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

Spring 2009

DEPRIVATION OF LIBERTY -- JLS-200-001

Mondays 2:10 PM to 4:50 PM
Ward 102

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Course Description

"They say that freedom is a constant struggle," sang the Mississippi "freedom fighters" during the Civil Rights movement in the 1960s. Today, there are less visible struggles for freedom, yet they are no less constant. One concerns the right to be left alone--the liberty of individual autonomy against the restraint of government authoritarianism. Is it constitutional for government to protect citizens from themselves and deprive them of liberty in the process?

Freedom *of* and *from* religion were dear to Thomas Jefferson and James Madison. The First Amendment was written, in part, to separate church and state and serves to protect against those who would deprive us of liberty in the name of religion. According to some influential writers over the past forty-five years, institutional psychiatry now replaces religion and is used by government to justify paternalism, that is, it is used to deprive citizens of liberty.

Behaviors formerly considered "good" and "bad" are now labeled as medical signs of "mental health" and "mental illness." Psychiatrists are empowered by the state to restore liberty and autonomy in those persons considered "mentally ill"--even if those labeled sick don't want to be "cured." Thus, do we have what has come to be known as "the therapeutic state" (a term created by psychiatrist Thomas Szasz in 1963). To what extent (if at all) has institutional psychiatry, that is, psychiatry sanctioned by the state, replaced the religious tyranny Jefferson and Madison worked so hard to protect us against?

Suicide (not "physician-assisted suicide") is considered one of the most controversial topics for discussion today. Is suicide a symptom of "mental illness?" Does a person have a right to die? If the Constitution guarantees our right to life, liberty and property, doesn't it also guarantee our right to self-destruction and death? How might government authoritarianism evolve to deprive citizens of individualism and liberty in this situation? Might such policies ultimately lead to a totalitarian society? When, if ever, is such deprivation of liberty constitutionally justified?

In this course we examine the answers to those and related questions. We will discuss the political and ethical issues involved in the right to one's body as property. We will study how the Nazis used medical rhetoric to justify persecution and murder in the name of public health. We will explore the ways government deprives individuals of liberty in a free society by focusing on the relationship between liberty and responsibility, psychiatry and government, and the origins of totalitarianism according to F.A. Hayek's critique of socialism and collectivism.

An important note: This is not an "anti-psychiatry" course. Psychiatry and mental health treatment, whatever one thinks of them, should be available to people who want to use them—Psychiatry between consenting adults. Who pays for such services, the individual or the state, is another matter. What you will learn in the first part of this course is how the idea of mental illness is used to deprive people of liberty and justice today, via the therapeutic state, a state in which medicine and state are united in ways that church and state were once united. In order to understand this, it is necessary to learn some basics facts about clinical and scientific medicine. A big concern here is when people are coerced into psychiatric treatment, and/or mental illness becomes exculpatory regarding criminal responsibility.

Some people misunderstand the deconstruction of mental illness to mean there are no people who are disturbed or disturbing to others in their behaviors, as if the people labeled or diagnosed with mental illness do not exist. This is not a position or perspective that is taught in this or any course I teach. The behaviors most clearly exist. It is how we define, describe, explain, classify, and what we do and don't do about those behaviors, those persons who are called mentally ill, that is a major part of study here. No one in class is discouraged from seeking psychotherapy or psychiatric help. If you are on psychiatric medication, do not stop it suddenly, talk to your physician about stopping or cutting back if that's what you want to do, and remember: all drugs have effects on the human body. Sudden withdrawal can be dangerous.

In the second part of this course we examine how medical rhetoric misused and misapplied was instrumental in scapegoating, persecution, and genocide—the elimination of society's unwanted. Here we examine what the Nazis did when they claimed to be practicing medicine based in science. We examine collectivism in the extreme: How doctors in Germany moved from being doctors of the individual to doctors of the collective; How doctors in Germany were empowered—not ordered—to kill and do other horrible things to people they claimed were "unworthy of life." And we will learn about how doctors were key players dictating the "duty to be healthy" then.

In the third part of this course we study F.A. Hayek's theory on how the Holocaust and totalitarian states can develop. We learn about the difference between socialism and classical liberalism, different definitions of freedom, the relationship between the individual and the state, and safeguards against deprivations of liberty in the future. Comprehending the difference between the rule of man and the rule of law is key here. So is the relationship between freedom and responsibility.

DEPRIVATION OF LIBERTY is one of the courses in Curricular Area 4, Social Institutions and Behavior, in the university's General Education Program. This course is taken as part of a two-course sequence. The foundation courses preceding it include Individuals and Organizations (54.105), Psychology: Understanding Human Behavior (57.105), and Justice in America

(73.100). DEPRIVATION OF LIBERTY explores in more depth a topic introduced in those three foundation courses.

A common question students often ask when taking this course is the following: "Why weren't we ever taught this before?" This is usually in reference to how the therapeutic state has come to replace the theocratic state, and how institutional psychiatry and the public health movement constitute grave threats to liberty and justice. You will be able to answer that question on your own by the end of the semester.

Your life is going to change as a result of taking this course. You will learn new ways of thinking about yourself and others that you may never have imagined before. Lecture and discussion format.

Course Objectives

1. To improve the student's legal, philosophical and policy-oriented thinking about liberty in a constitutional democracy.
2. To evaluate the values, costs, and logic of the ways in which classes of people (for example, drug users and those labeled as mentally ill) are defined as dangerous to themselves and others.
3. To explore the social, economic and political origins of totalitarianism and their relationship to authoritarian and paternalistic government policies in the US today.
4. To understand the meaning of "the therapeutic state" and what happens in involuntary treatment for mental illness and drug addiction; the structure and function of the insanity defense; and deprivations of due process via psychiatric testimony in the courts.
5. To understand how policy is formulated, developed and implemented based in classical liberal versus collectivist philosophies.
6. To develop skill in debating controversial legal and public policy issues.

Required Readings

- Hayek, F.A. (1994). *The road to serfdom*. Chicago: The University of Chicago Press. ISBN-10: 0226320618, ISBN-13: 978-0226320618
- Proctor, R.N. (1988). *Racial hygiene: Medicine under the Nazis*. Princeton, NJ: Princeton University Press. ISBN-10: 0674745787, ISBN-13: 978-0674745780
- Szasz, T.S. (1997) *Insanity: The idea and its consequences*. Syracuse, N.Y.: Syracuse University Press. Reprint edition. ISBN: 0815604602
- Szasz, T.S. (1998). *The myth of psychotherapy: Mental healing as religion, rhetoric, and repression*. Syracuse, NY: Syracuse University Press. ISBN-10: 0815602235 ISBN-13: 978-0815602231

Course Requirements and Grades

Paper	50%
Final exam	50%
Class participation	20% →
Total =	100%

Note: You **must** do the CP assignment. There is no grade for it. It is a required part of the course. If the assignment is not completed, the final grade is reduced by twenty percent.

Note: Throughout this course you must abide by Rudolf Virchow's definition of a disease; meaning it refers to cellular abnormality, a physical lesion (wound). In other words, you must abide by a pathologist's definition of disease, not that of a mental health professional. This has nothing to do with denying the existence of disturbing, abnormal, or irrational behavior. We are simply abiding by the gold standard when it comes to defining and describing disease in the literal sense. A behavior cannot be a disease. Or, a behavior can be a disease only as a metaphor.

Paper: Double-spaced typed paper dealing with any way that people today are coerced or deprived of liberty without due process of law. 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, if needed. There should be little need for further discussion. Everything is here. **Remember though: You must use the definition of disease as established by Virchow, and used as the gold standard by pathologists all over the world. This means that disease is of the body and consists of cellular abnormality, lesions, signs.** There is no such thing as the mind, therefore the mind cannot be sick, ill, or diseased.

The brain can obviously be diseased. Brain and mind are different. Disease is something literal. Differentiate between literal and metaphorical disease. Metaphorical disease can only be "treated" metaphorically. The difference between metaphorical and literal disease is one of the most difficult concepts in this course, and it is one of the most important concepts to comprehend. Use your dictionary. Ask questions. Work to understand the difference. Once you "get" the difference, everything "comes together." It doesn't matter whether you want to continue to believe that the mind can exist in a literal sense or not. You must use the gold standard when it comes to defining disease, that is, a disease is something physical, characterized by cellular abnormality and tissue destruction, and found in the cadaver during an autopsy.

Note: You will discuss your paper in class. You hand your paper in on the date listed below. Always keep a back-up copy of your paper.

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.
- You may not use *Wikipedia* for research.
- 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: The final examination will consist of multiple choice and/or essay questions focused on the material throughout the whole course. It is cumulative.

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

Class participation (CP): Further instructions or clarification for the assignment below will be presented in class. One post per week. This must be posted in the BlackBoard discussion board for the week indicated or labeled in the margin on the left of your BlackBoard home page for this course.

Directions: Each week you post one CP assignment for the appropriate week BlackBoard discussion board. There are three parts to one CP assignment or post. Title each CP post the

following way and make sure your name is listed as it appears with the registrar: CP post, date, your name.

Inside your post you do this: 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 brief opinion of the article. Thus,

1. CP, your name, the date, in the subject area.
Title of article in the text area with the
URL of article, followed by

2. Your opinion of article/issue. You decide the length. You should present enough to establish a clear statement of your opinion.

3. Then, underneath this you write "Reply to (name of student you are replying to)."
Here you post a response to the opinion written by someone else in class—their opinion in any post of theirs for that week. Please be polite and respectful. *Argumentum ad rem,* no *argumentum ad hominem*.

The CP assignment counts for twenty percent of your grade. It is a requirement for the course. If you do not do the assignment, your final grade drops by twenty percent of the average for your paper (fifty percent) and final exam (fifty percent).

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 four class absences**. Sign in at each class. Please be on time.

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. You do the readings. You write down questions for discussion from the readings and lectures. I lecture on various points from the readings. I do not lecture on everything you read. You are responsible for the readings. This is different from high school. You could be tested on something that is part of the readings that I did not lecture on in class. Grades: A-=90, B+=89, B-=80, C+=79, C-=70. **Check your email for class readings, announcements, etc**. Check BlackBoard for announcements.

Make sure you receive email through BlackBoard. If a class is cancelled because I have to give a talk out of town, or because I am sick or have to have surgery, I will make every effort to present a lecture for that class on BlackBoard. You are responsible for that lecture. I will send out an email directing you to the lecture on BlackBoard in place of my face-to-face lecture. I do have at least one important speaking engagement this semester that I must participate in, and I am scheduled for knee surgery in January. I'm not sure whether those events will fall on

the date of one or two of our classes, however, if they do, I will either schedule a guest speaker, a movie, or a lecture on BlackBoard.

If you know someone who is in the mental health profession, who you think disagrees with much of what we are studying, and you think he or she would be interested in giving a talk to the class, please let me know. I would be happy to talk to him or her about coming in and speaking to our class. College is a lot about exploring and debating new ideas, new ways of viewing oneself and the world. I welcome diversity and different points of view. Much of what you will learn in this course is rarely presented in other classes. In order for me to present these alternative ways of viewing disease and behavior, I must present the "other side."

Teaching Assistants

Our graduate teaching assistant is Mr. Nafis Islam. His email address is ni8955a@american.edu. Nafis will introduce himself to you through Blackboard and in class. He worked with me last semester. He may have time to help you with the process of the course, especially your papers. Contact Nafis if you (a) have a problem with BlackBoard and doing the CP assignment; (b) need help with the structure of your paper (Please do not wait until the last moment to ask Nafis for help.) He is not available for reading your paper carefully before you turn it in. He will help you with making sure you understand what goes under which heading, APA format, etcetera. If you are worried about writing a good paper, you should first meet with Nafis to make sure you have the headings correct, and the APA style correct. Then meet with someone in the university writing center. You must make an appointment at the writing center well in advance. Do not expect to get an appointment right away. Again, book your appointment in advance. When you get an appointment with someone be sure to take along a copy of your syllabus so they know what is expected of you. Not everyone has to do this. I strongly encourage you to use the writing center if you are not confident in your writing.

Our General Education Program Award Assistant is Ms. Lauren Berkebile. She has taken this course before and knows the material well. Her email address is lauren.berkebile@gmail.com Contact Lauren for tutoring with the course material. She will lead a study session for the final exam, and possibly one mid semester. Lauren will help with the content of the course.

Punctuality

It is important to be on time, when you have an appointment with Professor Schaler, Mr. Islam, Ms. Berkebile, or someone at the writing center. It is also important that you be on time for class. Please sign in at each class.

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

Any topic below is subject to change. Additional readings and articles may be sent out by email or be available for download on BlackBoard. Read those topics associated with the date on the left. Discussions may necessitate carrying a topic or presentation over to the following week. Make sure you have the readings done.

Date	Topic	Reading
January 12	Introduction: Three Step Model	Lecture
	Part I of *Insanity*	
	Read Part II of *Insanity*	
	Part II and Part III of *Insanity*	
January 19	Part IV of *Insanity*	
Martin Luther King, Jr. Day	*The Myth of Psychotherapy*	Lecture
No classes	Begin your CP assignment starting this week.	
	Please have it completed two days after each date	
January 20 –Inauguration Day	to do part three of the CP assignment.	
No classes		
January 26	*The Myth of Psychotherapy*	Complete
	The Myth of Psychotherapy	Lecture &
February 2	The Myth of Psychotherapy	Discussion
February 9	Origins of Racial Hygiene	Lecture
	Group assignments to present Proctor chapters	
	Note: You will be randomly assigned to groups to present	
	sections of Proctor's book; There will be time in class	
	to meet for preparation	
February 16	Neutral Racism	
	Political Biology	Proctor 4-6
	Sterilization Law	
February 23	Control of Women	Proctor 7-8
	Anti-Semitism	
	Organic Vision	
March 2	Medical Resistance	
	Politics of Knowledge	Finish Proctor
	Papers due	
Spring break, March 8 to March 15		
March 9	Introduction and The Abandoned Road	Hayek
	The Great Utopia	
March 16	Individualism and Collectivism	
	The "Inevitability" of Planning	
March 23	Planning and Democracy	
	Planning and the Rule of Law	

March 30	Planning and the Rule of Law	
	Economic Control and Totalitarianism	
April 6	Who, Whom?	
	Security and Freedom	
April 13	Why the Worst Get on Top	
	The End of Truth	
April 20	The Socialist Roots of Nazism	
	The Totalitarians in Our Midst	
	Material Conditions and Ideal Ends	
	Last week for CP assignment	
April 27—**Last class**	The Prospects of International Order	Finish Hayek
May 4	**Final Exam 2:10 PM to 4:40 PM**	**Ward 102**

Note: Try to get the readings done by the dates shown. We may spend more time on one chapter than another. The reading is your responsibility. We will have discussions about points related to the readings, to illustrate ideas in the readings, however, we may not necessarily discuss in class every part of the readings. You will share in presenting parts of Proctor, assigned in class. The final exam has to be taken on the date assigned.