

BIOETHICS AND THE LAW (LAW 715)
SPRING 2012

Can medicine be a free profession that is protected by no corporative law, no prohibition of practice, no privilege of qualification? Can the medical consciousness of a nation be as spontaneous as its civic or moral consciousness?

Michel Foucault, Birth of a Clinic

Wednesdays, 2:00 – 4:00 PM
25 E. Pearson St., Room 1101

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COURSE GOALS

This course provides an overview of American law as it relates to emerging ethical issues in medicine and health care. Picking up where introductory courses in health law and public health law often leave off, this course is intended to give students an appreciation of the ways in which medical practice and decision-making are guided by modern American principles of constitutional, tort, administrative, and criminal law. Students will learn how the law's regulatory powers have been used to set boundaries in medicine, and, in turn, how theories of medical ethics and practice have informed modern legal developments.

By the end of this course, students should be able to:

- Identify and analyze major legal issues in the context of health care and bioethics;
- Understand the ethical arguments on all sides of key debates in bioethics;
- Trace the historical development of American bioethics over the past century.

COURSE REQUIREMENTS

Class Participation: The success of this course is dependent on each student's interest and active involvement. Seminar participants are expected to be prepared for each meeting and contribute actively to class discussions.

Attendance: Regular and punctual attendance is expected. Excessive tardiness or absences will affect one's class participation grade.

Reading Assignments: There is no casebook for this course – all required readings will be posted on the course website on TWEN. The reading assignments for each week will generally be between 40 and 75 pages. The purpose of these readings is not to serve as comprehensive accounts of black-letter law, but rather to introduce seminar participants to new perspectives and to spark discussion of the challenges facing stakeholders at the intersection of law and bioethics. Students are responsible for all assigned readings, and should come to class prepared to discuss them in detail.

Critical Response Papers: During the first half of the semester (that is, by **February 29**), each student is expected to complete two critical response papers and submit them in class. These short (2 to 3 single-spaced pages) argument-based response papers are intended to give you an opportunity to explore issues that particularly spark your interest, surprise you, offend you, or otherwise challenge your intuitions. In each paper, you should take a position and defend it by reference to arguments grounded in law, policy, history, religion, philosophy, science, or the like. You are welcome to express your personal opinion or play “devil’s advocate” – the goal here is to work on building a clear and coherent argument rather than relying on mere rhetoric or unsupported opinion.

Policy Proposal and Class Discussion: The second half of the semester will be devoted to developing issues in law and bioethics, the details of which will be determined by student interest. Each student – either on her own or as part of a team – is expected to take responsibility for one “hot issue” of her choosing and direct class discussion for that session. As part of this requirement, students must: (1) research the issue and select one or more relevant reading assignments for the class, to be distributed one week in advance; (2) draft a written policy proposal (5 to 10 double-spaced pages) recommending action on the relevant issue; (3) present a brief overview of the issue to the class and direct class discussion using questions and case studies, incorporating the policy proposal as appropriate.

Final Research Paper (3-credit students only): For students taking this course for three credits, the final course requirement is a research paper on an approved topic in law and bioethics – preferably, the same topic that student has chosen for her policy proposal. The research paper should be between 20 and 40 double-spaced pages. A rough draft is due on **April 11**; and the completed paper is due on **May 9**.

GRADING

Your final grade in this course will be based on **class participation** (20% of the grade), **critical response papers** (20% of the grade); **policy proposals and presentations** (for 2-credit students, 60% of the grade; for 3-credit students, 20% of the grade); and, for 3-credit students only, the **final research paper** (40% of the grade). All grading is final.

While each formal course requirement is considered independently, the following should serve a general guide as to how student work will be evaluated:

A/A-: The student demonstrates an *exceptional* understanding of the subject matter, is *able to thoroughly describe and explain* themes raised in the readings, and presents a *sophisticated, creative, consistent, and comprehensively researched* argument of his own creation that stands up against *equally well-reasoned criticism*.

B+/B: The student demonstrates a *strong* understanding of the subject matter, is *able to clearly describe and explain* themes raised in the readings, and presents a *reasonable, consistent, and well-researched* argument of his own creation that stands up against *reasonable objections*.

B-/C+/C/C-: The student demonstrates a *basic* understanding of the subject matter, is *able to accurately describe* themes raised in the readings, and presents a *reasonable* argument that demonstrates *basic research skills and awareness of reasonable objections*.

F: The student is *not able to accurately describe* ideas and principles raised in the readings, or presents an argument that demonstrates *substandard research skills, logical inconsistencies, factual errors, or an inability to identify reasonable objections*.

COMMON COURTESY AND PROFESSIONALISM

Professionalism: Given the sensitive nature of the material we will be studying, it is particularly important that students maintain a professional and respectful manner during class discussions. The classroom is a space governed by honesty and mutual respect. If you have any questions or concerns on this subject, please do not hesitate to speak with me.

Laptops: Courteous laptop use is permitted in class. If I receive any complaints about inappropriate laptop usage during class, I reserve the right to change this policy.

Other Electronics: For my sanity and yours, please disable all cell phones, PDAs, and other disruptive electronic devices during class. If a cell phone rings during class, its owner will be invited to assist me in developing a new policy to ensure that devices do not disrupt class in the future.

Academic Integrity: Students should familiarize themselves with the law school's Code of Conduct, particularly the provisions relating to academic honesty. Violations will not be tolerated.

OFFICE HOURS

My regular office hours this semester will be from 1:00 PM to 4:00 PM on Mondays. However, I am happy to meet by appointment if that better accommodates your schedule. You are also welcome to stop by my office any time my door is open.

I look forward to getting to know everyone in the class personally, and welcome the opportunity to meet with groups of students informally over coffee or lunch.

PRELIMINARY SCHEDULE

Jan. 18	Introduction to Moral Reasoning in Bioethics and Law: <i>What are moral theories? To what extent should the law take them into account?</i>
Jan. 25	Protecting Human Subjects: <i>When is participation in research voluntary? What lessons can we learn from historical abuses?</i>
Feb. 1	End of Life Decision-Making and the “Right to Die”: <i>What are the philosophical and legal arguments surrounding the right to refuse medical treatment?</i>
Feb. 8	Physician-Assisted Suicide: <i>Why is there no constitutional right to PAS? Are there alternative means of achieving patients’ goals?</i>
Feb. 15	Issues in Reproduction: <i>In light of Roe and Casey, what liberty restrictions can states permissibly place on women during pregnancy?</i>
Feb. 22	Distributive Justice: Access to Dialysis and Organs: <i>Should policymakers and physicians ration medical care? If so, how?</i>
Feb. 29	Public Health: <i>How do we apply existing public health laws to the new realities of pandemics, international travel, and bioterrorism?</i>
Mar. 7	NO CLASS (Spring Break)
Mar. 14	[TBD]
Mar. 21	[TBD]
Mar. 28	[TBD]
Apr. 4	[TBD]
Apr. 11	[TBD]
	<i>Rough Draft Due (3-credit students only)</i>
Apr. 18	[TBD]
Apr. 25	[TBD]
May 9	<i>Final Paper Due (3-credit students only)</i>

Please take some time to think about what issues you would like to study during the second half of the semester, which will be devoted entirely to current topics of your choosing. Please e-mail me with suggestions or requests; we will be discussing all these possibilities in class. To get you started, below are a few topics that might be of interest:

Stem Cells, Embryos, and Clones:

- Should the United States fund research using stem cells derived from human embryos?
- Should the United States outlaw reproductive or therapeutic cloning?

Physician Role Conflict

- Should there be any legal or ethical restrictions on physician participation in capital punishment, interrogation, and torture?
- How should the government and physicians respond to the rising costs of health care? Should physicians consider cost at the bedside? Should there be laws about rationing care?
- What ethical or legal restrictions should there be on researchers and physicians working with pharmaceutical companies?

Access to Drugs

- Should patients have the right to access drugs that have not been approved by the FDA, including medical marijuana?
- Is the current TRIPS-based legal regime the best response to the problem of access to drugs in developing countries?

Genetics and Genomics

- Should the U.S. Patent and Trademark Office grant patents to genes and genetic material?
- How should the government and the medical profession respond to the rise of direct-to-consumer genetic testing?

Human Subjects Research

- What obligations should medical researchers have to ensure that research subjects benefit from their contributions?
- What obligations should medical researchers have to subjects if they discover health information that is outside the scope of the study (“incidental findings”)?
- Should institutional review boards (IRBs) allow research to proceed when the principal investigator has a financial interest in the outcome?
- How should international research by U.S. companies be regulated?

Reproductive Medicine

- Should there be any legal or ethical limitations on the number of embryos implanted in an IVF procedure? On embryo selection by patients undergoing IVF? On disposal of unwanted embryos resulting from IVF?
- Should parents be allowed to create “savior siblings?”
- Should states enforce surrogacy contracts between infertile couples and gestational surrogates?
- Should infertile patients be permitted to seek international surrogates?

Property Interests in Human Tissue

- What rights should a patient have to her tissue after it is removed from her body? After she is deceased?