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

Fall 2008

Deprivation of Liberty JLS-200-002

Mondays & Thursdays, 2:10 PM to 3:25 PM
Ward 204

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Office hours: (**by appointment, send email**)
Final exam is December 8, 2008, from 2:10 PM to 4:40 PM in Ward 204

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.

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%
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.

Paper: Double-spaced typed paper dealing with any way that psychiatry and the ideas of mental illness and mental health are used to deprive people of liberty. You base your paper primarily on the material in the first two books by Szasz, and add research from other sources as you deem appropriate. You can disagree or agree with Szasz, it doesn't matter. 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 R. 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. This is part of your exercise in analytic thinking.

NOTE: Your paper covers the readings in the first half of the course – again, you bring in outside references as you like. Your comprehension of the readings for the second half of the course is assessed through the final exam. The final exam covers the second two books, plus other readings, films, guest lectures that occur during the second half of the semester. There is no length set for the paper. You decide what is appropriate. You must have the sections listed as indicatedYou will discuss your paper in class. You hand your paper in on the date listed below.

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 we study in the second two books and anything else we deal with in the second half of the course. You will be given the opportunity to express your own point of view on the many controversial issues we addressed.

- 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*.

You complete this by Sunday night midnight, each week. Remember: This counts for twenty percent of your final grade.

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 appointment by email to come in to talk to Professor Schaler about anything.

Make sure you receive email through BlackBoard. Only your AU email address works. You can have your email to your AU account forwarded to another address if you want. However, it has to go to your AU email first. If a class is cancelled because I have to give a talk out of town, or because I am sick or have an emergency, 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 two important speaking engagements this semester that I must participate in. I'm not sure whether those 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 always like to invite speakers from "the other side." I frequently rely on students who have family members or friends who take issue with what you are learning. I would be happy to talk to them 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 have to present the "other side."

Finally, I will be sending out occasional vocabulary lists. You may or may not be tested on the meaning of any of these words as part of the final exam. It is to your advantage to look up the meaning of each word and to familiarize yourself with its meaning. I may call on you in class at anytime to define the word or term.

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 will be sent out by email or be available to download on BlackBoard.

Date	Topic	Reading
Aug 25	Introduction: Three Step Model	Lecture
Aug 28	Part I of *Insanity*	
Sept 1	No class, Labor Day	Read Part II of *Insanity*
Sept 4	Part II and Part III of *Insanity*	

Sept 8	Part IV of *Insanity*	
Sept 11	Schaler lecture on various related aspects	
Sept 15	Psychiatric Slavery: Legal Fiction	Szasz, LBO 1-3
	Dred Scott to Tarasoff	
	Psychiatric Slavery As Public Health	
Sept 18	Dangerousness as disease	LBO
	The Psychiatric Will	
Sept 22	Outpatient commitment	LBO
	Therapeutic jurisprudence	Finish LBO
Sept 25	Origins of Racial Hygiene	Proctor 1-3
	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	
	"Neutral Racism"	
	Political Biology	Proctor 4-6
Sept 29	Sterilization Law	
	Control of Women	Proctor 7-8
Oct 2	Anti-Semitism	
Oct 6	Organic Vision	
Oct 9	Medical Resistance	
Oct 13	Politics of Knowledge	Finish Proctor
Oct 16	**Talk about your papers**	
Oct 20	**Turn in your papers; talk about your papers**	
Oct 23	**Talk about your papers**	
Oct 27	Introduction and The Abandoned Road	Hayek
	The Great Utopia	
	Individualism and Collectivism	
Oct 30	The "Inevitability" of Planning	
Nov 3	Planning and Democracy	
Nov 6	Planning and the Rule of Law	
Nov 10	Planning and the Rule of Law	
Nov 13	Economic Control and Totalitarianism	
Nov 17	Who, Whom?	
Nov 20	Security and Freedom	
Nov 24	Why the Worst Get on Top	
Nov 27	The End of Truth	
Dec 2	The Socialist Roots of Nazism	
Dec 4	The Totalitarians in Our Midst	
Last class	Material Conditions and Ideal Ends	
	The Prospects of International Order	Finish Hayek
	Conclusion and Review	
Dec 8	**Final Exam**	**2:10 PM to 4:40 PM Ward 204**

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.