

Political Science 212  
Political Obligations  
Fall 2011  
Professor Arkes

I. The Foundations of Polity and Obligation

Aristotle, *The Politics*, Bk. I, A (1252a-1253a); Bk. III, C, ch. 9 (ca. 1280a-1281a) [Principles of Oligarchy and Democracy, and the Nature of Distributive Justice]

Rousseau, *The Social Contract*, Bk. I, chs. 3-4

(Recommended: Bk. II, ch. 6)

Hadley Arkes, *First Things*, Chs. I-II, pp. 3-30 [purchase]

Leo Strauss, "On Classical Political Philosophy," pp. 98-117

Thomas Reid, *Essays on the Active Powers of the Human Mind*, pp. 457-81

Richard Flathman, *The Public Interest*, pp. 3-13, 53-82

Kant, *The Metaphysical Elements of Justice*, pp. 215-28

C.S. Lewis, *Mere Christianity*, pp. 17-35

(Recommended:

-Kant, Critique of Practical Reason, Bk. I, ch. I, secs. 1-5; Bk. I, Ch. II

-R.M. Hare, The Language of Morals, chs. 6-9, pp. 94-150

-Hannah Pitkin, Wittgenstein and Justice, pp. 231-40, 99-115)

Harry Jaffa, *Crisis of the House Divided*, pp. 302-62

[Recommended: The Legal and Political Tendencies Toward Slavery, pp. 275-301]  
[purchase or Reserve]

Arkes, *First Things*, Ch. III, pp. 31-50

F.A. Hayek, *The Constitution of Liberty*, pp. 234-49 [Electronic Reserve]

Robert Cover, *Justice Accused: Antislavery and the Judicial Process*, pp. 1-25, 33-41

Lincoln on the Fugitive Slave Clause

Jaffa, *Crisis of the House Divided*, 363-86

Eugene Kamenka, "Law and Morality in Soviet Society," in The Ethical Foundations of Marxism, pp. 168-87

[Recommended: Hugh Collins, Marxism and Law, pp. 61-76, 124-46]

Tom Stoppard, *Professional Foul* [purchase]

(Recommended:

-Hans Kelsen, The Communist Theory of Law, pp. 20-23, 41-43, 77-88, 106-111, 116-32

-Bertrand Russell and F.C. Copleston, "A Debate on the Existence of God" [packet])

Thomas Reid, Essays on the Intellectual Powers of Man, pp. 644-71, 718-28

[Recommended: Reid, Essays on the Active Powers of the Human Mind, pp. 294-303, 435-56]

Daniel N. Robinson, "On the Evident and the Self-Evident," Lecture at the Madison Center, Princeton (October 2001), 19 pp.  
Bertrand Russell, The Problems of Philosophy, pp. 60-118 [Electronic Reserve]  
Kant, Groundwork of the Metaphysics of Morals, chs. I and III  
Daniel N. Robinson, Commentary on Kant, in Toward a Science of Human Nature, pp. 83-94  
Arkes, First Things, Chs. IV-V, pp. 51-115  
-Daniel Robinson and Sir John Eccles, "Environmentalism," in The Wonder of Being Human, pp. 90-103  
-Kahn v. Shevin, 416 U.S. 351 (1974)  
-From Justice O'Connor's dissenting opinion in Metro Broadcasting v. FCC, 111 L Ed 2d 445, 497-99 (1990)  
-Maryland v. Craig, 111 L Ed 2d 666 (1990) [Who had the "categorical" right?: O'Connor or Scalia?]

Aristotle, Nicomachean Ethics, Bk. I  
John Stuart Mill, Utilitarianism, Ch. II ("What Utilitarianism Is")  
John Finnis, "Utilitarianism, Consequentialism, Proportionalism ...or Ethics?," in Fundamentals of Ethics, pp. 80-108  
Plato, The Republic, Bk. I, 327-331D; Bk. IV, 427-V 457; Bk. IX, 588B-592B  
Arkes, First Things, Ch. VI, pp. 116-33

Melville J. Herskovits, "Cultural Relativism and Cultural Values," in Cultural Relativism, pp. 11-34

[Recommended:

- Philippa Foot, "Moral Relativism," in Meiland and Krausz, Relativism, pp. 152-166]
- Paul Gross and Norman Levitt, The Higher Superstition: "The Cultural Construction of Cultural Constructivism," and "The Realm of Idle Phrases: Postmodernism, Literary Theory and Cultural Criticism," pp. 42-106]

Thomas Aquinas, on the Natural Law and the First Law of Practical Reason, Summa Theologiae, 1a2ae, 94, articles 2-5  
Arkes, First Things, Chs. VII-VIII, pp. 134-74

[Possible problem for a short paper: A Relativist Theory of Universal Human Rights??

Jack Donnelly, Universal Human Rights in Theory and Practice, pp. 13-21  
Critique of Donnelly in Janet Holl Madigan, Truths, Politics, and Universal Human Rights, pp. 17-26 (Both essay on Electronic Reserve)]

A Challenge and Difference--from Several Angles [subject of a paper]:

-Radical Feminism:

-Judith Butler, "Contingent Foundations: Feminism and the Question of Postmodernism," in Butler and Scott (eds.), Feminists Theorize the Political pp. 3-21

[Recommended:

Carol Gilligan, *In A Different Voice*, pp. 64-105

-Thomas Pangle, Critique of Postmodernism, in *The Ennobling of Democracy*, pp. 20-68]

-Protestant Doubt about Natural Law: Carl Henry, "Natural Law and a Nihilistic Culture" *First Things [the journal]* (January 1995), pp.54-60

-Natural Law: John Finnis, *Natural Law and Natural Rights*, pp. 23-36, 48-49, 59-75, 81-97

[Recommended:

-J. Budziszewski, "Natural Law Revealed," *First Things* (December 2008), pp. 29-33 [Electronic Reserve]

--Budziszewski, *The Line Through the Heart*

-Robert George, "God's Reasons," in his *The Clash of Orthodoxies*, pp. 63-74

-Finnis, Moral Absolutes, pp. 31-106

-Pope John Paul II, Veritatis Splendor (1993)

-Arkes, Commentary on Veritatis Splendor, in First Things [the journal] (January 1994), pp. 25-29]

-Anthony Price, Love and Friendship in Plato and Aristotle]

-Robert George, "Life as an Evil; Death as a Good: Callahan's Inversion," in Bradley (ed.) Set No Limits

[Recommended:

-Patrick Lee and Robert George, *Body-Self Dualism in Contemporary Ethics and Politics* (2007), Ch. 1

-Arkes, "'That Nature Herself Has Placed in our Ears a Power of Judging: Some Reflections on the 'Naturalism' of Cicero," in Robert George (ed.), Theories of Natural Law (1992)]

-John Noonan, "The Natural Law Banner," in David Forte, Natural Law and Contemporary Public Policy, pp. 380-83

[Recommended: in the same volume, David Forte, "The Natural Law Moment," pp. 3-9, and "Family, Nurture, and Liberty," pp. 79-106]

-Gonzales v. Oregon (2006) [On assisted suicide], with the accent on Justice Scalia's dissenting opinion [Scalia backing into a version of "natural law"?]

-Hannah Arendt, On Revolution, pp. 179-215

[Recommended: Jean Yarbrough, "The Declaration and the American Character," in American Virtues [On Thomas Jefferson] pp. 1-26]

## 2. On Seeking Release from the Commitments of Law

*Gillette v. United States*, 401 U.S. 437 (1971) [selective conscientious objection]

-U.S. v. Lynch and Moscinski, 952 F. Supp. 167 (1997)

-On the Hyde-Weldon "Conscience Protection Act of 2004"

Spinoza, *A Theologico-Political Treatise*, chs. III and XV

John Paul II, From Fides et Ratio [Faith and Reason] (1998), Ch. IV ("The Relationship Between Faith and Reason") and Ch. VI ("The Interaction between Philosophy and Theology")

[Recommended: Richard Swinburne, *The Existence of God*, especially chs. 5, 11, 13, 14]

Walter Berns, "The Importance of Being Amish"

*Employment Division v. Smith*, 108 L Ed 2d 876, 882-93, 904-913 (1990) [the peyote case]

[Recommended: Gaffney, Laycock, and McConnell, "An Open Letter on Religious Freedom," First Things [the journal] (March 1991), pp. 44-46

Russell Hittinger, "A Crisis of Legitimacy," in the Symposium on "The Judicial Usurpation of Politics," in *First Things* (November 1996), pp. 25-29

[Recommended:

-In the same symposium: Robert George, "The Tyrant State," pp. 39-42

-Richard Neuhaus, "Can Atheists Be Good Citizens?," First Things (Aug./Sept. 1991), pp. 17-21]

Arkes, *First Things*, Ch. IX, pp. 177-205

Hobbes, Leviathan, Bk. I, ch. 14; Bk. II, ch. 18, ch. 20 (pars. 1-13), ch. 21

Arkes, First Things, Ch. X, pp. 206-231

Jaffa, "The Teaching Concerning Political Salvation," in Crisis of the House Divided, pp. 183-232 [Electronic Reserve]

[Recommended:

Lincoln's Lyceum Speech (1838), in Works, I, pp. 108-115

H.L.A. Hart, "Legal and Moral Obligation," in Melden (ed.), Essays in Moral Philosophy, pp. 82-107]

Plato, Crito

## 3. Justifications of War

### A. The Question of the "Regime" and Interventions

Michael Walzer, "World War II: Why Was This War Different?," Philosophy and Public Affairs (Fall 1971), pp. 3-21

Aristotle, The Politics, Bk. II, ch. 3 (1276a-1276b); chs. 6-7 (1278b-1279b)

Arkes, First Things, Chs. XI-XII, pp. 232-87

Two views of Bush's strategy in Iraq and the War on Terror:

Angelo Codevilla, "When the Cheering Stops" (Claremont Review of Books, 2003)

Norman Podhoretz, "Is the Bush Doctrine Dead?," *Commentary* (September 2006)

[Recommended:

-David Goldman, "The Morality of Self-Interest," *First Things* (June/July 2010)  
pp. 53-59

--David Goldman, writing as "Spengler," on "Obama's Women Reveal His Secret,"  
*Asia Times Online* (February 2008):

[www.atimes.com/atimes/Front\\_Page/JB26Aa01.html](http://www.atimes.com/atimes/Front_Page/JB26Aa01.html)

-Angelo Codevilla, *No Victory, No Peace*, especially chs. V-VIII

-Codevilla, "Victory [in Iraq]: What It Will Take to Win," *Claremont Review of Books* (Winter 2002)

-Hadley Arkes, *Bureaucracy, the Marshall Plan, and the National Interest*, pp. 3-16, 322-44

-Guenter Lewy, *America in Vietnam*, chs. 6-II and Epilogue, pp. 190-441]

[Recommended:

-Robert Kagan, "The Case for Global Activism," *Commentary* (September 1994),  
pp. 40-44

-Responses by Elliott Abrams and Angelo Codevilla, *Commentary*  
(December 1994), pp. 4-6]

Norman Podhoretz, "World War IV: "How it Started, What it Means, and Why We Have to Win," *Commentary* (September 2004)

-Podhoretz, "The War Against World War IV," *Commentary* (February 2005)

-Podhoretz, "Who is Lying About Iraq?," *Commentary* (December 2005)

## B. "Supererogatory" Acts and the Limits of Obligation

Arkes, *First Things*, Ch. XIII ("The Obligation to Rescue and Supererogatory Acts"),  
pp. 288-308

J.O. Urmson, "Saints and Heroes," in Melden (ed.) *Essays in Moral Philosophy*, pp. 198-216

Charles Gregory, "The Good Samaritan and the Bad: The Anglo-American Law"

-McFall v. Shimp, 10 Pa. D & C 3d 90 (1978)

Plato, Laches

[Recommended:

--Nick Eberstadt, "Famine, Development and Foreign Aid," Commentary (March 1985), pp. 25-31 (Electronic Reserve)]

(Recommended:

- Anthony Honore, "Laws, Morals and Rescue," in The Good Samaritan and the Law
- Wallace Rudolph, "The Duty to Act: A Proposed Rule" (in ibid.)
- Yania v. Bigan, 155 Atlantic Reporter 2d 343 (1959)
- Louisville and Nashville Railroad v. Scruggs, 49 So. Reporter 399 (1909)

Arkes, First Things, Ch. XIV (The Moral Case for Welfare, the Troubled Case for Redistribution) [The Graduated Income Tax--and now, the "Flat Tax"], pp. 309-26  
[Recommended: An Application of Natural Law to Taxation and Economic Policies: John Mueller, "Taxation," in Forte (ed.), Natural Law and Contemporary Public Policy, pp. 219-38]

#### 4. Claims of Privacy

Arkes, *First Things*, Ch. XV ("Privacy and the Reach of the Law"), pp. 327-59

[Recommended:

- Griswold v. Connecticut*, 318 U.S. 479 (1965) Electronic Reserve
- Bateman v. Arizona*, 50 L Ed 2d 32 (1976) Electronic Reserve
- John Haas, "The Inseparability of the Two Meanings of the Marriage Act," pp. 89-106 [Electronic Reserve]
- Roger Scruton, *Sexual Desire*, chs. 10-11
- "The Homosexual Movement," Ramsey Colloquium, *First Things* (March 1994), pp. 15-20]
- Lawrence v. Texas* (2003), in the exchange between Justices Kennedy and Scalia
- Arkes, "The Family and the Laws" [on same-sex marriage] in Robert George and Jean Elshstain (eds.) *The Meaning of Marriage*, pp. 116-41 (Elec. Reserve)]

*Roe v. Wade*, 410 U.S. 113 (1973)

[Recommended: Planned Parenthood v. Casey, 120 L Ed 2d 674 (1992)]

Hadley Arkes, *First Things*, Chs. XVI-XVII ("The Question of Abortion and the Discipline of Moral Reasoning," and "Abortion and the Framing of the Laws," pp. 360-422)

[Recommended: For an account of the basic facts, see Robert George and Christopher Tollefsen, "The Facts of Embryology," in *Embryo*, pp. 27-56]

-Arkes, "Abortion Facts and Feelings" [Commentary on James Q. Wilson's "On Abortion"], First Things (April 1994), pp. 34-38

-"Abortion Facts and Feelings II: An Exchange" [with James Q. Wilson], First Things (May 1994), pp. 39-42

[Recommended: Patrick Lee and Robert George, *Body-Self Dualism in Contemporary Ethics and Politics*, Chs. 2 ("Human Beings are

Persons,” and 4 (“Abortion”)]

Naomi Wolf, "Our Bodies, Our Souls," The New Republic,  
(October 16, 1995), pp. 26-35

Magda Denes, "Performing Abortions," Commentary (October 1976), pp. 33-37  
Bernard Nathanson, "The Abortion Cocktail," First Things (January 1996), pp. 23-26

Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* (Fall 1971),  
pp. 47-66

[Parts of Thomson's argument are subjected to a critique in Francis Beckwith,  
*Defending Life*, pp. 56-62, 143-47]

Rosalind Hursthouse, "Virtue Theory and Abortion," *Philosophy and Public Affairs*  
(Summer, 1991), pp. 223-46

[Recommended: Francis Beckwith, *Defending Life*, esp. ch. 3 ("Abortion, Liberalism  
and State Neutrality") and ch. 5 ("Popular Argument: Pity, Tolerance  
and Ad Hominem")]

Bernard Nathanson, *Aborting America*, pp. 206-217, 278-86

Daniel Robinson, "Reflections on the Rights of Fetuses and Other Animals"

Hearings on Fetal Pain, Senate Committee on the Judiciary (May 1985), Exchange among  
Robinson, Moseley, Berkowitz, Nathanson, Mahoney, pp. 1-45

The fetus as "assailant"?

--Eileen McDonagh, *Breaking the Abortion Deadlock*, pp. 12-15, 32-39,  
65-76

--Critique of McDonagh in Janet Madigan, *Truth, Politics, and Universal  
Human Rights*, pp. 181-88 [Both essays on Electronic Reserve]

At the limits of abortion: Partial-birth abortion in the courts

-Arkes, columns in the summer/fall of 1998 [handed out in a separate packet]

"Slouching Towards Infanticide," Weekly Standard (May 25, 1998), pp. 26-29

"The Adventures of the Summer--Continued" Crisis (September 1998)

"Backing Into Old Truths" Crisis (October 1998)

-Arkes, *Natural Rights & the Right to Choose*, pp. 112-46 ("Antijural Jurisprudence")  
[the doctrines marked out by the federal courts as they producing a string of  
decisions striking down the laws on partial-birth abortion in the States]

-The "most modest first step" of all: Can the law protect the child, born alive, who  
survives, an abortion?

--Hadley Arkes and Robert George, Testimony on the Born-Alive Infants  
Protection Act, U.S. House Committee on the Judiciary (July 2000)

[Recommended:

-Arkes, *Natural Rights & the Right to Choose*, chs. 4 and 8]  
-Arkes, "This Heartbreaking Court," *First Things* (October 2006)  
pp. 11-14]

-The End of the Regime of Roe?: The Court Sustains the Federal Bill on Partial-Birth Abortion

-Gonzales v. Carhart (2007)

-Anticipating the outcome in Carhart: Arkes, "The Kennedy Court,"  
*First Things* (January 2007), pp. 11-13

Maureen Condic, "The Basics About Stem Cells," *First Things* (February 2002), pp. 30-34

Markus Grompe and Maureen Condic, "Breakthrough on Stem Cells" [report on the generation by researchers of "induced pluripotent state" cells] *Wall Street Journal* (November 23, 2007)

Michael Sandel, "Embryo Ethics: The Moral Logic of Stem Cell Research,"

*New England Journal of Medicine* (July 15, 2004), pp. 207-209 [Elec. Reserve]

--For a critique of Sandel, see Robert George and Christopher Tollefsen,  
*Embryo*, pp. 176-84 (Elec. Reserve)]

Arkes, "Senseless on Stem Cells," *NROnline* (August 24, 2004)

Doerflinger, "Old and New Ethics in the Stem Cell Debate," *J. of Law, Medicine & Ethics* (Summer 2010), pp. 212-18 (Elec. Reserve)

[Recommended:

-Maureen Condic, "What We Know About Embryonic Stem Cells,"  
*First Things* (January 2007), pp. 25-29 (included in the packet)

-Condic, "Getting Stem Cells Right," *First Things* (February 2008), pp. 10-12]

-Report of the President's Commission on Bioethics, Separate Statements from  
Members of the Commission: Michael Gazzaniga, Robert George, Alfonso Gomez-  
Lobo (Electronic Reserve)

-"The Ethics of Cloning for Biomedical Research," Ch. 6]

*U.S. v. University Hospital at Stony Brook*, 729 F. 2d 146-49, 161-63 (1984) [Statement of case  
and Ralph Winter's dissent]

Daniel Robinson, "What Ever May Happen to Baby Jane?," *Washington Post* (December  
1983)

*In re Guardianship of Andrew James Barry*, 445 So. 2d 365 (1984), 367-72

*In the Matter of Nancy Ellen Jobes*, 529 Atlantic Reporter 2d 434, 436-52, 464-65 (1987)

*Cruzan v. Director, Mo. Health Dept.*, 111 L Ed 2d 224 (1990)

Hadley Arkes, "'Autonomy' and the 'Quality of Life': The Dismantling of Moral Terms,"  
*Issues in Law & Medicine* (May 1987), pp. 421-33

Leon Kass, "Suicide Made Easy: The Evil of 'Rational' Humaneness," *Commentary* (1991)

Kass, Testimony on Assisted Suicide, Hearings of the House Committee of the Judiciary  
(April 1996)

Arkes, Commentary on the Glucksberg case, in *First Things* [the journal] (October 1997), pp. 22-23 [Recommended: Arkes, "Once More Unto the Breach: The Right to Die-- Again," *Issues in Law & Medicine* (Winter 1992), pp. 317-30 (Elec. Reserve)]

Daniel Robinson, "Schiavo, Privacy and the Interests of Law"

[Recommended:

- Washington v. Glucksberg*, 138 L Ed 2d 772, 779-833 (1997) [Electronic Reserve]
- Daniel Robinson, Introduction to *In the Matter of Karen Quinlan*, pp. vii-xviii
- Paul Ramsey, "Reference Points in Deciding About Abortion," in John Noonan (ed.), *The Morality of Abortion*, pp. 60-100
- David Louisell and John Noonan, "Constitutional Balance," in *ibid.*, pp. 220-60
- Finnis, "The Rights and Wrongs of Abortion" [Reply to Judith Thomson] *Philosophy and Public Affairs* (Winter 1973), pp. 117-45 ]
- Arkes, "On 'Delayed Hominization': Some Thoughts on the Blending of New Science and Ancient Fallacies," in *The Interaction of Catholic Bioethics and Secular Society*, Proceedings of the Eleventh Bishop's Workshop (Pope John XXIIIrd Center) 1992
- "The Inhuman Use of Human Beings," A Statement on Embryo Research by the Ramsey Colloquium," *First Things* (January 1995), pp. 17-21]
- Leon Kass and Nelson Lunt, "Courting Death: Assisted Suicide, Doctors, and the Law," *Commentary* (December 1996), pp. 17-29]

Can the right to abortion be cabined or confined?: Arkes, "Prudent Warnings and Imprudent Reactions," in *Natural Rights & the Right to Choose*, pp. 147-84

Conclusion: Arkes, *First Things*, pp. 423-26