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

Fall 2009
Deprivation of Liberty JLS-200-002
Mondays and Thursdays, 2:10 PM to 3:25 PM
Ward 203
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Use Blackboard

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. Your life is going to change as a result of taking this course. Lecture and discussion format. You will learn new ways of thinking about yourself and others you had never imagined before. A common question students ask when taking this course is this: "Why weren't we ever taught this before?" You will be able to answer that question on your own at the end of the semester.

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 about clinical and scientific medicine. The 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 as meaning that there are no people who are disturbed or disturbing 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's 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.

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.

Note: Class discussion is a MAJOR part of this course. You do the readings on your own. The professor does not go over every reading unless you have a question. Student presentations will be assigned for Racial Hygiene book. If you don't present in your group, or make a bad presentation, your final grade will be lowered by ten percent.

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: 0226320618

- Proctor, R.N. (2003). *Racial hygiene: Medicine under the Nazis.* Cambridge, MA: Harvard University Press. ISBN: 0674745787

- Szasz, T.S. (2002). *Liberation by oppression: A comparative study of slavery and psychiatry.* New Brunswick, NJ: Transaction Publishers. ISBN: 0765805405

- Szasz, T.S. (1997) *Insanity: The idea and its consequences.* Syracuse, N.Y: Syracuse University Press. Reprint edition. ISBN: 0815604602

Course Requirements and Grades

Paper	40%	
Final exam	40%	
Class participation	20%	→ Note: You must do the CP assignment. There is no grade for it. It is just A required part of the course. If the assignment is not completed, the final grade is reduced by twenty percent.
Total =	100%	

Note: Throughout this course you must abide by Virchow and Szasz'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.

Description of course requirements

You are going to learn an important model in this course that was developed by Professor Schaler. Some of you have used it in other courses of mine/ It is called the "three-step model of policy analysis." Throughout the course, refer back to this model. Whatever it is that you are reading in books, articles that I post for you to read, lectures, discussions, the topic and what we are focusing on fits somewhere in this model. The three-step model is an intellectual compass. It will help you not only in this course, but in other courses you are and will be taking.

First, there is what I call a "phenomenon of interest." The phenomenon of interest for the course could be anything, "mental illness," "addiction," and so on. We are learning about, comprehending, explaining, and determining the efficacy of policy in light of how the three steps relate to one another → all concerning the phenomenon of interest. So, with the phenomenon of interest "mental illness," the model looks like this:

Step One: We must describe and define mental illness. Describe is different from define. Describe and define are different from "explain." Never confuse explanations for mental illness with description and definition of mental illness. We are concerned with the description and definition of mental illness. We do not want to confuse description and definition with theories about why mental illness occurs, or what we call "explanations for mental illness." We are interested in explanations for mental illness, they are tremendously important to comprehending and evaluating policy, we just don't want to confuse explanation with description and definition. How do the drugs get into the body? Are we talking about behavior or disease? Study the meaning of behavior. We are using the Virchowian definition of disease → Disease = cellular abnormality. This is also the definition that pathologists use. We are *not* using the definition of disease frequently used by members of the mental health profession. To the extent that we are concerned with medicine in this course we are concerned with, and differentiate, scientific medicine not/from clinical medicine. Everything that is in the Diagnostic and Statistical Manual of Mental Disorders (DSM) is part of Step One. This is because the DSM describes many diverse behaviors. It does not explain why the behavior occurs.

We will also discuss and you will learn about the difference between public and private health. Both are concerned with disease. One way of remembering the difference is that a true public health problem is phenomena whereby you can contract a disease simply by being in the vicinity of another. Private health problems are the result of a consensual relationship where contracting a disease is a potential risk of the relationship. Catching *herpes genitalis* from having consensual sex with someone is a private health problem or risk. Catching *swine flu* virus simply by breathing the air in a contagious person's vicinity is a public health problem or issue. You didn't do anything to contract the disease but be in the vicinity, be near a person who was contagious. We will discuss many other examples.

Step Two: Explanations. Why does mental illness occur? We will examine four domains of explanation: Religious or theological; Biological/genetic; Psychological; and Sociocultural. The biological and genetic explanatory paradigms are most popular here, however, this has not always been so, and it is unlikely to remain this way. Much of what you may have learned elsewhere regarding the truth about neurotransmitters and genes or mutations of genes as causes of mental illness may not be true. We will examine the evidence supporting claims regarding each of these explanations. It is up to you to decide what you think makes the most sense.

Step Three: Policy. What do we do about mental illness. Keep in mind that one of the policies can always be doing nothing, that is, leaving people alone. Policy here means what we do about mental illness and the people who are labeled as mentally ill.

We are concerned with policy in four domains: The legal domain, meaning, to what extent does mental illness exculpate criminal behavior? Here we are concerned about involuntary commitment, the insanity defense, testamentary capacity, the right to refuse treatment, competency to stand trial, and so on. The second domain is concerned with clinical

treatment. If we regard mental illness as a "treatable disease," or even just a treatable problem in living, what approaches are best? Do any treatment approaches actually work? The third area of policy is concerned with what we call "informal social control," in sociology, or what we shall refer to here as "social policy." There are two areas we are especially concerned with here: relational forms of social control and self control. Remember that when it comes to social policy, or informal social control, we are not talking about the involvement of the state. And finally, the fourth area of policy that we are focusing on in this course is referred to as "formal social control" by sociologists, or public policy. Here we are talking about the involvement of the state in controlling mental illness. Does the State have any business "inside a citizen's head?"

So, this is the three-step model that we will constantly return to in terms of comprehending mental illness, explaining it, and comprehending the relationship between explanations and policy in each of the four domains mentioned. If you are ever lost in terms of material we are covering, always go back to this three-step model and find out where you are stuck in the model. Then ask the professor or teaching assistant for help if you need more assistance. The three-step model makes learning this very new and different perspective easy and fun.

Paper:
You are free to write about anything you want, as long as it is somehow related to what we read and discuss in the course. You must follow the instructions regarding format, though.
No page limit. You decide how long your paper should be. Most students submit papers between six and ten pages long. Your paper must have the following sections in it: A title page, an introduction – containing your thesis, or the purpose of your paper. A section containing operational terms and definitions, if needed. A literature review (your opinion must be absent from this section. You include only the opinion of others). A discussion section, where you analyze and interpret your findings in the literature review (your opinion is appropriate for this section—no colloquialisms, or "casualisms," please). A summary/conclusion followed by your references, which begin on a separate page at the end. Note: Each of the other sections do not begin on a separate page, except for the title page and your introduction. You must use American Psychological Association style/format. (Find APA format guidelines on the web. There is only one version of APA format. If someplace suggests a different version, it is not the correct version. We will go over all of these requirements the first week of class.

Keep the following points in mind regarding your paper:

- Take into consideration the relationship between liberty and responsibility, a positive correlation as discussed in class, not a negative correlation.
- All references to literal disease are consistent with the definition of disease by pathologists and nosologists, that is, disease is a lesion of the physical body, cellular abnormality, defined primarily by signs, not symptoms. Disease is defined as by Rudolf Virchow in his nineteenth century classic Cellular Pathologist. Behavior is a metaphorical disease, not a literal disease. You must differentiate between metaphorical and literal disease if you are ever to refer to behavior as disease.
- 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. Use qualifiers like "in my opinion," to be clear to your reader.
- 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 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 each 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.
- Keep a copy of your paper.
- Your paper may be selected to be run through turnitin.com, to check for originality. This can also lead to suspicions regarding plagiarism. You may use turnitin.com to check your own paper.
- You may not use past papers written for other classes, in part or whole. Doing so violates the academic integrity code.
- Avoid using the pronoun "I".
- Do not cite Professor Schaler. You may address ideas in class, of course, but neither praise nor attack persons in your paper. Focus on ideas.

This is a short 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.

- You may not use *Wikipedia* for research.
- Do not quote more than two lines of material.
- Do not rely exclusively on Internet research, that is, by citing urls. You must give author, date, title, journal, editors, publishers, and place of publication.

- Any and all court case citations must be in italics with the date of the decision, for all intexts referencing.
- 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 we study throughout the whole course. You will be given the opportunity to express your own point of view on the many controversial issues we addressed. The primary focus is on comprehension of concepts and their application in policy domains of law, clinical, public, and social arenas. There may also be some philosophical questions. Again, you write the answers to the exam on line.

Class participation (CP): 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.

You may also be called upon by name to answer questions throughout the course, and especially to give your opinion. This is a time for everyone to be involved. You are perfectly free to disagree with me, your professor, and the authors of material we are reading together. Do not, however, attack anyone's character to try and win an argument. Stick with ideas.

CP Directions: Each week you post one CP assignment for the appropriate week on the 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 the name of the news item along with the url. 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.*

You complete this by Sunday evening, midnight. Remember: This counts for twenty percent of your final grade. This means that your final grade can drop by twenty percent if the CP

assignment is not completed perfectly.

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. The exam must be taken on the date assigned. 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.

Punctuality

It is very important to be punctual, or on time, when you have an appointment with Professor Schaler. If you set up an appointment with our graduate assistant, you must be on time. If you skip the appointment, you may not be seen again, or, you may be seen at a later date, at the Graduate Assistant, or Professor's convenience. 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 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
August 24 & 27	Introduction: Three Step Model Part I of *Insanity* Read Part II of *Insanity* Part II and Part III of *Insanity*	Lecture
August 31 and Sept. 3	Part IV of *Insanity* *Liberation by Oppression*	Lecture

No class Sept. 7,Labor Day	*Liberation by Oppression*	
Sept. 10	*Liberation by Oppression*	
Sept. 14 & 17	*Liberation by Oppression*	
Sept. 21 & 24	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	
Sept. 28 & Oct. 1	Neutral Racism	
	Political Biology	Proctor 4-6
	Sterilization Law	
Oct. 5 & 8	Control of Women	Proctor 7-8
	Anti-Semitism	
	Organic Vision	
Oct. 12 & 15	Medical Resistance	
	Politics of Knowledge	Finish Proctor
	Papers due	
Oct. 19 & 22	Introduction and The Abandoned Road	Hayek
	The Great Utopia	
Oct. 26 & 29	Individualism and Collectivism	
	The "Inevitability" of Planning	
Nov. 2 & 5	Planning and Democracy	
	Planning and the Rule of Law	
Nov. 9 & 12	Planning and the Rule of Law	
	Economic Control and Totalitarianism	
Nov. 16 & 19	Who, Whom?	
	Security and Freedom	
Nov. 23 & 26	Why the Worst Get on Top	
	The End of Truth	
Nov. 30 & Dec. 3	The Socialist Roots of Nazism	
	The Totalitarians in Our Midst	
	Material Conditions and Ideal Ends	
	The Prospects of International Order	Finish Hayek
Dec 3	Classes end	
Dec 7	**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 on taken on the date assigned, based on the date assigned by the university registrar's office.

Remember: Class discussion is a major part of this course. You will be tested on material discussed in class, not necessarily in the readings. We may not go over the readings verbatim, however, you will be tested on anything in the readings. Psychiatry as a tool of social control is a major part of this course, as is the medicalization of behavior, and the therapeutic state.