

The works of the great writers of the past are very beautiful even from without. And yet their visible beauty is sheer ugliness, compared with the beauty of those hidden treasures which disclose themselves only after very long, never easy, but always pleasant work. This always difficult but always pleasant work is, I believe, what the philosophers had in mind when they recommended education. Education, they felt, is the only answer to the always pressing question, to *the* political question, of how to reconcile order which is not oppression with freedom which is not license.

-- Leo Strauss, "Persecution and the Art of Writing"

**Political Science 7991/7903 (Summer A, 2018)**  
**Freedom of Speech**

It is one of the paradoxes of free speech that the case in its favor ought to begin with the case against it—first, because, as its advocates insist, truth is uncovered dialectically, and second, because those who can't listen to the case against it will never be its true friends. In this seminar, we will encounter the case against and the case in favor of free speech, will examine the jurisprudence of the United States Supreme Court that has defined free speech in the course of the past century, and will explore salient issues concerning free speech in our day.

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**Office Hours:** after class, and by appointment

**Course requirements:**

- Attendance at all sessions and participation in discussions [unexcused absence penalized]
- Three 500-word essays on the readings, due at the beginning of class (one or two due 6/7, 6/12, or 6/14) (remaining one or two due 7/3, 7/5, 7/10, or 7/12) [20%]
- Three one- or two-page study briefs, one per day, on 6/19, 6/21, 6/26, or 6/28) [20%]
- Research OR Review presentation (7/17 or 7/19) [10%]
- Research paper (15-18 pages/ 4500-5500 words) on an approved topic (due 7/26), OR Take-Home Final Exam, three essays (5-6 pages/ 1500-2000 words each) [50%]

**Books for purchase:**

Thomas R. West & Grace Starry West, trans., *Four Texts on Socrates* (Cornell) [ISBN 9780801485749]

John Milton, *Areopagitica and other Political Writings* (Liberty Fund) [ISBN 9780865971974]

John Stuart Mill, *On Liberty* (Dover) [ISBN 9780486421308]

Keith Whittington, *Speak Freely: Why Universities Must Defend Free Speech* (Princeton) [ISBN 9780691181608]

Timothy Garton Ash, *Free Speech: Ten Principles for a Connected World* (Yale) [ISBN 9780300226942]

Syllabus:

## I. THE POLITICAL THEORY OF FREE SPEECH

- Tues., 6/5 The Classical Approach: Against Free Speech?  
 Plato, *Apology of Socrates*  
 Leo Strauss, "Persecution and the Art of Writing" *Social Research* 8  
 (1941): 488-504
- Thurs., 6/7 The Modern Proposition: For Free Speech  
 John Milton, *Areopagitica*  
 John Trenchard & Thomas Gordon, *Cato's Letters*, No. 15 ("Of  
 Freedom of Speech") & No. 32 ("Reflections upon Libelling")  
 "[A Brief Narrative of the Case and Tryal of John Peter Zenger](#)" (1736)
- Tues., 6/12 The Early American Republic  
 Thomas Jefferson, *Notes on the State of Virginia*, Query 17  
 James Madison, "Virginia Report of 1800"  
 Alexander Hamilton, argument in *People v. Croswell*, in Julius Goebel,  
 Jr., ed., *The Law Practice of Alexander Hamilton*, pp. 808-833  
 Tocqueville, *Democracy in America*:  
 v.1, pt.2, ch.3 ("On the Freedom of the Press in the United States")  
 v.1, pt.2, ch.7 (pages on "The Power [of] the Majority...over Thought")  
 v.2, pt.2, ch.6 ("On the Relation between Associations & Newspapers")  
 John C. Calhoun, [Report "...to Prevent the Circulation of Incendiary  
 Abolition Petitions through the Mail," February 4, 1836](#)  
 John Quincy Adams, [Letter to the Inhabitants of the 12<sup>th</sup> Congressional  
 District of Massachusetts, March 3, 1837](#)  
 Frederick Douglass, [A Plea for Freedom of Speech in Boston, December 9,  
 1860](#)
- Thurs., 6/14 Modern Liberalism and its Critics  
 John Stuart Mill, *On Liberty*, ch. 1-4  
 Willmoore Kendall, "The 'Open Society' and its Fallacies," *American  
 Political Science Review* 54 (1960): 972-979  
 Herbert Marcuse, "Repressive Tolerance," in *A Critique of Pure  
 Tolerance* (Beacon Press, 1965)

## II. THE JURISPRUDENCE OF FREE SPEECH

- Tues., 6/19 The Supreme Court Discovers the First Amendment  
 Cases [edited versions will be supplied when possible]:  
*Mutual Film Corp. v. Industrial Comm'n*, 236 U. S. 230 (1915)  
*Schenck v. United States*, 249 U.S. 47 (1919)  
*Abrams v. United States*, 250 U.S. 211 (1919)  
*Gitlow v. New York*, 268 U.S. 652 (1925) [over]

*Whitney v. California*, 274 U.S. 357 (1927)  
*Stromberg v. California*, 283 U.S. 359 (1931)  
*Near v. Minnesota*, 283 U.S. 697 (1931)  
*Lovell v. Griffin*, 303 U.S. 444 (1938)  
*Cantwell v. Connecticut*, 310 U.S. 296 (1940)  
*Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)  
*West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)  
*Terminiello v. Chicago*, 337 U.S. 1 (1949)  
 Alexander Meiklejohn, *Free Speech and its Relation to Self-Government*,  
 ch. 1 (“The Rulers and the Ruled”)  
 Christopher Wolfe, *The Rise of Modern Judicial Review*, ch. 8 (“Freedom  
 of Speech in the Transitional Era”)

#### Thurs., 6/21 The Supreme Court Redefines Free Speech

Cases [edited versions will be supplied when possible]:  
*Dennis v. United States*, 341 U.S. 494 (1951)  
*Beauharnais v. Illinois*, 343 U.S. 250 (1952)  
*Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952)  
*Yates v. United States*, 354 U.S. 298 (1957)  
*Roth v. United States*, 354 U.S. 476 (1957)  
*Edwards v. South Carolina*, 372 U.S. 229 (1963)  
*New York Times v. Sullivan*, 376 U.S. 254 (1964)  
*United States v. O'Brien*, 391 U.S. 367 (1968)  
*Stanley v. Georgia*, 394 U.S. 557 (1969)  
*Watts v. United States*, 394 U.S. 705 (1969)  
*Brandenburg v. Ohio*, 395 U.S. 444 (1969)  
*Cohen v. California*, 403 U.S. 15 (1971)  
 Harry Jaffa, *Equality and Liberty*, ch. 8 (“On the Nature of Civil and  
 Religious Liberty”)  
 Walter Berns, *In Defense of Liberal Democracy*, ch. 8 (“Beyond the  
 (Garbage) Pale: Democracy, Censorship and the Arts”)

#### Tues., 6/26 Constitutional Relativism in the Media Age

Cases [edited versions will be supplied when possible]:  
*New York Times v. United States*, 403 U.S. 713 (1971)  
*Branzburg v. Hayes*, 408 U.S. 665 (1972)  
*Kleindienst v. Mandel*, 408 U.S. 753 (1972)  
*Miller v. California*, 413 U.S. 15 (1973)  
*Gertz v. Welch*, 418 U.S. 323 (1974)  
*Buckley v. Valeo*, 424 U.S. 1 (1976)  
*FCC v. Pacifica*, 438 U.S. 726 (1978)  
*Central Hudson Gas & Elec. v. Public Service Comm'n*, 447 U.S. 557 (1980)  
*Hustler Magazine v. Falwell*, 485 U.S. 46 (1988)  
*Texas v. Johnson*, 491 U.S. 397 (1989)  
*RAV v. City of St. Paul*, 505 U.S. 377 (1992)  
*Turner Broadcasting System v. FCC*, 512 U.S. 622 (1994) [over]

Harvey Mansfield, *America's Constitutional Soul*, ch. 12 ("The Media World and Constitutional Democracy")  
 Catharine MacKinnon, *Only Words*, ch. 3 ("Equality and Speech")

Thurs., 6/28 The Internet Age and the Polarized Polity

Cases [edited versions will be supplied when possible]:

*Reno v. ACLU*, 521 U.S. 844 (1997)

*Ashcroft v. ACLU*, 542 U.S. 656 (2004)

*Virginia v. Black*, 538 U.S. 343 (2003)

*Rumsfeld v. F.A.I.R.*, 547 U.S. 47 (2006)

*Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)

*Christian Legal Society Chap. of Hastings v. Martinez*, 561 U.S. 661 (2010)

*Snyder v. Phelps*, 562 U.S. 443 (2011)

*Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011)

*United States v. Alvarez*, 567 U.S. 709 (2012)

*McCullen v. Coakley*, 573 U.S. \_\_\_\_ (2014)

*Elonis v. United States* 575 U.S. \_\_\_\_ (2015)

*Matal v. Tam*, \_\_\_\_ U.S. \_\_\_\_ (2017)

### III. CONTEMPORARY FREE SPEECH ISSUES

Tues., 7/3 The Global Web

Timothy Garton Ash, *Free Speech for a Connected World* (Part I; Part II, ch. 1-4) [pp. 1-206]

Thurs., 7/5 *Free Speech for a Connected World* (Part II, ch. 5-10, "Challenges") [pp. 207-381]

Tues., 7/10 Campus Speech

Keith Whittington, *Speak Freely: Why Universities Must Defend Free Speech*

Thurs., 7/12

Excerpts from Donald Alexander Downs and Chris W. Surprenant, eds., *The Value and Limits of Academic Speech: Philosophical, Political, and Legal Perspectives*

### IV. WORKSHOP ON PAPERS / REVIEW FOR FINAL

Tues., 7/17 Student presentations

Thurs., 7/19 Student presentations