

The Rule of Law: Controlling Government (Seminar in Contemporary Legal Thought)

Syllabus

(NOTE: Assignments begin on page 5)

Professor John Norton Moore
Mondays, 7:00-9:00 PM
Meeting at Professor Moore's home
824 Flordon Drive, Charlottesville

Fall 2011
University of Virginia
School of Law

Date	Topic
September 5	I. Introduction <ul style="list-style-type: none">A. The Rule of Law: An Overview<ul style="list-style-type: none">i. Overview and Principal Focusii. The Rule of Law: Exploring the Concept<ul style="list-style-type: none">- Law for the Purpose of Enforcing the Will of the State (or the will of the ruling elite) or Law for the Purpose of Promoting Liberty and Individual Freedom (protecting against interference with liberty from either individuals or the State)- Elements of the Rule of Law and a Jurisprudence of Freedom and Human DignityB. Modes of Analysis: Scholasticism vs. Scientific Method<ul style="list-style-type: none">i. Sir Francis Bacon (<i>The New Organon</i>), the Newtonian Revolution and Scientific Methodii. A Word About Epistemology<ul style="list-style-type: none">• Rationalism, Plato, and Descartes (deductive mode)• Empiricism, Aristotle, and Locke/Montesquieu (inductive mode)
September 12	C. Totalitarianism and Its Consequences: The Costs of Extreme Government Failure
September 19	D. Democracy, the Growth of Leviathan, and the Costs of Moderate Government Failure
September 26	E. The Theory of Government Failure Guest Participant: James M. Buchanan Center for the Study of Public Choice, George Mason University Nobel Prize in Economics, 1986 James M. Buchanan Center for Political Economy < http://www.gmu.edu/jbc/ >
October 3	II. Constitutionalism and the Rule of Law: Historic, Jurisprudential, and Comparative Antecedents

Date	Topic
	<p>A. Historic and Comparative Antecedents in Political Theory: Competing Streams of Thought</p> <p>i. Empowering the Government: The Traditions of Interventionist Government and Ruthless Power</p> <ul style="list-style-type: none"> - Interventionist Government: Plato (<i>The Republic</i>: the “organic” theory of government and rule by “philosopher kings”), Sir Thomas More (<i>The Utopia</i>), Hobbes (<i>The Leviathan</i>), Rousseau (<i>The Social Contract</i>), Joseph de Maistre (<i>Considerations on France</i>), Hegel (<i>Elements of the Philosophy of Right</i>), Marx, Lenin, and Habermas & the Frankfurt School (though contradictory), Heidigger - Ruthless Pursuit of Power: Machiavelli (<i>The Prince</i>), Nietzsche (“warrior” vs. “herd” morals), von Bernhardt, Lenin, Stalin, Hitler, Mao, Pol Pot, Guzmán & the Shining Path, and al Qaeda (<i>Training Manual</i>) <p>ii. Empowering the Individual: Toward Human Freedom</p> <ul style="list-style-type: none"> - Aristotle (<i>The Politics</i>—with, however, the prevailing errors of his day concerning slavery and second-class status for women), Magna Carta, Locke (<i>Second Treatise of Civil Government</i>), Sidney (<i>Discourses Concerning Government</i>), Montesquieu (<i>The Spirit of the Laws</i>), Rousseau (<i>The Social Contract</i>), the French Declaration of the Rights of Man, Adam Smith (<i>The Wealth of Nations</i>), Constitution of Massachusetts, Jefferson (U.S. Declaration of Independence), Madison (<i>U.S. Constitution</i>), Hamilton, Madison, and Jay (<i>The Federalist Papers</i>), Olympe de Gouge (<i>Declaration of the Rights of Women</i>), Benjamin Constant (<i>Political Writings</i>), Alexis de Tocqueville (<i>Democracy in America</i>), Mill (<i>On Liberty</i>), Emile Durkheim (founder of sociology, supports democracy, and rejects claim of socialism and communism to be “scientifically based”) Hayek (<i>The Constitution of Liberty</i>) & the Austrian School, Hannah Arendt, George Orwell, the CSCE Copenhagen Document and other modern human rights norms and processes <p>iii. Recurrent Underpinnings in the Debate</p> <ul style="list-style-type: none"> - The Nature of Man: From Plato’s “Philosopher King” to Freud’s “Realism” - Anti-modernism (the idealization of man in a state of nature and the charge of “alienation” from modern society; “natural,” primitive needs vs. “artificial,” social needs): Rousseau, Marx (though contradictory), Nietzsche (<i>The Spirit of Modernity</i>), and Claude Lévi-Strauss - Property and its Effects: Plato, Rousseau, and Marx vs. Aristotle, Smith, Jefferson, Madison, and Hamilton - Meaning and Language: Plato (refuting the arguments made by Gorgias and Phaedrus in <i>Gorgias</i> and <i>Phaedrus</i>), Immanuel Kant, Michael Walzer (about the politics of Michel Foucault), Jurgen Habermas (“destruction is renamed deconstruction”), Václav Havel vs. Gorgias, Phaedrus, Friedrich Nietzsche (meaning is relative and all meaning is will to power in <i>The Will to Power</i>), Jean Baudillard, Michel Foucault (“truth isn’t outside power” in <i>Power/Knowledge</i>) Jacques Derrida (“Force of Law: The ‘Mystical Foundation of Authority’”) Stanley Fish (<i>Doing What Comes Naturally</i>). - Within the Democratic Tradition—the Appropriate Degree of “Democratic” vs. “Republican” Forms of Government
October 10	B. Jurisprudential Antecedents: The Continuing Influence of the Legal Realist Movement

Date	Topic
	C. The “New Haven” Approach: A Methodology for Appraising Alternative Theories of Jurisprudence
On Your Own	D. A Review of Past and Present Influential Approaches (Marxist Legal Theory, Law and Economics, and Critical Legal Studies)
Fall Break, October 17-19, 2011	
October 24	III. Exploring the Rule of Law
	A. Controlling Leviathan: The Rule of Law and the Judicial Decision Process i. “The Case of the Speluncean Explorers” ii. The Neutral Principles Debate iii. Decision Theory: Judicial Decision-making and the Doctrine of Precedence
October 31	B. Controlling Leviathan: The Rule of Law and Theories of Constitutional Interpretation Guest Participant: Professor John Harrison UVA School of Law
November 7	C. Controlling Leviathan: Policing the Criminal Justice System Guest Participant: <i>RESCHEDULED TO NOV. 28</i> Shawn Armbrust, Executive Director Mid-Atlantic Innocence Project http://www.exonerate.org/ http://www.innocenceproject.org
November 14	IV. Strengthening the Rule of Law: Toward Reform and Dissemination
	A. Controlling Leviathan: The National Debt Guest Participant: Chris Edwards, Director of Tax Policy Studies (invited) Cato Institute
November 21	B. Controlling Leviathan: Case Study of Campaign Finance Reform Guest Participant: Bradley Smith Capital University Law School

*** Thanksgiving Break – November 23-25 ***

Date	Topic
November 28	<p>C. Global Constitutionalism and the Rule of Law</p> <p>Guest Participant: Professor A.E. Dick Howard UVA School of Law</p> <p style="text-align: right;"><i>RESCHEDULED TO NOVEMBER 7</i></p>
December 5	<p>D. Controlling Leviathan: An Overview of Proposed Reforms and Case Studies of Social Security Reform and Healthcare Reform</p> <p>Guest Participant: Peter Ferrara Director of the Social Security Project, Free Enterprise Fund Senior Fellow, Institute for Policy Innovation</p> <ul style="list-style-type: none">i. Overview<ul style="list-style-type: none">- Reforms Related to the Modalities of Government Action (taxation and spending, regulation, takings, and creation of civil and criminal law, among other actions)- Reforms Related to the Modalities of Government Process (constitutional structure, interpretation and amendment; legislative process; executive and regulatory processes; judicial process; and voting processes)ii. Case Study of Social Security Reformiii. Case Study of the Balanced Budget Amendmentiv. Case Study of Healthcare Reform under Barack Obamav. Case Study of Term Limitsvi. Katrina and Emergency Management Reformvii. The Sub-prime Mortgage Crisis

NOTE: The Seminar may also meet from time to time during the term with lecturers visiting at the Law School.