

## Civil Liberties and Civil Commitment



Defenders of civil liberties readily recognize when some state interventions—such as censorship of the press or forced religious observances—violate civil liberties. However, many of the same defenders of civil liberties are unable or refuse to recognize when certain other state interventions—such as civil commitment—violate civil liberties.

The American Civil Liberties Union (ACLU) claims to be the premier American organization for the protection of civil liberties. (It does not claim to be a “libertarian” organization.) The Union’s website states: “The ACLU’s mission is to fight civil liberties violations wherever and whenever they occur. . . . We’re not anti-anything. The only things we fight are attempts to take away or limit your civil liberties, like your right to practice any religion you want (or none at all). . . . The ACLU is our nation’s guardian of liberty.”

During its first quarter of a century the ACLU took no notice of psychiatric coercions. Once it did, it was love at first sight. Charles L. Markmann, the official historian of the ACLU, proudly relates how, after World War II, the ACLU “began to draft model statutes for the commitment of the insane.” The ACLU has never wavered in its support of involuntary mental hospitalization and the insanity defense.

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For many years Aryeh Neier was the executive director of the ACLU. In his recent autobiography, he relates that when he joined the New York Civil Liberties Union in 1963, “I knew little about mental commitment. *The issue was not on the civil liberties agenda.* I had not then read the works of Thomas Szasz. . . .”

Unfortunately, Neier did not read my writings very carefully. In 1968 he formed a special action group in the ACLU, called the Civil Liberties and Mental Illness Litigation Project. This group became, in effect, a mouthpiece of organized psychiatry, devoting its efforts to bolstering the legal foundations of psychiatric coercions and excuses. In 1976, the Union issued a formal *Policy Guide on Civil Commitment*, a document that might as well have been written by the board of directors of the American Psychiatric Association.

Twenty years later the ACLU issued a fresh endorsement of psychiatric brutalities. In a book titled *The Rights of People With Mental Disabilities*, the ACLU endorsed not only deprivation of liberty as “hospitalization,” but also poisoning as “drug treatment”: “[U]nlike criminal defendants, people facing commitment can be preventively detained for behavior that violates no law because the confinement is to an institution, not a prison, and the purpose is treatment, not punishment. . . . At its root the right to treatment is an assertion that the government has an obligation not just to protect institutionalized individuals or leave them alone, but to provide services that will

improve their lives. . . . The difference between appropriate medication and chemical restraint is often as much a metaphysical as a legal or medical question.”

Whether a particular drug is *appropriate* for what ails a particular patient is a *medical and scientific question*. Whether a patient uses a drug *voluntarily* or whether it is introduced into his body *against his explicit objection, by agents of the state using physical force*, is a *common sense question*. Why does the ACLU conflate and confuse these wholly separate issues? Cui bono?

### Civil Liberties Are Only for Sane People

A person looking at the term “American Civil Liberties Union” and told that it is the name of an organization concerned with protecting the American people’s right to free speech would assume that the Union is opposed to incarcerating innocent persons because of what they say. Actually, the opposite is the case.

The ACLU defends the rights of Jews, Catholics, and Muslims to assert their particular religious beliefs, which many others regard as false. However, it does not defend the rights of mental patients to assert their particular beliefs, which psychiatrists and many others regard as false and call “delusions.” To the contrary, the Union defends the rights of the psychiatrist to imprison such persons, provided the jailors are called “psychiatrists,” and the jails “hospitals.”

My review of the ACLU’s position regarding coerced psychiatric interventions may seem excessively critical. I fear, however, that it is not nearly critical enough. I have not pinpointed what makes the ACLU’s support of involuntary psychiatric interventions particularly foolish and obscene.

Let us recall that in 1963, when Aryeh Neier joined the ACLU, “The issue [mental commitment] was not on the civil liberties agenda.” Neier should have asked himself

why it wasn’t. He would have found that civil commitment was not on the civil liberties agenda because the ACLU accepted the psychiatric view that mental hospitalization, like medical hospitalization, is a medical procedure. Period. Let us pause and consider this point carefully.

In a document submitted to a Senate committee in 1961, the American Psychiatric Association (APA) stated: “We, as doctors, want our psychiatric hospitals and outpatient facilities to be looked upon as treatment centers for sick people in the same sense that general hospitals are so viewed.”

The APA is committed to defining psychiatric procedures imposed on persons against their will as legally and medically indistinguishable from medical procedures provided to persons with their consent. This recasting of oppression as “liberation from mental illness” reduces persons called “mental patients” to the level of wards, and turns the psychiatrists coercing them into their guardians. The ACLU embraces this interpretation. I reject it.

In this connection, we must keep in mind two things. One is that medical interventions cannot be imposed on competent adults against their will: in Anglo-American law, medical treatment without consent—regardless of its effect on the health of the subject—constitutes “assault and battery.” The other is that proceedings for civil commitment and legal incompetence are wholly different interventions: the principal result of the former is confinement in a mental hospital, of the latter, the appointment of a legal guardian.

According to *Black’s Law Dictionary*, “Every confinement of the person is an ‘imprisonment,’ whether it be in a common prison, or in private house, or in the stocks, or even by forcibly detaining one in the public streets.” Incarceration in a building called “mental hospital” is imprisonment: it is preventive detention, not medical treatment. Q.E.D. □