



## **LIBERALISM AND RELIGION IN THE NATIONAL CONSTITUTION Second semester 2022**

**TEACHERS:** Martin Diego Farrell ([mdfarrell@fibertel.com.ar](mailto:mdfarrell@fibertel.com.ar)) Diego Botana ([dbotana@allende.com](mailto:dbotana@allende.com))

*The deadline to leave a course without sanction is the Friday before the start of the calendar of shares. Then it will be allowed to leave a course. In the event that the student stops attending a course (i.e. leaves it) after the deadline to unsubscribe, it will correspond to him/her.*

*a deadline.*

**Learning objectives:** To provide students with knowledge of fundamental issues related to the relationship between law, political ideologies and religion, and their influence on the National Constitution. The teaching will be given showing opposing perspectives that allow the intervention of the students, objecting, inquiring, or taking positions. This system will promote the active intervention of students in classes.

**Contents:** These are central issues to Argentine constitutional law and the theory of the State. As the program shows, the course will address historical elements linked to the relationship between religion and power. In particular, the most relevant conflicts between the Catholic Church and the Western monarchies will be evaluated, in order to begin to discover the path by which religion and state were disconnected in the West. The political effects of the Protestant Reformation in Europe, the creation of the Church of England and the concept of "national churches" or controlled churches, as in the cases of France and Spain, will be reviewed. In parallel, the historical origins of liberalism as a philosophical system that generated a profound impact on the theistic and religious visions of modernity will be addressed. The impact of the French and American Revolutions on the relationship between religion and state will be reviewed. With this historical context, the constitutional debates related to the relationship between Church and State, both of the Constitution of 1853, and of the previous projects, will be analyzed. It will deal with the special position of religion in legal systems and the eventual sovereignty of the State over religion. It will also study the case of the Constitución, Liberalismo Y Religión

freedom of religion and its evolution; and the emergence of the right not to believe, the role played by religion in the identity of the individual, the degree of tolerance that the State should promote, the limits of conscientious objection, as well as the fundamental distinctions between public reasons and religious conscience.

**Modality of work:** The active participation of the students in the classes is expected, in permanent dialogue with the teachers. The presence of students is also expected in a very high percentage of the classes, which may not in any case be less than 75%.

**Evaluation mechanism:** Students must submit a written work at the end of the course, of an extension of no more than 20 pages (double-spaced), which delves into any of the topics seen in class.

**Hours of consultation:** It is suggested to coordinate the interview with the teachers in advance, by email, in order to allow the orderly development of the consultations.

***Plagiarism and intellectual dishonesty***

The University of San Andrés demands a strict adherence to the canons of intellectual honesty. The existence of plagiarism constitutes a serious dishonor, unbecoming of university life. Its configuration not only occurs with the existence of a literal copy in face-to-face exams, but whenever an abusive use of the intellectual effort of others is noticed. The Code of Ethics of the University considers punishable conduct the appropriation of the intellectual work of others, so it is recommended to adhere to the generally accepted academic formats (MLA, APA, Chicago, etc.) for citations and references bibliographies (including online formats). The alleged violation of these rules may lead to the formation of an Ethics Tribunal which, depending on the seriousness of the offence, may recommend disciplinary sanctions ranging from warning to expulsion. In case of doubt consult the guide that is available at the University Writing Center.

**PROGRAM**

**-I-**

Religion and power in history. The Wars of Religion and the Beginning of Secularism.

Liberalism as an attempt to harmonize social life without wars Readings: Thesis Diego Botana: pags. 16-18

**-II-**

The problem of religion and the State. The understanding of the Truth. The origin of the union between religion and the state in the West. The Pope vs. the Sovereigns

Liberalism and theories of truth. Correspondence and coherence. The concepts of autonomy, paternalism and perfectionism.

Readings: Thesis Diego Botana: pp. 19-44 **-III-**

European traditions after the Protestant and Anglican Reforms: Sovereigns as heads of their churches; and Catholic kingdoms, with control of their Churches. The Glorious Revolution.

Liberal seeds in the Protestant world. Hobbes, Locke and the idea of Tolerance. Jeremy Bentham.

Readings

Thesis Diego Botana: pp. 45-54/89-98

**-IV-**

The French Gallican model, the patronage in Spain and reformed Europe. The French Revolution.

Adam Smith and Human Action

Readings

Thesis Diego Botana: pags. 55-77

*Church and Revolution: Pius VI before the declaration of the rights of man and of the citizen of 1789*, by Rafael D. García Pérez. UNAM 2015.

**-V- (3/9/21)**

Debates in the Río de la Plata. The Constitution of Cadiz. Debates in the United States and the liberal influence of the 1776 Declaration of Independence and the 1798 Constitution.

John Stuart Mill and Liberalism in the Nineteenth Century. Readings Thesis Diego Botana: pags. 78-81/97-108/112-128

**-VI- (10/9/21)**

Argentina until 1853. A Catholic nation. The influence of the Gallicans and the Spanish control system in the debates of the national organization.

The idea of the Liberal State. The principle of Harm. Readings Thesis Diego Botana: pags. 129-138.

**-VII-**

Liberals in the nineteenth century in Argentina. Alberdi, Gutierrez and Gorostiaga. The eclectic system written by the founding fathers. Freedom of worship as an instrumental right. The Argentine Board of Trustees. The problem of art. 2.

Variants of liberalism. Autonomy and neutrality. Readings Thesis Diego Botana: pags. 139-171[ ]

**-VIII-**

Liberal debates in the nineteenth century in Argentina. Education and marriage. The constitutional problem.

The debate between moral facts and moral subjectivism. ReadingsThesis Diego Botana: pags. 172-201.

**-IX-**

Argentina in the twentieth century. The "Catholic nation" and the withdrawal from the scene of liberal ideas. The revolution of 1943. Peronism and the reform of 1947.

Evolutions of liberalism in the twentieth century. The idea of "egalitarian liberalism". Isaiah Berlin and positive and negative freedom.

ReadingsThesis Diego Botana: pags. 207-241 **-X- (29/10/21)**

The Concordat with the Holy See signed in 1966. Liberals remain on the defensive. The Catholic influence in the second half of the twentieth century.

The Liberalism of John Rawls. Theory of Justice and Political Liberalism. The problems of "overlapping consensus".

Readings

Thesis Diego Botana: pags. 242-259.

Law No. 17.032 (1966)

*The Constitutional Transcendence of the Concordat or Agreement with the Holy See and its Meaning*, by Jorge R. Vanossi, ED Constitucional, T° 2017, p 589 (19-9-17)

**-XI-**

Liberal Argentina from 1983. The Supreme Court and its "liberal" reading of the National Constitution. Relevant cases. The return to perfectionism.

The Council for the Consolidation of Democracy. The proposal for a liberal constitutional text.

ReadingsCSJN Failure "Sejean c/Sacks de Sejean"CSJN Ruling "Argentine Homosexual Community" **-XII- (12/11/21)**

Tensions between religion and liberal status. Conscientious objection. Is it possible for the state to be neutral in religious matters?

Ronald Dworkin and minimal secularism. ReadingsTo **define-XIII- (19/11/21)**

Final debate. The challenges of the democratic republic and religions. A look at other theocratic systems. Debate and argumentation in the public sphere. Public reasons and private conscience.

#### Readings

- - Case of Lautsi et al. v. Italy – European Court of Human Rights
- - *Religious freedom in Islam: a global Landscape*, by Daniel Philpott, Journal of

Law, Religion & State 2, (2013) 3-21

**DEADLINE FOR SUBMISSION OF THE FINAL PROJECT: DECEMBER 7**