Waters: Why the cholera epidemic in Luanda (Angola) was a disaster waiting to happen.</p>

<p>Oct. 24 Class 7</p>	<p>Protection of the Human Rights of Persons with Mental Illness and Other Disabilities</p>	
	<p><u>SR:</u></p>	<p>WHO. Mental Health Care Law: Ten Basic Principles (Geneva, 1996).</p> <p>United Nations Commission on Human Rights: Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care.</p> <p>United Nations Declaration on the Rights of Mentally Retarded Persons.</p> <p>United Nations Declaration on the Rights of Persons with Disabilities.</p> <p>Paul Hunt and Judith Mesquita, "Mental Disabilities and the Human Right to the Highest Attainable Standard of Health," <i>Human Rights Quarterly</i> 28 (2006): 332-356.</p> <p>Gostin, Lawrence O. 2001. Beyond Moral Claims: A Human Rights Approach in Mental Health. <i>Cambridge Quarterly of Healthcare Ethics</i> 10: 264-274.</p> <p>Stanley S. Herr, Lawrence O. Gostin, Harold Hongju Koh, Eds., <i>The Human Rights Of Persons With Intellectual Disabilities: Different But Equal</i>, Introduction (Oxford University Press, 2003).</p> <p>Lance Gable, Javier Vasquez, Lawrence Gostin, et al., "Mental Health and Due Process in the Americas: Protecting the Human Rights of Persons Involuntary Admitted to and Detained in Psychiatric Institutions," <i>Pan American Journal of Public Health</i> 18 (2005): 366-373.</p> <p>Alison A. Hillman, "A Human Rights and Deinstitutionalization: A Success Story in the Americas," <i>Pan American Journal of Public Health</i> 18 (2005) (5 pp.)</p> <p>Optional Reading: Lawrence O. Gostin and Lance Gable, "The Human Rights of Persons with Mental Disabilities: A Global Perspective on the Application of Human Rights Principles to Mental Health," <i>Maryland Law Review</i> 63 (2004): 20-121.</p>
	<p><u>WR:</u></p>	<p><u>FULL THESIS STATEMENT AND INITIAL OUTLINE DUE:</u> Students must submit a more developed thesis statement, supported by an outline of their paper topic. A thesis statement is essential to original research. The full thesis statement should be 2-3 pages long setting out the paper's theory, method of development, and forms of argumentation in support of the thesis. Typically, this would include a detailed statement of what the paper expects to prove, why it is important, how the thesis will be developed, and the main forms of argumentation. The thesis statement should be supported by an outline of the paper. This outline should be based on the student's independent research and should present the title and subject matter of the eventual first draft of the paper. The outline should also feature headings and subheadings with sentence-length descriptions of the findings and subject matter within each heading. Well-organized outlines might also contain footnotes. These outlines allow the Professor and student peer to analyze the current status of the student's research, provide commentary and suggestions, and assist the student in organizing, research, and writing the first draft.</p>

Oct. 31	Torture and the Role of Health Professionals	
Class 8	Guest Lecturer: Gregg Bloche	
	<u>SR:</u>	<p>Marks, Jonathan H. 2005. Doctors of Interrogation. <i>Hastings Center Report</i> 35(4): 17-22.</p> <p>American Psychiatric Association. 2006. Psychiatric Participation in Interrogation of Detainees: Position Statement.</p> <p>Meier, Benjamin M. 2004. International Criminal Prosecution of Physicians: A Critique of Professors Annas and Grodin's Proposed International Medical Tribunal. <i>American Journal of Law, Medicine, and Ethics</i> 30: 419-52.</p>

Nov. 7	Public Health Emergencies and Emerging Infectious Diseases	
Class 9		
	<u>SR:</u>	<p>Barbera, Joseph, et al. 2001. Large-scale quarantine following biological terrorism in the United States: scientific examination, logistic and legal limits, and possible consequences. <i>JAMA</i> 286: 2711-17.</p> <p>Rothstein, Mark, et al. 2003. International Case Study: China . <i>Quarantine and Isolation: Lessons Learned from SARS</i> 60-76.</p> <p>Markel, Howard. 1999. The Microbe as Social Leveler. In <i>Quarantine! East European Immigrants and the New York City Epidemics of 1892</i> (Baltimore: Johns Hopkins Press), 183-93.</p> <p>United Nations, Economic and Social Council, Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985).</p>

Nov. 14	CLASS PRESENTATIONS	
Class 10		
	<u>WR:</u>	<p><u>SELECTION OF PRESENTATION DATE AND TIME:</u> On a random basis, students will select the date and time of their presentations. The presentations allow the students to present their topics and research findings to the class, take questions, and receive constructive feedback from the Professor, student peer, and class members.</p> <p><u>DETAILED OUTLINE DUE:</u> Although a previous version of the outline was already constructed to supplement the thesis statement, now is the time to revisit the outline and strengthen it so that the structure and coherence of the paper is guaranteed. A detailed outline finalizes the initial groupings that were made and re-evaluates whether they will be the best organizational approach for the paper that is in progress.</p>

Nov. 21	CLASS PRESENTATIONS	
Class 11		

Nov. 28	CLASS PRESENTATIONS	
Class 12		
	<u>WR:</u>	<u>FIRST DRAFT OF PAPER DUE!</u> Students must submit their first draft of the paper to the Office of the Registrar, Professor, Fellows, and student peer. These papers should <i>not</i> be partial drafts or mere extended versions of the outline. Rather, these drafts should feature complete analysis of all headings and subheadings and more extensive footnoting. These papers allow the Professor and student peer to fully review the student's topic and provide meaningful commentary and suggestions.

Dec. 5	CLASS PRESENTATIONS	
Class 13		

Dec. 22	<u>FINAL PAPERS DUE!</u> Submit papers to the Office of the Registrar. <u>No paper extensions will be granted except in emergency situations.</u>	
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