

Government 312L: Issues and Policies in American Government

LIBERTY, LIBERALS, AND LIBERTARIANS: THE CONCEPT OF FREEDOM IN AMERICAN LAW AND POLITICS

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COURSE DESCRIPTION

The concept of individual liberty has been a building block of American law and politics since the Founding. In our celebrations of what makes the American experiment so compelling, we almost invariably reference liberty. Our national anthem proclaims ours to be “the land of the free”; the patriotic canon celebrates the “sweet land of liberty” where we “let freedom ring”; our greatest thinkers and leaders say that our nation was “conceived in liberty” and that every individual holds a “self-evident” and “inalienable” right to “life, liberty, and the pursuit of happiness”.

Nevertheless, serious thinkers have questioned whether the fundamental concept of liberty is even a coherent idea, much less a value that can be protected by law. Particularly during the 1930s “New Deal Revolution,” which transformed American law and politics into what we know it to be today, almost all public intellectuals questioned the coherence of the concept of liberty.

Today, the New Deal critique has been largely forgotten, but mainstream politicians leverage the concept of freedom highly selectively. The Republican Party beats the drum of personal liberty when criticizing environmental, economic, and gun regulations, but Republicans generally lose their commitment to liberty when discussing social issues like the rights of LGBTQ individuals, ethnic minorities, and women. Recently, Republicans have argued emphatically for personal freedom to avoid masks and vaccines to protect against COVID-19, but they have simultaneously prohibited private individuals and businesses from refusing to work with employees or customers who do not wear masks or vaccinate. On the other hand, the Democratic Party proclaims its commitment to freedom on social issues but then advocates strict regulation of environmental actions, gun ownership, income disparities, and public health. Despite Americans’ proclaimed dedication to liberty, consistent libertarians rarely make it far in electoral politics.

This course explores foundational writings on the concept of freedom and its role in American law and politics from the Founding Era to today. The goal of the course is to examine and question our ideas about personal freedom and its role in American law.

One “content warning” is in order: Once we move past the New Deal Era, our discussion will hone in on the one aspect of liberty that has been most controversial in modern American law: women’s reproductive autonomy and the right to abortion. Of all the issues of liberty that we are currently facing, reproductive rights provide the most challenging insights into the scope and

limits of the concept of freedom. Abortion policy involves a five-way clash of “liberty”: the woman’s, the fetus’s, the man’s, the pro-life observers’, and the pro-choice observers’. It also involves the most compelling possible claim to a “natural law” limit on what government can do because there are some obvious biological facts-of-the-matter: the fetus cannot exercise “individual liberty” outside the woman’s body and, from conception to birth, *only* the woman bears the costs of supporting and protecting the fetus’s rights. As we move through the timeline of American thought, therefore, we will focus increasingly on abortion rights as a way to interrogate and challenge our thinking about liberty.

TEXTS

The readings for this course will be posted on Canvas. You are not required to buy any of the books from which the readings are drawn. Every text listed will be heavily excerpted; you will not be expected to read the full text of any of the books or articles included on the syllabus. All of that said, you are *of course* welcome to read beyond the assigned portions of any of the texts, and I would be happy to talk with you about any extra reading you do.

GRADING AND ASSIGNMENTS

Your grade for this course will be based on attendance, in-class participation, two exams, and a 5-page paper on a topic you develop related to the concept of liberty. The breakdown of your grade will be as follows:

Attendance & Participation	10%
Midterm Exam	30%
Final Exam	30%
5-Page Paper	30%

Grade Scale:

A:	93-100	C:	73-76
A-:	90-92	C-:	70-72
B+:	87-89	D+:	67-69
B:	83-86	D:	63-66
B-:	80-82	D-:	60-62
C+:	77-79	F:	Less than 60

Without exception, I will round up scores of 0.5 and higher and round down scores of less than 0.5.

ATTENDANCE

While Austin is in covid stage 5 or 4, the attendance policy is as follows: In order to get full credit on the attendance and participation portion of your grade, you must attend class in person at least one day per week. On the other days, you may either Zoom into class [here](#) or simply watch the Lectures Online recording at your leisure. If there is a week during which you cannot

attend in person at least one of the three days we meet, you must email me before noon on Friday to excuse the absence; otherwise, you will be credited with one unexcused absence for the week. If you have more than 3 unexcused absences at the end of the semester, you will receive a 0 for the attendance and participation portion of your grade. Please note that a valid excuse for missing Friday's class will not excuse you from the full week; you must have a valid excuse for having been unable to attend any of the three weekly sessions.

If Austin returns to covid stage 3 or below, the attendance policy will be as follows: In-person attendance is mandatory at all meetings. If you cannot make it to class in person but would like to Zoom in, you must email me before 8 AM the day of the relevant meeting to request permission (and to let me know that I need my iPad that day). If you can neither attend in person nor Zoom into class, you must email me before noon to excuse the absence; otherwise, you will be credited with one unexcused absence per missed meeting. If you have more than 3 unexcused absences at the end of the semester, you will receive a 0 for the attendance and participation portion of your grade.

TECHNOLOGY

I will not enforce any limits on your use of technology during class. One of the most important skills of the modern age is self-regulation with devices. If you find that a laptop is helpful for taking notes, use one. If you find that the temptation to surf is too distracting, put your phone and laptop away. If someone sitting in front of you is playing a game that you can't stop watching, move to a different seat. If your phone rings and you need to answer it, step into the hall. (Bonus points if you have an awesome ringtone. Extra bonus points if it's a song related to freedom.) All the while, please bear in mind that participation is 10% of your grade and that it's pretty obvious, from the lecturer's dais, when you're surfing TikTok instead of following the discussion.

OTHER POLICY STATEMENTS

Any students with disabilities may request appropriate accommodations from the Division of Diversity and Community Engagement, Services for Students with Disabilities. Please let me know as soon as possible, by email, if you have made arrangements for such accommodations.

If you haven't already, please immediately read the UT Honor Code and the explanation of what constitutes plagiarism. Plagiarism on your paper will result in an automatic grade of 0 on the paper, which will put you at serious risk of failure.

By UT policy, you must notify me at least 14 days in advance if you will be absent to observe a religious holy day.

COURSE OUTLINE

I. Foundations (Weeks 1 & 2)

- a. John Locke, *Second Treatise on Government*
- b. *The Declaration of Independence*

- c. Federalist/Anti-Federalist Debates over the Bill of Rights
 - i. George Mason, 1787 call for a bill of rights
 - ii. Brutus II Essay
 - iii. *Federalist* No. 51
 - iv. *Federalist* No. 84
- d. U.S. Constitution, Amendments I-X

II. Contemporaneous European Thought (Weeks 3 & 4)

- a. Adam Smith, *The Wealth of Nations*
- b. Jeremy Bentham, “Anarchical Fallacies”
- c. Emmanuel Kant, *Groundwork of the Metaphysics of Morals*
- d. Peter Singer, *Hegel: A Very Short Introduction*
- e. Harriet Taylor and John Stuart Mill, *On Liberty*
- f. Karl Marx, “On the Jewish Question”

III. The American Civil War (Weeks 5 & 6)

- a. *Dred Scott v. Stanford*
- b. Abraham Lincoln, selected writings
- c. U.S. Constitution, Amendments XIII-XV
- d. *The Slaughterhouse Cases*

IV. The *Lochner* Era and Its Critics (Weeks 7-9)

- a. Herbert Spencer, *Social Statics*
- b. *Lochner v. New York*
- c. Robert Lee Hale, “Coercion and Distribution in a Supposedly Non-Coercive State”
- d. John Dewey, “Liberty and Social Control”
- e. Wesley Newcomb Hohfeld, “Fundamental Legal Conceptions as Applied in Judicial Reasoning”

V. The New Deal Revolution and WWII (Weeks 10 & 11)

- a. *West Coast Hotel v. Parish* and *United States v. Carolene Products*
- b. Franklin D. Roosevelt, State of the Union Address of 1944 (“The Second Bill of Rights”)
- c. Friedrich Hayek, *The Road to Serfdom* (Reader’s Digest condensed version)

VI. The Warren Court Era (Weeks 12 & 13)

- a. Isaiah Berlin, “Two Concepts of Liberty”
- b. Reproductive Rights Cases: *Skinner v. Oklahoma*, *Griswold v. Connecticut*, and *Roe v. Wade*

- c. Positive Rights Cases: *Gideon v. Wainwright*, *Griffin v. Illinois*, and *Dandridge v. Williams*
- d. Milton Friedman, *Capitalism and Freedom*
- e. Robert Nozick, *Anarchy, State, and Utopia*

VII. Reaganomics and the Rehnquist Court (Weeks 14 & 15)

- a. Ronald Reagan, selected writings and speeches
- b. Reproductive Rights Again: *Harris v. McRae* and *Planned Parenthood v. Casey*
- c. *Washington v. Glucksberg*
- d. *DeShaney v. Winnebago County*
- e. “The Moral Majority,” selected writings
- f. Cass R. Sunstein, *The Partial Constitution*
- g. Richard A. Posner, “The Cost of Rights: Implications for Central and Eastern Europe—and for the United States”

VIII. Today (Weeks 16 & 17)

- a. Glenn Beck and the Tea Party Movement, selected writings
- b. Bernie Sanders, Alexandria Ocasio-Cortez, and the Democratic Socialists of America, selected writings
- c. Robert George, *Clash of Orthodoxies*
- d. *Carhart I & II*, *Whole Women’s Health*, *Hobby Lobby*