

21H.181/17.035

Libertarianism in History

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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 some of the major idioms and sources of the (western) concept of freedom. Part Two surveys some of the key texts of the modern libertarian canon. Part Three takes up a series of constitutional and policy applications: free speech, religious freedom, criminal procedure, the Internet, and the financial markets. 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.

Course materials:

Michael Sandel, ed., *Justice: A Reader* (New York: Oxford University Press, 2007) [hereafter "*Justice*"], contains a great deal of material relevant to our course. Because we will only use a relatively small section of this book, it is merely recommended rather than required for this course. I will post to Stellar the selections we will be using. All other readings will be made available via the Stellar course site and via hyperlinks provided below in the schedule of topics and readings.

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 Friday 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.

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. It will be difficult for students who miss more than two sessions of the seminar to receive a passing grade for this 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 website forum. These responses should consist of 200-300 words on a topic/question that will be posted 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 (one informal, the other a formal Supreme Court argument) 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 19 (Rawls v. Nozick) and the second on April 9 (the pending Supreme Court case of Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission). Your contributions to these exercises will be evaluated as part of your overall class participation portion of the final grade.

Finally, you will have the opportunity to write two papers in this course. The first is a paper of 7-8 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 in class on March 12. The second is a 10-12 page paper that discusses at least two of the constitutional/policy issues we will study in Part Three of the course. This final paper is due in class on May 14. 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 = 25%

- Paper #2 = 35%
- Stellar forum posts = 15%
- Class participation = 25%

Schedule of Topics and Reading Assignments:

Introduction

Feb. 12: What is Libertarianism?

- Eben Moglen, "Liberation by Software," *The Guardian*, Feb. 24, 2011, <http://bit.ly/2lw0FIC>.
- 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>.

Part One: Liberty before Libertarianism

Feb. 20: Pre-modern liberty.

- 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: University of Massachusetts Press, 2006), 31-66.
- Isaiah Berlin, "Two Concepts of Liberty," in *Liberty: Incorporating 'Four Essays on Liberty'*, ed. Henry Hardy (New York: Oxford University Press, 2002), 166-217.
- Quentin Skinner, "A Third Concept of Liberty," *Proceedings of the British Academy* 117 (2002): 237-268.

Feb. 26: Revolutionary Liberty

*** First Stellar Forum post due today at 9am (online). ***

- The American Declaration of Independence (July 1776), at <http://bit.ly/1gpivYT>.
- The French Declaration of the Rights of Man and of the Citizen (Aug. 1789), at <http://bit.ly/2CcQbpC>.
- 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.
- 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.

Mar. 5: Self-Organization, Innovation, and Regulation (**with guest John Chisholm, entrepreneur and MIT Corporation member**).

- a) Jonathan Sheehan and Dror Wahrman, *Invisible Hands: Self-Organization and the Eighteenth Century* (Chicago: University of Chicago Press, 2015), Intro. and Ch. 3.
- b) John Chisholm, "Drones, Dangerous Animals, and Peeping Toms: Impact of Imposed vs. Organic Regulation on Entrepreneurship, Innovation, and Economic Growth," *International Journal of Entrepreneurship and Small Business* 35, no. 3 (January 2018): 1-24.

Part Two: Varieties of Modern Libertarianism

Mar. 12: A Version of the Post-WWII Libertarian Canon

*** First paper due in class today. ***

- 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) Gary Dorrien, "Recovering the Black Social Gospel," *Harvard Divinity Bulletin* (Summer/Autumn 2015), <http://bit.ly/2G2NpFy>.
- d) Milton and Rose Friedman, selections from *Free to Choose* (1980), in *Justice*, 49-60.

Mar. 19: Rawls v. Nozick (Property, Equality, and Distributive Justice).

*** In-class debate today. ***

- a) John Rawls, selections from *A Theory of Justice* (1971), in *Justice*, 203-226.
- b) Robert Nozick, excerpt from *Anarchy, State, and Utopia* (1974), in *Justice*, 60-73, 226-235.
- c) George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics*, rev. and exp. ed. (Philadelphia, PA: Temple University Press, 2006), ch. 5.

Part Three: Constitutional and Policy Applications

Apr. 2: Free Speech.

*** *Second Stellar Forum post due today at 9am (online).* ***

- 1) Citizens United v. F.E.C., 558 U.S. 310 (2010).
- 2) Jeremy Waldron, "Hate Speech and Free Speech," *The New York Times*, June 18, 2012, at <http://nyti.ms/2jV4gia>.
- 3) Richard Epstein, "Free Speech and Sexual Harassment at Yale," *Newsweek* (Oct. 27, 2016), <http://bit.ly/2EzDUkc>.

Apr. 9: Religious Liberty and Sexuality

*** *Supreme Court oral argument today (Masterpiece Cakeshop v. Colorado).* ***

- a) Burwell v. Hobby Lobby, 573 U.S. 22 (2014).
- b) Adam Liptak, "Justices Sharply Divided in Gay Rights Case," *New York Times* (Dec. 5, 2017), <http://nyti.ms/2kovzaE>.
- c) Supreme Court oral argument in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, No. 16-111 (Dec. 5, 2017), <http://bit.ly/2Ekoml7>.
- d) Douglas Laycock, "Sex, Atheism, and the Free Exercise of Religion," 88 *U. Det. Mercy L. Rev* 407 (2011).

Apr. 23: The Fourth Amendment

- a) *Maryland v. King*, 133 S. Ct. 1958 (2013), <http://bit.ly/2EBCHcg>.
- b) *United States v. Jones*, 132 S.Ct. 945 (2012), <http://bit.ly/2H8qcTY>.

Apr. 30: Open Access (The Aaron Swartz Case)

*** *Third Stellar Forum post due today at 9am (online).* ***

- a) Selections (to be announced) from Harold Abelson et al., "Report to the President: MIT and the Prosecution of Aaron Swartz" (July 26, 2013), <http://bit.ly/11Pudat>.
- b) Aaron Swartz, "Guerilla Open Access Manifesto" (July 2008), at <http://bit.ly/1iayesU>.

- c) Superseding indictment, United States v. Aaron Swartz, No. 1:11-cr-10260-NMG (D. M.A., Sept. 12, 2012).

May 7: The Financial Markets and the 2008 Subprime Crisis

- 1) Conclusions of the Financial Crisis Inquiry Commission (2011), <http://stanford.io/1cg8ypd>.
- 2) Dissenting Views of Keith Hennessey, Douglas Holtz-Eakin, and Bill Thomas, at <http://stanford.io/2BpFmE3>, and the Dissenting Views of Peter J. Wallison, at <http://stanford.io/2nQ3Oa0>, pp. 443-470.

May 14: Conclusion

**** Final papers due in class today; 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. ****