

BIOETHICS AND THE LAW
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Course Plan and Coverage

Law now plays a prominent role in medicine and science. Recent years have witnessed a major expansion of law's involvement. Law (statutory and court-made) articulates and interprets norms of conduct. As society has become more diverse, as emphasis on individual will and belief has come to dominate our ideology, as technological change has mounted, clashes over values have expanded exponentially. Because medicine and science affect many of our most fundamental values including body, life, death, religion, reproduction and sexuality, and family, the decisions in those fields are highly contested and very visible. Law also provides an institutional setting for authoritative resolution of disputes, one that has become increasingly prominent as other traditional sites for resolving conflict have weakened. We no longer live in small towns, neighbors no longer know one another, religious institutions are far from unitary in their authority, and families have become smaller and less influential.

This course will examine a number of topics where law and medicine intersect. In each are we will include both traditional issues, like "right to die" and more current disputes in each area, for example physician assisted suicide.

The main text for the course will be Bioethics and Law by Furrow, Greaney, Johnson, Jost, and Schwartz. Legal opinions and articles, as well as commentary on ethical issues from a range of scholarly fields and from intellectually compelling public media sources will supplement and illustrate the issues begun within the text.

Major Topics To Be Addressed (with illustrative sub-topics and cases)

- I. Definitions and Demarcations at the Beginning and End of Life**
Personhood as distinct from life, life and death as continuum rather than point in time, defining death in terms of brain vs. heart-lung function, variable definitions of life and death and their link to decision-making and duties of care.
- 2. Sexuality and Reproduction**
Separating procreation from sexuality, legal definition of parenthood and family, various methods of assisted reproduction (artificial insemination, in vitro fertilization, surrogacy, gamete and embryo donation, abortion, (Baby M, Johnson v. Calvert, Michael H. v. Gerald D.).
- 3. End-of-Life Care and Death Decisions**
Refusal of care, palliative care, pain management, decriminalization of suicide, physician-assisted suicide, proportion of costs incurred in late stages of life, Implications of various medical statuses (comatose, persistent vegetative state, "minimal" consciousness, role of disability and quality of life, impaired newborn decisions. (Wendland, Schiavo, Cruzan,

Vacco and Compassion in Dying v. Washington, etc., New Jersey statute allowing individual variation based on religion in definition of death

- 4. Division of Decisional Authority Among Professionals, Patients and Society.**
Professional liability, informed consent, mandated disclosure, legislative and regulatory mandates, management of uncertainty, evidence-based medicine, role of ethics committees and research review bodies. Parental authority regarding care or withholding of care from severely premature or impaired neo-nate or child. (Miller v. HCA, Cobbs v. Grant, Quinlan).
- 5. Issues in Genetics and use of DNA**
Discrimination in insurance or workplace, ethical conflicts about genetic counseling, internet sale of diagnostic tests, patentability, ownership of body? (Greenberg, Chakrabarty).
- 6. Conflicts of Interest in Regulation, Research and Practice**
Fiduciary responsibilities of professionals; FDA approval process, privately sponsored research; interface between universities and corporate sector (Moore v. UC Regents)
- 7. Justice and Access to Care**
Race and class disparities in care and outcome, care for un- and underinsured costs of care, management of scarce resources, rationing, EMTALA (federal emergency treatment mandate).

Evaluation of Students

Students will be given three descriptions of difficult problem situations that involve law and bioethics. We will form small groups to discuss and resolve their views about the issue at hand. For each assignment, a different member of the group will write up the group's response. All members of each group will receive the same grade on the response, with the grade for each assignment being more heavily weighted toward the writer. For example, if A, B, and C form a group and there are three problem sets, A writes up the *group's* consensus view on Problem 1, B writes up Problem 2, C writes up Problem 3. All receive the same grade on a given problem but the writer receives double the weight of that grade. Thus, each person in the group will write one of the three Problem Responses. Each will receive 10% of his/her grade from each of two problems and 20% of his/her grade from the problem he/she wrote up.

There will also be a mid-term (15%) and a final exam (25%).

Class participation and preparation will count for 20% of the grade