

**Proposed Course
New York University
School of Law**

CLASSICAL LIBERALISM:
History, Theory and Contemporary Jurisprudence

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Description: Classical liberalism is the political philosophy that holds that society, within a legal framework of private property and liberty of contract, largely runs itself. This course is an interdisciplinary exploration of the fundamental principles of liberalism and its application to issues of broad relevance to the law. These principles are developed through classical and contemporary sources from Marcus Tullius Cicero to Richard Epstein and Randy Barnett. The applications include eminent domain, religious toleration, the legal status of homosexuality, the war on terror, the market for parental rights, and the moral and economic status of profiting from the ignorance of others.

I. Introduction

Ralph Raico, "Prolegomena to a History of Liberalism." From: *Journal des Economistes et des Etudes Humaines*.

Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns." From: *Political Writings*.

II. The Meaning of Spontaneous Order: An Introductory View

Karen Vaughn, "The Invisible Hand." From: *The New Palgrave Dictionary of Economics*, ed. J. Eatwell, M. Milgate and P. Newman.

Michael Polanyi, "Manageability of Social Tasks," pp. 154-57; 159-65. From: *The Logic of Liberty*.

Friedrich A. Hayek, "The Creative Powers of a Free Civilization." From: *Essays on Individuality*, ed. Felix Morley.

_____, "The Market Order or Catallaxy." From: *Law, Legislation and Liberty*, vol. 2.

III. Fundamental Principles: “Classical” Views

• *Utilitarianism*

E. K. Bramsted and K. J. Melhuish, “The Utilitarian Approach to Government: An Introduction.” From: *Western Civilization*.

Jeremy Bentham, “The End of Legislation – The Greatest Happiness for the Greatest Number.” From: *An Introductory View of the Rationale of Evidence*.

_____, “The Principle of Utility.” From: *An Introduction to the Principles of Morals and Legislation*.

David Lieberman, “The Critique of the Common Law.” From: *Bentham: Moral, Political and Legal Philosophy*, vol. 1, ed. Gerald J. Postema.

• *Indirect Utilitarianism*

Henry Hazlitt, “Need for General Rules.” From: *The Foundations of Morality*.

David Hume, “Justice and Property.” From: *Treatise of Human Nature*, book 3.

Adam Smith, *The Theory of Moral Sentiments*, pp. 166-68; 169-70; 289-90.

Herbert Spencer, “The Formula for Justice.” From: *Principles of Ethics*, vol. 2.

• *Natural Law*

Marcus Tullius Cicero, “True Law.” From: *The Republic*.

Samuel Pufendorf, “On Natural Law.” From: *On the Duty of Man and Citizen*, Book 1.

Wilhelm von Humboldt, “The Purpose of Man” and “The Purpose of the State.” From: *The Sphere of Duties of Government*.

IV. Fundamental Principles: Contemporary Views

Randy E. Barnett, *The Structure of Liberty: Justice and the Rule of Law*, Part 1: “The Problems of Knowledge,” pp. 29-129.

Richard A. Epstein, *Principles of a Free Society: Reconciling Individual Liberty with the Common Good*, Chap. 1, “Natural Law: The Utilitarian Connection.”

_____, *Scepticism and Freedom: A Modern Case for Classical Liberalism*, Chap. 1, “Two Forms of Scepticism,” and Chap. 2, “The System of Liberty.”

V. **Social Cooperation**

• **Market Exchange**

Henry Hazlitt, “How the Price System Works.” From: *Economics in One Lesson*.

David Ramsay Steele, *From Marx to Mises*, Chap. 10, “The Division of Knowledge,” pp. 229-37, 243-48.

F. A. Hayek, “The Use of Knowledge in Society.” From: *American Economic Review*, Sept. 1945, pp. 519-30.

Specific Issue: Should People Be Able to Profit from the Ignorance of Others?

Marcus Tullius Cicero, *On Duties*, Book 3, sec. 12-13 (44 B.C.)

Thomas Aquinas, *Summa Theologiae*, vol. 38, 2a 2ae, Question 77 (c. 1270).

U.S. Supreme Court, *Laidlaw v. Organ* (1819). As summarized in David Friedman, *Law’s Order*, pp. 168-70.

Israel Kirzner, “Discovery, Private Property and the Theory of Justice in Capitalist Society.” From: *Journal des Economistes et des Etudes Humaines*.

• **Property**

Armen Alchian, “Property Rights.” From: David Henderson, ed., *The Fortune Encyclopedia of Economics*, pp. 69-74.

Garrett Hardin, “The Tragedy of the Commons.” From: *Fortune Encyclopedia*, pp. 88-91.

Samuel Wheeler, “Natural Property Rights as Body Rights.” From: *Nous* (1980), pp. 171-93.

Specific Issue: Should there be a Market in Parental Rights?

Richard A. Posner, “The Regulation of the Market in Adoptions.” From: *Boston University Law Review*, 67 (1987), pp. 59-72.

Specific Issue: Eminent Domain

Ilya Somin, “Controlling the Grasping Hand: Economic Development Takings After Kelo.” From: *Supreme Court Economic Review* (2007), Parts 1 and 2.

VI. Social and Religious Toleration

George Smith, “Philosophies of Toleration.” From: *Atheism, Ayn Rand and Other Heresies* (1991).

John Stuart Mill, “On Individuality, as One of the Elements of Well-Being.” From: *On Liberty* (1859).

Specific Issue: Homosexuality and the Law

Jeremy Bentham, “Offences Against One’s Self: Pederasty,” Part 1. From: *Journal of Homosexuality* (1972 – originally written c. 1785).

Lawrence v. Texas, 539 U.S.558 (2003).

Randy E. Barnett, “Justice Kennedy’s Libertarian Revolution: *Lawrence v. Texas*.” From: *Cato Supreme Court Review* 2002-2003, pp. 21-41.

Specific Issue: Drug Prohibition

“A Survey of Illegal Drugs: High Times.” From: *The Economist*, July 28, 2001.

Specific Issue: Making Men Moral

Robert P. George, *Making Men Moral*, Chap. 1.

Mario J. Rizzo, “The Problem of Moral Dirigisme: A New Argument Against Moralistic Legislation.” From: *NYU Journal of Law and Liberty* (2005).

VII. Liberty and Democracy

E. K. Bramsted and K. J. Melhuish, “Are Liberty and Democracy Compatible: Introduction,” and “Tyranny of the Majority and the Right to Nonconformity: Introduction.” From: *Western Liberalism*.

Alexis de Toqueville, “The Influence of Democratic Opinions and Sentiments on Political Society.” From: *Democracy in America*.

William E. H. Lecky, “Democracy Does Not Harmonize Well With Liberty.”
From: *Democracy and Liberty*.

Alexis de Toqueville, “The Unlimited Power of the Majority in the United States
and its Consequence.” From: *Democracy in America*.

John Stuart Mill, “On the Dangers Arising from the Role of the Numerical
Majority.” From: *Representative Government*.

Lord Acton, “On the Will of the Majority.” From: *Essays on Freedom and Power*.

Herbert Spencer, “Political Rights – So-Called.” From: *Principles of Ethics*, vol.
2.

Ilya Somin, “When Ignorance Isn’t Bliss: How Political Ignorance Threatens
Democracy,” *Cato Policy Analysis* no. 525 (2004).

VIII. Foreign Policy, War on Terror and Liberty

Jeremy Bentham, “In International Dealings, Justice and Beneficence.” From: *The
Constitutional Code*.

William Graham Sumner, “The Conquest of the United States by Spain” (1899).
From: *Voices in Dissent*, ed. Arthur Ekirch, Jr.

Herbert Spencer, “Imperialism and Slavery” (1902). From: *Facts and Comments*.

Robert A. Taft, *A Foreign Policy for Americans*, Chap. 1, “What are the Purposes
of a Foreign Policy?”

Zbigniew Brezezinski, “Confronting Anti-American Grievances.” From: *The New
York Times*, Sept. 1, 2002.

“For Whom the Liberty Bell Tolls.” From: *Economist*, Aug. 31, 2002.

Gene Healy and Timothy Lynch, “Power Surge: The Constitutional Record of
George W. Bush,” *Cato White Paper*, May 2006.

IX. General Slippery Slope Analysis

A. V. Dicey, “The Debt of Collectivism to Benthamism.” From: *Lectures on the
Relation between Law and Public Opinion in England during the
Nineteenth Century*.

Herbert Spencer, “The Coming Slavery.” From: *The Man versus the State*.

Eugene Volokh and David Newman, "In Defense of the Slippery Slope," From: *Legal Affairs*, March-April, 2003. (The full story is in Volokh, "The Mechanisms of the Slippery Slope," From: 116 *Harvard Law Review* 1026 (2003).)

Mario J. Rizzo and D. Glen Whitman, "The Camel's Nose is in the Tent: Rules, Theories and Slippery Slopes." From: *UCLA Law Review* (2005).

X. **Paternalism**

Gerald Dworkin, "Paternalism." From: *Stanford Encyclopedia of Philosophy*. Available at <http://plato.stanford.edu/entries/paternalism>.

Richard Thaler and Cass Sunstein, "Libertarian Paternalism." From: *AEA Papers and Proceedings* (May 2003), pp. 175-179.

D. Glen Whitman, "Against the New Paternalism: Internalities and the Economics of Self-Control," *Cato Policy Analysis*, no. 563 (2006).

D. Glen Whitman and Mario J. Rizzo, "Paternalist Slopes." From: *NYU Journal of Law and Liberty* (2007).