

PHIL 267: Political Philosophy

UCSD; Spring 2020

Wednesdays 1-3:50pm via Zoom

Professors Richard Arneson and David O. Brink

Office Hours: email or Zoom meeting by appointment

Topic: Liberty and Its Limits

Note: This is a provisional description of the contents and logistics for the seminar and is subject to revision.

CONTENT

This seminar addresses a number of theoretical and practical issues about liberty or freedom and its limits. Theoretical and applied issues can become entangled, so that it is not always easy to separate them. But some issues seem more theoretical or more applied than others. Here's a sample of issues, not all of which we will be able to address during the seminar.

At the theoretical level, we will discuss various issues about how liberty is best conceived, what its value is, and how it is related to other values. We will contrast a classic *liberal* conception of liberty as non-interference with a *republican* conception of it as non-domination, where one person dominates another even when they don't interfere if they have the power to do so. Do we have rights to *liberty per se* or only rights to specific *basic liberties*? If the focus is on basic liberties, how do we determine which liberties are basic and which are not? Liberty is *moralized* if the right is to be free from *unjustified* interferences with our liberty. Should we moralize liberty, and, if so, why? If we moralize liberty, does liberty remain explanatorily fundamental? Is liberty a value to which we have rights, and, if so, are rights best conceived as *side-constraints*? Should we be *consequentialists* or *deontologists* about liberty? If we are deontologists, are liberty rights *absolute* or *moderate*? Libertarians often ground their rights in claims about *self-ownership*. What is self-ownership and what is its connection with liberty? Unrestricted liberty involves a commitment to *laissez-faire*, but *laissez-faire* has a tendency over time to erode *fair equality of opportunity*. How do liberties and opportunities interact, and in what ways should fair equality of opportunity limit liberty? How is liberty connected with other values, such as *autonomy*, *responsibility*, and *respect*? Are there different kinds of freedom, and what unity, if any, should we expect among different kinds of freedom? Is all liberty *negative* or can there be *positive* liberty? Are there moral hazards inherent in positive liberty? What is autonomy and how are liberty and autonomy related? Can and should our conception of autonomy be normatively neutral?

There are many more applied issues about the implications and limits of liberty than we will have time to discuss. Here are a few. Mill makes clear that *harm prevention* can be a legitimate reason for restricting liberty. Under what conditions is harm prevention a sufficient reason for restricting liberty? What counts as a harm, and must harm itself be moralized? *Expressive liberties* seem to be among the most fundamental liberties, but what makes them so important? What follows from treating expressive liberties as fundamental, and under what conditions can expressive liberties be restricted? *Hate speech* is one of many flashpoints at the boundaries of freedom and equality. What's a sensible attitude to take to hate speech? *Freedom of association* also seems to be a fundamental liberty, but it can run afoul of *anti-discrimination norms*, as in the civil rights era Heart of Atlanta Motel case and the recent Masterpiece Cakeshop case. Do associational rights privilege insiders in a way that gives outsiders complaints of distributive justice? Most liberals and republicans view *paternalism* skeptically. What's the basis for this skepticism, and what limits, if any, should we recognize in the anti-paternalist case? *Nudges* are policies that seek to shape the structure of choice in non-coercive ways that tend to produce better prudential outcomes for those who are nudged. Are nudges paternalistic and, if so, in what ways? What are the moral hazards of nudging and what, if anything, can we do to prevent or mitigate them? Social and economic freedom are often associated

with *markets*. Does freedom require markets? Market exchanges are subject to *externalities*, both negative and positive. What do externalities imply about the efficiency and permissibility of market mechanisms? Do market mechanisms distribute some kinds of goods better than others? Are there plausible *anti-commodification* arguments, and to which good and services do they most plausibly apply and why? Some forms of *exploitation* are non-consensual, but this is not always so. What makes social relations *exploitative*, and is exploitation always bad? If we seek to prevent exploitation, is this a matter of harm prevention, paternalism, or legal moralism? In a pandemic health crisis, individual freedom creates both personal and social risks that seem to call for some combination of voluntary and mandatory social distancing measures. Are such measures best understood on a paternalistic or harm prevention model? How, if at all, does social risk require us to modify or adapt the harm prevention principle? When can social distancing remain voluntary, and when should it become mandatory? Should mandatory pandemic regulations be guided by libertarian, utilitarian, or prioritarian standards?

FORMAT

Though the seminar will be conducted remotely, we hope to conduct it, as much as possible, like a traditional seminar. However, we are technological troglodytes, and you should not expect the transition to a remote platform to be seamless, especially in the early going. (Imagine two dinosaurs jostling to figure out and use an iPhone for the first time.) Seminar meetings will occur at the scheduled time, but will be conducted via Zoom, accessible through the Canvas website. Typically, one of us (RA or DB) will have primary responsibility for a seminar meeting, and the other will be the designated kibitzer. (A tentative distribution of primary responsibilities is indicated on the Syllabus.) Usually, we will post handouts or notes on the website in advance of seminar meetings. Enrolled students are expected to submit short reader responses in advance of each week's meeting. We will typically begin seminar meetings with a "lightning round" in which we go around the room and each member shares some thoughts, comments, or questions about the week's readings, which can reflect issues they raised in their reader responses or something else. Seminar meetings will involve presentations by RA and/or DB that aim to structure discussion of the readings and raise issues for discussion. Significant seminar participation is an expectation of every seminar member.

REQUIREMENTS

Students enrolled in the seminar must submit weekly reader responses (approximately 250-500 words), participate in the lightning round at the beginning of each seminar (approximately 2-3 minutes each), and submit a final paper (approximately 4-6K words). An outline of the paper must be submitted by the end of the day Wednesday of Week 9, and the paper itself is due by the end of the day Wednesday of exam week (Week 11). One's overall grade in the seminar will reflect an assessment the requirements weighted in the following way: reader responses = 25%, paper = 60%, and participation = 15%.

READINGS

A tentative list of topics and readings assignments is contained in the Syllabus. We may need to update the topics and readings as we progress. We plan to post all the required readings as pdfs on the course website. We have not ordered any books for the seminar; seminar participants may wish to purchase some of these texts from an online source (e.g. Amazon). If you have any questions about the readings or texts, please contact one of us.

WEBSITE

Handouts and other seminar materials will be posted on the course website, available through Canvas on Course Finder (<https://coursefinder.ucsd.edu>). Students enrolled in the seminar should have automatic access to the website. You will be expected to have access to versions of these

handouts during seminar meetings. You should check periodically to make sure that you have current versions of all the handouts, which are revised/updated periodically. If you are not enrolled in the seminar, but would like to have access to the website, let one of us know, giving us a UCSD email address, and we can arrange for you to have access.

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Syllabus

The topics and especially the readings are provisional and may change, so make sure that you check the syllabus periodically for updates. Readings are divided into required (A) and recommended or supplemental (B). Please do the required readings in the order in which they are listed.

GENERAL

- (B) John Stuart Mill, *On Liberty* (1859) and *The Subjection of Women* (1869) in *The Collected Works of John Stuart Mill*, 33 vols., ed. J. Robson (University of Toronto Press, 1965-91) available online through the Liberty Fund at <https://oll.libertyfund.org/titles/mill-collected-works-of-john-stuart-mill-in-33-vols> (*On Liberty* is in CW XVIII and *The Subjection of Women* is in CW XXI); Philip Pettit, *Republicanism* (OUP 1997), *A Theory of Freedom* (OUP 2001), and *Just Freedom* (Norton 2014); and Joel Feinberg, *The Moral Limits of the Criminal Law*, 4 vols. (OUP 1984-90).

Week 1 (April 1): MILLIAN LIBERALISM [DB]

- (A) Mill, *On Liberty* (CW XVIII).
- (B) Mill, *The Subjection of Women* (CW XXI); David O. Brink, *Mill's Progressive Principles* (OUP 2013), esp. chs. 6-9; David Lyons, "Liberty and Harm to Others" reprinted in Lyons, *Rights, Welfare, and Mill's Moral Theory* (OUP 1994); and Dan Jacobson, "Mill on Liberty, Speech, and the Free Society" *Philosophy & Public Affairs* 29 (2000): 276-309.

Week 2 (April 8): REPUBLICAN FREEDOM [RA]

- (A) Philip Pettit, *Just Freedom*, chs. 1-3.
- (B) Philip Pettit, *Republicanism* and *A Theory of Freedom*; Frank Lovett, *A General Theory of Domination and Justice* (OUP 2010); Thomas Simpson, "The Impossibility of Republican Freedom" *Philosophy & Public Affairs* 45 (2017): 27-53.

Week 3 (April 15): LIBERTARIAN DEONTOLOGY [RA]

- (A) Robert Nozick, *Anarchy, State, and Utopia* (Basic Books 1974), pp. 28-35 and chapter 4.
- (B) Peter Railton, "Locke, Stock, and Peril" reprinted in Railton, *Facts, Values, and Norms* (CUP 2003); Richard Arneson, "'Side Constraints, Lockean Individual Rights, and the Moral Basis of Libertarianism" in *The Cambridge Companion to Nozick's Anarchy, State, and Utopia* (CUP 2011); G.A. Cohen, "Capitalism, Freedom, and the Proletariat" in *The Idea of Freedom*, ed. A. Ryan (OUP 1979).

Week 4 (April 22): KINDS OF FREEDOM [DB]

- (A) Immanuel Kant, *Groundwork for the Metaphysics of Morals* (1785) (many editions) §3; Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Macmillan 1907), Appendix; T.H. Green, "On the Different Senses of Freedom as Applied to Will and the Moral Progress of Man" in *Collected*

Works of T.H. Green, 5 vols., ed. P. Nicholson (Thoemmes 1997), vol. II; and Isaiah Berlin, "Two Concepts of Liberty" in Berlin, *Four Essays on Liberty* (OUP 1969).

- (B) Green, *Prolegomena to Ethics*, ed. D. Brink (OUP 2003), books II-III and *Lectures on Kant's Ethics* CW II; Stephen Darwall, "Two Kinds of Respect" *Ethics* 88 (1977): 36-49.

Week 5 (April 29): AUTONOMY [DB]

- (A) Harry Frankfurt, "Freedom of the Will and the Concept of a Person" *Journal of Philosophy* 68 (1971): 5-20; Joel Feinberg, *Harm to Self (Limits III)*, ch. 18; and Nomy Arpaly, *Unprincipled Virtue* (OUP 2003), ch. 4.
- (B) Gerald Dworkin, *The Theory and Practice of Autonomy* (CUP 1988), chs. 1-2; Manuel Vargas, Review of J. Taylor, *Personal Autonomy*, *Notre Dame Philosophical Reviews* (2006); and Jonathan Knutzen, "The Trouble with Formal Views of Autonomy" *Journal of Ethics and Social Philosophy* (forthcoming).

Week 6 (May 6): HARM TO OTHERS [RA]

- (A) Joel Feinberg, *Harm to Others (Limits I)*, ch. 1; Arthur Ripstein, "Beyond the Harm Principle" *Philosophy & Public Affairs* 34 (2006): 215-45.
- (B) David Lyons, "Liberty and Harm to Others" reprinted in Lyons, *Rights, Welfare, and Mill's Moral Theory* (OUP 1994); Arthur Ripstein, *Force and Freedom* (Harvard 2009), chs. 1-3.

Week 7 (May 13): FREEDOM OF EXPRESSION AND HATE SPEECH [DB]

- (A) Seana Shiffrin, *Speech Matters* (Princeton 2014), ch. 3; David O. Brink, "Millian Principles, Freedom of Expression, and Hate Speech" *Legal Theory* 7 (2001): 119-57; Rae Langton, "Speech Acts and Unspeakable Acts" *Philosophy & Public Affairs* 22 (1993): 293-330.
- (B) Joshua Cohen, "Freedom of Expression" *Philosophy & Public Affairs* 22 (1993): 207-63; David O. Brink, *Mill's Progressive Principles*, ch. 7.

Week 8 (May 20): PATERNALISM [DB]

- (A) Joel Feinberg, *Harm to Self (Limits III)*, chs. 17-19; Seana Shiffrin, "Paternalism, Unconscionability Doctrine, and Accommodation" *Philosophy & Public Affairs* 29 (2000): 205-50.
- (B) Richard Arneson, "Paternalism, Utility, and Fairness" *Revue Internationale de Philosophie* 43 (1989): 409-37.

Week 9 (May 27): NUDGES [RA]

- (A) Cass Sunstein, *Why Nudge?* (Yale 2014).
- (B) Richard Thaler and Cass Sunstein, *Nudge* (Yale 2008); Daniel Hausman & Brynn Welch, "Debate: To Nudge or Not to Nudge" *Journal of Political Philosophy* 18 (2010): 123-36; Motin Gori, "Towards an Interpersonal Theory of Manipulation" *American Philosophical Quarterly* 51 (2014): 51-61; Richard Arneson, "Nudge and Shove" *Social Theory and Practice* 41 (2015): 668-91; and Robert Noggle, "The Ethics of Manipulation" *Stanford Encyclopedia of Philosophy* (<https://plato.stanford.edu/entries/ethics-manipulation>).

Week 10 (June 3): EXPLOITATION [RA]

- (A) Joel Feinberg, *Harmless Wrongdoing (Limits IV)*, chs. 31-32; Allen Wood, "Exploitation" *Social Philosophy & Policy* 12 (1995): 136-58; ...
- (B) ... Frank Lovett, "Mill on Consensual Domination" in *Mill's On Liberty: A Critical Guide*, ed. C.L. Ten (CUP 2008); Richard Arneson, "Exploitation and Outcome" *Politics, Philosophy, and*

Economics 12 (2013): 392-412 and "Exploitation, Domination, Competitive Markets, and Unfair Division" *Southern Journal of Philosophy* 54 (2016): 9-30.