

21H.181

Libertarianism in History

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Tues 7-10pm
4-253

Office hours: Fri. 2:30-4pm and by appt.

The will to live free of the control of the state (or of organized groups who have coopted state authority) is one of the most powerful and controversial motors of social and political action. This course explores the history of the ideal of personal freedom with an eye towards contemporary debates over the pros and cons of the regulatory state. The first part of the course explores a range of historical sources of the concept of freedom. Part Two surveys some key texts from the modern libertarian canon and introduces liberty's leading relatives or competitors: property, equality, community, and republicanism. Part Three takes up a series of constitutional applications: free speech, religious freedom, and criminal procedure (the Fourth Amendment). Readings are drawn from political philosophy, sociology, history, and law.

The basic objectives of the course are twofold: to familiarize students with the varieties of libertarianism and their histories, and to enable students to argue effectively about libertarianism on several different levels. Libertarianism has cultural-historical, political-theoretical, and policy dimensions (among others), and by the end of the course students should have a sense for what it means to analyze the claims made both for and against libertarianism on all three of these levels.

Required Texts:

There are two texts required for purchase in this course:

- Michael Sandel, ed., *Justice: A Reader* (New York: Oxford University Press, 2007) [hereafter "*Justice*"].
- Stephen J. Schulhofer, *More Essential Than Ever: The Fourth Amendment in the Twenty-First Century* (New York: Oxford University Press, 2012) [hereafter "Schulhofer"].

All other readings will be made available via hyperlinks provided below in the schedule of topics and readings and/or via the Stellar course site.

Course Format, Assignments, and Evaluation:

The class meets once a week for three hours. Beginning with our second meeting, we will convene in three fifty to fifty-five minute blocks, with two five-minute breaks in between. The night before each class, I will send you an email describing the structure and format of that week's session and highlighting two to three questions that you should consider in light of the readings.

Laptops and tablets are not permitted in this class.

Regular attendance and participation in class discussions are essential. If you must miss a class, please be sure to do the readings for that week and email me (before the start of that class) a one-page, double-spaced comment that analyzes what you see as the key issues in the readings. Students who miss more than two sessions of the seminar will not be able to receive a passing grade for the course barring an unusual medical or personal emergency.

The primary expectation for all class meetings is that students closely read the assigned texts and then engage with them in our group discussions. On a few occasions during the semester, I will ask you to post brief responses to the readings on the Stellar web-site forum (roughly one for each part of the course, for a total of three). These responses should consist of 200-300 words on a topic/question that will be posted on the Stellar Forum the week before the responses are due. You need not do any "extra" research for these posts. Students will receive a composite grade for all three of the forum posts and that grade will form a portion of the overall final grade.

We will hold two in-class debates during the course of the semester. The class will be divided into two teams and each side will be asked to prepare a "pro" or "con" position as represented by the readings for that day. The first debate will be held on March 21 (Rawls v. Nozick) and the second on April 25 (religious freedom). Your contributions to the debates will be evaluated as part of your overall class participation portion of the final grade.

Finally, the course assignments include two papers. The first is a paper of 8-9 pages on a topic relating to the history and political theory of liberty as an ideal (Parts One and Two of the course). That paper is due online in class on March 16. The second is a 10-12 page paper that more deeply explores one of the constitutional applications we will study in Parts Three of the course. This final paper is due in class on May 16. At least two weeks before each due date, I will post on Stellar essay

prompts that more fully describe the format and expectations for each paper.

Grades will be determined as follows:

- Paper #1 = 20%
- Paper #2 = 30%
- Stellar forum posts = 10%
- Class participation = 40%

Schedule of Topics and Reading Assignments:

Please note: the following list of topics and reading assignments can be considered stable for the most part but is likely to change in small ways as we progress throughout the semester. I will periodically post updated versions of the syllabus to our Stellar course site, with accompanying email announcements to the class participants.

Introduction

Feb. 7 (**class meets starting at 8pm**): What is Libertarianism?

- a) Waleed Aly, "Voting Should be Mandatory," *The New York Times* (Jan. 19, 2017), at <https://nyti.ms/2k4bb9u>.
- b) Jeffrey Rosen, "Madison's Privacy Blind Spot," *The New York Times* (Jan. 18, 2014), at <https://nyti.ms/2kaedbZ>.

Part One: Liberty before Libertarianism

Feb. 14: Pre-modern liberty.

- a) Orlando Patterson, "The Ancient and Medieval Origins of Modern Freedom," in *The Problem of Evil: Slavery, Freedom, and the Ambiguities of American Reform*, ed. J. Stauffer and S. Mintz (Amherst, MA: University of Massachusetts Press, 2006), 31-66.
- b) Isaiah Berlin, "Two Concepts of Liberty," in *Liberty: Incorporating 'Four Essays on Liberty'*, ed. Henry Hardy (New York: Oxford University Press, 2002), 166-217.
- c) Quentin Skinner, "A Third Concept of Liberty," *Proceedings of the British Academy* 117 (2002): 237-268.

Feb. 28: Revolutionary liberty.

- a) The American Declaration of Independence (July 1776), at http://www.archives.gov/exhibits/charters/declaration_transcript.html.
- b) The French Declaration of the Rights of Man and of the Citizen (Aug. 1789), at <http://chnm.gmu.edu/revolution/d/295/>.
- c) Toussaint Louverture's Constitution (July 1801) and the Haitian Declaration of Independence (Jan. 1, 1804), in *The Haitian Revolution: A Documentary Reader*, ed., David Geggus (Indianapolis, IN: Hackett, 2014), 160-164, 179-180.
- d) Bernard Bailyn, *The Ideological Origins of the American Revolution*, enl. ed. (Cambridge, MA: Harvard University Press, 1992), ch. 3 ("Power and Liberty: A Theory of Politics," pp. 55-93).
- e) Christopher Brown, "The Problems of Slavery," in *The Oxford Handbook of the American Revolution*, ed. Edward G. Gray and Jane Kamensky (New York: Oxford University Press, 2013), 427-446.
- f) Steven Pincus, *The Heart of the Declaration: The Founders' Case for an Activist Government* (New Haven, CT: Yale University Press, 2016), 1-23.

Mar. 7: Liberalism and Existentialism.

- g) Benjamin Constant, "The Liberty of the Ancients Compared with the Moderns" (1819), at http://oll.libertyfund.org/index.php?option=com_content&task=view&id=1467&Itemid=262.
- a) John Stuart Mill, *On Liberty* (London, 1859), chs. 1-2, at <http://www.econlib.org/library/Mill/mlLbty.html>.
- b) Sarah Bakewell, *At The Existentialist Café: Freedom, Being, and Apricot Cocktails* (New York: Other Press, 2016), 1-34.
- c) Selections from Simone de Beauvoir, *The Second Sex*, trans., Constance Borde and Sheila Malovany-Chevalier (Paris: Gallimard, 1949; London: Jonathan Cape, 2009).

Part Two: Libertarianism and its Rivals

Mar. 14: A Version of the Post-WWII Libertarian Canon

- a) Friedrich A. Hayek, selections from *The Constitution of Liberty* (1960), in *Justice*, 73-82.
- b) Martin Luther King, Jr., "I Have a Dream," (Aug 28. 1963), at http://www.youtube.com/watch?v=HRIF4_WzU1w.

- c) Robert Nozick, selections from *Anarchy, State, and Utopia* (1974), in *Justice*, 60-73.
- d) Milton and Rose Friedman, selections from *Free to Choose* (1980), in *Justice*, 49-60.
- e) Jane Mayer, "Covert Operations," *The New Yorker*, Aug. 30, 2010, at <http://bit.ly/1sYkMeb>.

Mar. 21: Property, Equality, and Distributive Justice.

*** Our first class debate (Rawls v. Nozick) will be held today. ***

- a) John Locke, selections from *Second Treatise of Government* (1690), in *Justice*, 83-127.
- b) Gregory S. Alexander, Eduardo M. Penalver, Joseph William Singer, and Laura S. Underkuffler, "A Statement of Progressive Property," *Cornell Law Review* 94 (2009): 743-744, at <http://www.lawschool.cornell.edu/research/cornell-law-review/upload/A-Statement-of-Progressive-Property.pdf>.
- c) John Rawls, selections from *A Theory of Justice* (1971), in *Justice*, 203-226.
- d) Robert Nozick, excerpt from *Anarchy, State, and Utopia* (1974), in *Justice*, 226-235.

Apr. 4 (**to be rescheduled**): Communitarianism and Civic Republicanism.

- a) Alasdair MacIntyre, selections from *After Virtue* (1981), in *Justice*, 315-328.
- b) Michael Sandel, selections from *Democracy's Discontent* (1996), in *Justice*, 328-334.
- c) Michael Walzer, selections from *Spheres of Justice* (1983), in *Justice*, 335-342.

Part Three: Constitutional Applications (The First and Fourth Amendments)

Apr. 11: Free speech. **Attorney and author Harvey Silverglate, a leading civil libertarian and free speech advocate, will be our guest today.**

- 1) *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).
- 2) *Citizens United v. F.E.C.*, 558 U.S. 310 (2010).
- 3) Alan Charles Kors and Harvey A. Silverglate, *The Shadow University: The Betrayal of Liberty on America's Campuses* (New York: Harper, 1999), 34-49, 187-192.

- 4) Jeremy Waldron, "Hate Speech and Free Speech," *The New York Times*, June 18, 2012, at <http://nyti.ms/2jV4gia>.

Apr. 25: Religious liberty

*** Our second class debate (*Burwell v. Hobby Lobby*) will be held today. ***

- a) Jack Rakove, "Jefferson, Rights, and the Priority of Freedom of Conscience," in *The Future of Liberal Democracy: Thomas Jefferson and the Contemporary World*, ed. Robert Fatton and R. K. Ramzani (New York: Macmillan Palgrave, 2004), 49-64.
- b) Sarah Barringer Gordon, *The Spirit of the Law: Religious Voices and the Constitution in Modern America* (Cambridge, MA: Harvard University Press, 2010), 1-14.
- c) *Reynolds v. United States*, 98 U.S. 145 (1878).
- d) *Employment Division v. Smith*, 494 U.S. 872 (1990).
- e) *Burwell v. Hobby Lobby*, 573 U.S. 22 (2014).

May 2: The Fourth Amendment (I)

- a) Schulhofer, chs. 1-4.

May 9: The Fourth Amendment (II)

- a) Schulhofer, chs. 5-8.

Conclusion

May 16: The Future of Libertarianism

Note: the first 10-15 minutes of today's class will be devoted to completing the online course evaluations for this subject. Please bring your laptops today (for this purpose only).

- a) Eben Moglen, "Liberation by Software," *The Guardian*, Feb. 24, 2011, at <http://bit.ly/2lwOFIC>.
- b) Jim Dwyer, "Volkswagen's Diesel Fraud Makes Critic of Secret Code a Prophet," *The New York Times*, Sept. 22, 2015, at <http://nyti.ms/2kPMAqy>.
- c) Amicus brief of the technology companies in *Washington v. Trump*, No. 17-35105 (9th Cir. Feb. 5, 2017).

*** Final papers due in class on May 16. ***