

Political Science 12
Political Obligations
Fall 2010
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

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
[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

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:

-Kristie McClure, "The Issue of Foundations: Scientized Politics, Politicized

- Science, and Feminist Critical Practice," in Butler and Scott, pp. 341-68
- Carol Gilligan, *In A Different Voice*, pp. 64-105
 - Thomas Pangle, Critique of Postmodernism, in *The Ennobling of Democracy*, pp. 20-68]
- Protestant Dubiety 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]
 - 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 Sendor, 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
- 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

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 Court strikes down the laws on partial-birth abortion Stenberg v. Carhart (June 2000), Opinion by Justice Breyer, dissenting opinions by Justices Scalia, Thomas, and Kennedy~~

-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

[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 Jobs, 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