

Political Libertarianism and its Critics

Natural Liberty, Merit, Markets, and Public Goods

PHIL 3195
Spring Semester, 2012
Meetings: TF 1-2:15 pm

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Office Hours: *Tuesdays and Fridays 4 - 6:00 pm* and some Wednesdays by appointment. Thursdays I teach a graduate seminar at RH, and I'm at RH most Wednesdays for department meetings. Mondays I can be reached by email at home.

Course Goals. This course is an *interdisciplinary* elective that critically explores a key tradition of 'neoconservative' political thought – a tradition that has roots in classical economic theory and that has been very influential in American politics. Political libertarianism is a theory of social justice that gives primacy to an ideal of individual liberty deriving from Thomas Hobbes and John Locke, and to belief in free-market systems that traces to Adam Smith. It advocates minimal government limits on inequalities resulting from voluntary exchanges and contracts, and thus maximum freedom for markets forces, and bases this on a moral conception of individual rights.

While elements of this ideal were expressed by influential US revolutionaries such as Patrick Henry and Samuel Adams and 19th century reformers such as Thoreau, its modern American form was established from the 1940s on in reaction against FDR's New Deal, European socialism, and the rise of Communism. Through Ayn Rand's novels and the writings of economists like F.A. Hayek and Milton Friedman, arguments were developed against the welfare state, increasing health and safety regulations, entitlement programs and graduated taxation schemes. By the early 1980s, libertarian critiques of "big government," including federal spending on projects and income taxation had become so influential that they strongly affected party platforms, and have been a major force in American politics ever since. Following the anti-taxation part of the view without the rest, however, has helped to cause the enormous federal debt that left our nation with no 'rainy day' fund for the economic crisis of 2008. Now public attention has returned to moral and strategic questions raised by the debt, including the issue of 'justice to future generations.'

This course will focus on the philosophical strengths and weaknesses of the libertarian approach: our goal is to assess the best theoretical defenses of libertarianism by Isaiah Berlin, Ayn Rand, Hayek and Friedman, Robert Nozick, Jan Narveson, Tibor Machan and others, and the best counterarguments in contemporary political philosophy. In particular, we will ask these questions:

- whether these theories provide an adequate conception of individual liberties;
- whether they recognize the full range of public goods that require coordination through law;
- whether they take account of all relevant dimensions of social justice, including starting points in the 'game of life' and the interests of future generations;

- whether there are any good arguments for limiting the levels of socioeconomic inequalities that can arise from the 'invisible hand' of free markets.

Major Topics in Sequence. Here are the major course topics in the order of our readings.

- We begin with a couple famous papers on the concept of liberties, and two versions of the social contract – Hobbesian egoism and Locke's natural rights theory. The former leads more directly to market fundamentalist versions of libertarianism such as Narveson's, and the latter to 'deontological' versions such as Nozick's and Machan's.
- We spend a week on Ayn Rand's thought, which combines these strands with several meritocratic suggestions that trace more to Aristotelian and classical 'republican' thought.
- We will spend a week on basic elements of Rawls's theory of social justice, since it is the most often cited in opposition to libertarians, and is often criticized by libertarians. We'll consider the disagreement between Rand and Rawls over differences in life-prospects resulting from chance of birth as a central moral issue.
- We then have a week on Machan's theory of natural rights and response to some critics of libertarianism. We're focusing on the first third of his book for our purposes.
- We'll spend two weeks on key themes in the most respect libertarian philosopher, Robert Nozick, looking at his state of nature theory, defense of natural rights, and non-meritocratic account of just distribution through fair initial acquisition and transfers. This process account will allow us to frame a number of interesting questions raised by critics.
- Then we'll turn to a series of critical responses to libertarianism. There are a number of conceptual objections raised by Haworth, and arguments from common ownership of nature implicit in the Lockean proviso (Rousseau, Riese). However, the main objections on which we'll focus are found in rational decision theory proofs that there are "public goods" that cannot be provided by markets. This idea is deployed in Hobbesian (Gauthier), intuitionist (Sandler, Sagoff), and utilitarian (Haslett) versions.
- Another central problem that emerges from Gauthier is the question of fair starting positions, which may support Rawls against Rand. We'll spend a week considering Olsaretti's analysis of this issue in relation to meritocratic libertarianism and the idea of equal opportunity.
- We will also consider critiques based on the idea of social capital as an inheritance and consider whether this idea can help support Rawls's and Olsaretti's positions.
- Finally, we'll consider more explicitly political arguments for alternatives to libertarianism from (a) the requirements of legitimate democracy and opportunities for political participation and (b) the pragmatics of institutionalizing rights in mass industrial societies.

Along the way, at various points we will consider and revisit public issues which are topics of mainstream political debate, that intersect these philosophical arguments about liberties and the need for government – such as the US federal debt, tax law, health care, environmental resources, and justice to future generations. We'll also consider different moral theories that inform accounts of liberties, though we will not spend lots of time debating which moral theory in general is best. Our focus will be on the central questions of political justice that form our main themes.

Required Texts:

- (1) Ayn Rand, *The Virtue of Selfishness* (Signet 1964, reprint 2006); ISBN-13: 9780451163936.
- (2) Alan Haworth, *Anti-Libertarianism* (Routledge, 1993); ISBN-13: 978-0415082549 .
- (3) Serena Olsaretti, *Liberty, Desert, and the Market* (Cambridge UP, 2004); 978-0-521-10781
- (4) Stephen Holmes and Cass Sunstein, *The Cost of Rights* (Norton, 1999); ISBN 0393320332.

- (5) Tibor Machan, *Libertarianism Defended* (Ashgate, 2006); ISBN-13: 978-0754652168.
- (6) William Gates Sr. & Chuck Collins, *Wealth and our Commonwealth* (Beacon Press, 2004)
ISBN-13: 978-0807047194
- (5) Course packet for all other readings. \$40 paid by check or money order to Fordham University.

Other recommended books on library reserve (and see articles on eres)

- (1) Robert Nozick, *Anarchy, State, Utopia* (Basic Books, 1977); ISBN-13: 9780465097203.
- (2) David Miller, *The Liberty Reader* (Paradigm, 2006); ISBN-13: 978-1594511653 .
- (3) Chris Sciabarra, *Marx, Hayek, and Utopia* (SUNY Press, 1995).
- (4) Chris Sciabarra, *Ayn Rand: The Russian Radical* (Penn State Univ. Press, 1995)
- (5) John Hospers, *Libertarianism* (Author's Choice Press, 1971, 2007).
- (5) Michael Otsuka, *Libertarianism without Inequality* (Oxford University Press, 2003).

Course Assignments:

An oral report	14%	Includes 2-3 page written presentation on a reading.
Two short answer assignments	28%	3-page short response to a question on readings.
Take-home test	20%	Covers readings through most of the semester.
One final paper	24%	12 pages + on topic (your choice) agreed with me.
Class participation	14%	Includes attendance and advance reading to prep for active participation in class discussion.

Honesty and Citation: Cheating is the one unforgivable sin. Handing in work you did in another class without clearing it with me is cheating. Handing in work derived from anyone else or any secondary source without citing it constitutes plagiarism, and is grounds for failing the course. You are welcome to bring in ideas and quotes from secondary sources, but you must cite them either by footnotes or parenthetical references referring to a bibliography at the end of the paper.

- This includes paraphrases: even if you reword what the author said, *cite the page number*.
- It also includes websites: give the full URL of the page you cite. Note that webpages should *never* be the only source you cite in college essays.
- You can use parenthetical notes in the text of your essay (referring to a Works Cited section at the end), or you can use footnotes with a full reference to your source in the first footnote to it (and abbreviated references in all subsequent footnotes to it)

Tentative Course Schedule

Jan. 17 - 20: Introduction to the Class: a brief History of Liberalism from 17th -20th centuries

- (1) Four major course themes introduced.
- (2) Classical social contract theories: Hobbes and Locke (see Locke selections in course packet)
– focus on Locke’s *Second Treatise of Government* ch.2 on state of nature & ch.5 on property.
- (3) Natural law and natural right theories; Herbert Spencer and the notion of *maximal liberties*.
- (4) The intertwined development of utilitarianism and neoclassical free-market economic theories
– subjective utilitarianism favors markets; objective goods utilitarianism favor redistributions.
- (5) *Recommended:* see Ian Shapiro, *The Evolution of Rights in Liberal Theory*, ch.3: “The Classical Moment” (eres).
- (7) Hohfeld’s influential analysis of the structure of liberties – class handout and discussion.

- (8) Isaiah Berlin, "Two Concepts of Liberty," from *Four Essays on Liberty* (emailed & on eres).
Discussion: the large influence of Berlin's argument and its pitfalls (esp. re. "autonomy").
 – Focus on first three sections. We will discuss the "negative" vs "positive" liberty distinction.
- (9) *Recommended*: Alan Haworth, *Anti-Libertarianism*, ch.5 responding to Berlin.
- (10) The landscape of main positions in political philosophy – theories of social justice (handout).

Jan. 24-27: Ayn Rand: deontological rights, meritocracy, & Hobbesian contract combined?

- (1) Historical roots continued: American liberalism and "minimal government."
- (2) Historical introduction to Ayn Rand and her novels. See recommended selections on eres from Chris Sciabarra, *Ayn Rand: The Russian Radical*, ch.4 (eres).
- (3) John Galt's speech from the end of *Atlas Shrugged* (selections in course packet)
- (4) Ayn Rand, *The Virtue of Selfishness*, chs.1 on ethics & chs 12-14 on rights and government.
Discussion points and questions:
 – liberties as permissions vs claim-rights, formal and material rights
 – is Rand a meritocrat prioritizing an ideal of excellence or a free market fundamentalist?

Jan. 31 - Feb.3: Economic libertarianism (with Hobbesian roots): Hayek and Friedman

- (1) Friedrich von Hayek, "Freedom and Coercion," in Miller, *The Liberty Reader* (course packet).
Recommended (time permitting): Hayek, *The Road to Serfdom*, Prefaces, Int. & ch.3-5 (eres).
- (2) Milton Friedman, selections from *Capitalism & Freedom*, chs. 1-2 (course packet).
- (3) William Gates, *Wealth and Our Commonwealth* ch.1 on the estate tax (course packet).
Discussion points (see course handouts on history of tax law):
 – Arthur Laffer's curve and Reagan's tax cuts in 1980s;
 – The Clinton tax increase and federal budget (excluding social security) balanced by 2000;
 – The Bush 2001 tax cuts; the public debt; increasing socioeconomic inequality.

Feb. 7-10: The Welfare Liberal opposition: John Rawls and Rand's Central Objection

- (1) John Rawls, selections from *A Theory of Justice* (course packet & eres): the notion of "justice as fairness" expressed in the "original position" idealized/imaginary social contract.
- (2) Rawls continued: equal opportunity, rights to education, and the "Difference Principle"
- (3) Rand, "An Untitled Letter" in *Philosophy: Who Needs It?* – esp. pp.108-14 (course packet)
Discussion questions:
 – are natural inequalities justice-neutral? What is Rawls' (implicit Kantian) response to Rand?
 – conditions for 'starting position' fairness? Is the history of human culture relevant to this?

Feb.14-17: Tibor Machan: a Randian defense of Lockean Natural Rights. [Happy Valentines]

- (1) Machan, *Libertarianism Defended*, chs. Intro. - ch.5. Breakdown of themes:
 Introduction: response to Sunstein on the role of government
 chs. 1-2: personal ethics vs legal obligation; natural rights in American Declaration;
 ch. 3: Lockean natural rights as negative liberties; critique of Rawls; response to skeptics;
 ch.4: Community and political action; no rights-violations for more optimal collective results;
 ch.5: economic libertarianism; attempt to respond to externalities and other market failures;
 ch.6: short discussion of positive roles for minimal government.
- (2) Machan on property: "What Rights Do We Have?" *Journal of Value Inquiry* 2009 (packet).
Discussion points:
 – has Machan established that the right to private property is included with other basic rights?
 – can he square inalienable liberties with an apparently limitless claim to self-ownership?

- cases in which the aggregate results of market choices are sub-optimal for all or most actors?
- (3) *Short response paper #1* due on Feb.17

Feb.21: Following Presidents' Day Monday, classes follow a Monday schedule on Tuesday.

Feb.24: Jan Narveson's Hobbesian contract version of Libertarianism

- (1) *The Libertarian Idea*, chs. 2-4 (course packet)

Discussion Points:

- can there be a pre-normative notion of "interference" and "non-interference"?
- involuntarily benefitting from past wrongs and delayed reparations.

Feb. 28 - March 3: Robert Nozick on Deontological Lockean Rights and the Minimal State

- (1) Nozick, *Anarchy, State, and Utopia*, chs. 2-3 (packet): state of nature, rights as side-constraints
(2) Nozick, *Anarchy, State, and Utopia*, ch.5: deduction of the state; when opt-outs are allowed.

Discussion points:

- Does Nozick's explanation of rights successfully limit them to negative liberties?
 - Does he explain why free riders can be forced into the state, but not forced in other cases?
- (3) *Recommended:* Machan, *Libertarianism Defended*, ch.10 on Nozick.

March 6 - 9: Nozick on Initial Acquisition and Transfer: Deontological Property Rights

- (1) Nozick, *Anarchy, State, and Utopia*, ch.7 pp.149-89, pp.213-27: Transfer, Acquisition, Rawls
(2) Mattias Risse, "Common Ownership of the Earth," *European Journal of Phil* 2008 (packet)

Discussion points:

- Nozick's Wilt Chamberlain example and high salaries of stars, top executives, vs Rawls.
 - Just initial acquisition and ways of interpreting the "proviso" condition; Georgism.
 - the endless tangles of past injustices in transfer and reparations to correct them?
- (3) Haworth, *Anti-Libertarianism*, chs.8-9 responding to Nozick.
(4) *Recommended:* Nozick, *Anarchy, State, and Utopia*, ch.4 on rights to enforcement (eres).
– problems posed for deontological libertarianism by 2nd-order rights to equal enforcement.
(5) *Short response paper #2* due on March 9 for some topics (later due date for other topics).

March 12 -16: Spring Break (enjoy your liberty!)

March 20 -23: Game Theory Critique of Markets: the concept of Public Goods

- (1) David Gauthier, *Morals by Agreement*, chs. 3-4 (course packet)
(2) Todd Sandler, *Global Challenges* ch.2 (course packet): types of collective action problem.
(3) Mark Sagoff, "At the Shrine of Our Lady of Fatima: Why Political Questions are not all Economic" (course packet) for an expanded conception of public goods.

Discussion points:

- goods markets do not reliably produce (market preconditions, failures, objective values)
 - the Big Problem: 'Starting Positions' in the game of life and Rawls vs Rand redux.
 - justice to future generations;
 - the current American national debt (see charts and figures in course packet).
- (4) *Short response paper #2* due on March 23 for later topics.

March 27- 30: Critiques of Nozick, Hayek, and Berlin on Markets, Freedom & Utility.

- (1) Alan Haworth, *Anti-Libertarianism*, chs. 1-4 on the reduction thesis and invisible hand thesis.

(2) David Hazlett, *Capitalism with Morality*, ch.2 (course packet).

Discussion points:

- are the aggregate results of fair individual choices necessarily just? Fallacies of composition.
- should utilitarian considerations of greater collective goods ever justify government provision (single payer) of some goods and services (e.g. maybe healthcare?).

April 6: Easter Break

April 10 - 13: April 3: Olsaretti's critique of Meritocratic & Entitlement Libertarianism

(1) Sarah Olsaretti, *Liberty, Desert, and the Market* chs. 1-3.

Discussion questions:

- Is fair equality of opportunity essential to a just society (or to any competitive process)?
- Does an analysis of equal opportunity require a clearly fair baseline?

(2) Time-permitting: Sarah Olsaretti, *Liberty, Desert, and the Market* ch.4.

- her critique of Deontological and Hobbesian 'Entitlement' Theories (e.g. Nozick).

April 17 - 20: Social Capital & other forms (cultural, epistemic, institutional, environmental)

(1) *Take-home test* due Tuesday April 17 in class.

(2) David Halpern, *Social Capital*, Introduction (course packet)

(3) John Field, *Social Capital*, selection on "Social Capital and Inequality" (course packet)

(4) Peter Singer, *President of Good and Evil* (Penguin, 2004), ch.2 on opportunity and taxes.

(5) Herbert Simon's claims about social capital (see 2-page reading in course packet).

Discussion Points:

- the range and impact of social/cultural capital; how much of our productivity comes from it?
- does benefitting non-voluntarily create obligations? past sacrifices for common goods;
- the idea of a common economic and cultural 'endowment.'

April 24 - 27: Rights to Enforcement of Rights and the Need for Government

(1) Social Capital readings *continued*.

(2) Holmes and Sunstein, *The Cost of Rights*, Introduction - ch.7 (pp. 13-117).

May 1: Democracy as Rational Popular Sovereignty: further problems for libertarians

(1) Jürgen Habermas, *Between Facts and Norms*, ch. 3.1 and 3.3 on popular sovereignty and the deduction of basic rights (eres)

Discussion points:

- the tradition of civic republicanism and "positive freedom" again
- deliberative answers to "tyranny of the majority."

(2) *Recommended*: John Rawls, *Political Liberalism*, selections from "The Basic Structure as Subject" (directly addressing libertarianism) and from "The Basic Liberties and their Priority" on the fair value of political liberties (eres).

May 4. Final class in lieu of final exam [as required by college rules when there is no exam].

(1) Three Senses of Justice: Historical Acquisition & Transfer, Merit, & Sustained Capital Growth

(2) Summary of all the major objections to the different forms of philosophical libertarianism.

(3) The *Endowment Model* of cultural capital, infrastructure, and the environmental base.

May 8: Final term papers due (when final exam would have been scheduled).

Contents of the Course Packet

Packet Part A

Syllabus

Course Handouts – includes background on moral theory

1. Enlightenment Arguments Against Slavery (Locke, Rousseau, Kant) – inalienable liberty
2. Introduction to Utilitarianism
3. Different Universalizability Tests – utilitarian and deontological
4. Rawls's Conception of Social Justice
5. Rawls's Difference Principle, – chart illustration and graphical curve illustration
6. Herbert Spencer (19th century libertarian and 'social darwinist')
7. The Hohfeldian taxonomy of types of rights-claims
8. Isaiah Berlin's "Two Concepts of Liberty"
9. A Rousseauian Argument that we owe Future Generations an Undespoiled Planet
10. Two Levels of Public Goods
11. Social Capital
12. An Endowment Model of Basic Justice

Main Course Readings (in addition to assigned books)

1. Thomas Hobbes's Moral and Political Philosophy (from Internet Ency. Philosophy).
2. John Locke, *Second Treatise of Government*, ch.II on the state of nature.
3. Ayn Rand: *Atlas Shrugged*, selections from John Galt's speech
4. Ayn Rand, "An Untitled Letter" critiquing Rawls in *Philosophy: Who Needs It?*
5. Friedrich von Hayek, "Freedom and Coercion," in Miller, *The Liberty Reader*
6. Milton Friedman, selections from *Capitalism & Freedom*, chs. 1-2, and ch.10.
7. John Rawls, selections from *A Theory of Justice*, sections 3-6, 10-16, part of 17.
8. Jan Narveson, *The Libertarian Idea*, chs. 2-3, 8, 13-14.
9. Robert Nozick, *Anarchy, State, Utopia* (Basic Books, 1974), chs.2-3, 5 and 7

Packet part B

10. Mattias Risse, "Common Ownership of the Earth," *European Journal of Phil* 2008
11. David Gauthier, *Morals by Agreement* (Oxford Univ. Press, 1988), chs. 3-4.
12. Todd Sandler, *Global Challenges* (1997), ch.2 and part of ch.3 on duties to the future.
13. Mark Sagoff, "At the Shrine of Our Lady of Fatima: Why Political Questions are not all Economic" (from *Earth Ethics*, ed. Sterba)
14. David Haslett, *Capitalism with Morality*, ch.2.
15. David Halpern, Social Capital, Introduction.
16. John Field, Social Capital, selection on ASocial Capital and Inequality@
17. Peter Singer, *President of Good and Evil* (Penguin, 2004), ch.2 on opportunity and taxes.
18. Herbert Simon's claims about social capital (2-page article from Boston Review, Oct. 2000).
19. T.M. Scanlon, Libertarianism and Liberty, Boston Review

Supplemental Readings (newspaper articles, short pieces from popular magazines & websites)

1. Biographical Notes on Ayn Rand
2. Newspaper articles related to Rand
3. Fifty Ways to Kill Recovery
4. Article on Arthur Laffer, misc articles on entrepreneurs, foreign aid etc.
5. Enron: Waving Goodbye to the Invisible Hand
6. Hymowitz, Freedom Fetishists, *Commentary*, Sept. 2007
7. Yale's stolen Van Gogh Painting – how do we deal with effects of unclear past misappropriation?
8. Abraham Lincoln's March 1839 letter supporting higher taxes on wealthier landowners.
9. Article on Bank Fees
10. Editorial in defense of tax havens (or corporate income tax cuts)

Handouts on Federal Debt & Taxation (Government figures, newspaper & magazines articles)

1. US Federal Government Deficits and Debt – my summary from CBO & web sources
2. “The Biggest Bill in History,” *Economist*, June 2009 article on federal debt
3. Articles related to spring 2001 tax cuts
4. Articles related to fall 2004 tax laws
5. Historical Effective Federal Tax Rates – CBO
6. USA Today editorial for simpler tax code
7. White House summary of the Recovery and Reinvestment Act of spring 2009
8. Basic Data on Current Federal Tax Rates
9. Social Security Tax Rates
9. Federal Capital Gains Tax Rates from 1988 - 2011
10. CBO doc on Estate and Gift Taxes
11. Top Federal Income Tax Rates since 1913
12. Effective Federal Tax Rates for All Households, 1979 - 2007
13. CBO detail on Historical Effective rates in 2004-2005.