Political Science 311, THE FIRST AMENDMENT  

SYLLABUS

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This course considers a number of historical, philosophical, political, and legal questions concerning the First Amendment. Among these are the following: How did the Framers understand freedom of speech, the press, and religion? What political principles or values underlie the right to freedom of expression, and can one of these be said to be primary? If some limitations on expression are necessary, what sort of limitations are compatible with the political theory underlying the First Amendment? Does violent pornography discriminate against women? Should hate speech be protected even when it causes emotional harm? Does religion have any place in public schools? How should the Religion Clauses be interpreted in a multicultural society? What are some of the implications for First Amendment jurisprudence of liberal or communitarian convictions about politics and human nature?

Readings:

The following required texts are available at the bookstore:

Steven H. Shiffrin and Jesse H. Choper, *The First Amendment: Cases--Comments--Questions* (2nd ed.)

John H. Garvey and Frederick Schauer, *The First Amendment: A Reader* (2nd ed.)

Donald Alexander Downs, *Nazis in Skokie: Freedom, Community, and the First Amendment*

All cases listed in the syllabus which are followed by a page number are found in the Shiffrin & Choper casebook. Articles in the Garvey & Schauer reader are listed by the author's name, followed by the page number in that book. You should read the complete article or case (i.e., "complete" as it appears in the book--most of these are actually excerpts) unless otherwise noted. Additional required readings (marked "R" in the syllabus) are on closed reserve at the library.

Course Requirements:

Oral report and paper 20%

Serve as discussant 5%

Take-home midterm (due Feb. 16) 20%

Final paper (due March 9) 35%

1-hr. final exam (March 16) 20%

Participation:

Discussion is central to this seminar. Active participation, based on careful reading of the assigned texts, is expected. Briefing the cases, especially the major ones, will help enormously in preparing for class as well as exams. Your grade may be helped or hurt by your involvement in class discussion or lack thereof.

Oral Reports:
All class members are required to do an oral presentation on one article or case during the course of the term. Readings available for these presentations appear in the syllabus with an asterisk. Your task will be to describe the argument made in the reading, relate it to other course readings—particularly those assigned for the same day—and to judge its merits. All class members should have read the article/case, as these are part of the required readings, and should have questions for the presenter after the report. However, one person will be designated as the "discussant" and will take the lead in the discussion. Each student will serve as the "discussant" once during the term.

The presentation should take about 15 minutes or so, and must be written up as a paper which will be turned in the day you give your talk. The paper should be about 5-7 pages. In order to give the discussant a chance to come prepared with questions, the presenter should get him or her a copy of the paper a day or two before. (Exactly when this will be should be worked out by the two of you.) Informal presentations rather than a straight reading of the paper are encouraged; however, if you're more comfortable reading, or you fear you won't be clear enough if you don't read, reading is fine.

See the following dates for oral reports: Jan. 19, 26, & 28; Feb. 2, 9, 23, & 25; and March 2 (2 articles) & 4.

Exams:

There will be a take-home midterm due Feb. 16. The final exam, on March 16, will be a one-hour exam covering only the second part of the course.

Paper:

The seminar paper is due on the last day of class, March 9. Details forthcoming.

Office Hours: to be announced shortly

Feel free to come see me in my office should you have any questions or difficulties with the course, or if you just want to pursue a topic we've touched on in class or in the readings. I'll be glad to set up an appointment if you can't make my regular office hours. My extension is 4123 and my e-mail address is scohen@carleton.edu

Tu Jan. 5 Introduction

FREEDOM OF SPEECH AND THE PRESS

Th Jan. 7 History

    The Constitution of the United States (R)

    Daniel A. Farber, *The First Amendment*, 1-17 (R)

    Blasi, 2; Levy, 8; Anderson, 14.


Tu Jan. 12 Philosophical Foundations

    Emerson, 47; Mill, 58; Schauer, 65; MacKinnon, 72; Baker, 82; Redish, 86; Bork, 94; Meiklejohn, 101; Shiffrin, 132; Bollinger, 137; Strauss, 142; Smith, 146.

Th Jan. 14 First Amendment Doctrine

    Cass, 161; Farber and Frickey, 177; Garvey, 179; Schauer, 195; Nimmer, 204; Schauer, 220.
Tu Jan. 19 Content Regulation


Karst, 231; Stone, 234; Greenawalt, 245.

*Michael Sandel, Democracy's Discontent, 3-8 and 71-90 (R)

(see reserve list for Political Science 122-2)

Th Jan. 21 Prior Restraint


Blasi, 279; Redish, 288.

Tu Jan. 26 Advocacy of Illegal Action


*Greenawalt, 36.

Th Jan. 28 Defamation


Kalven, 103; Schauer, 153; LeBel, 318; Leval, 329; Ingber, 333; Zimmerman, 335.

Tu Feb. 2 Obscenity and Pornography


Reno v. ACLU (R)

Kalven, 344; Schauer, 348; MacKinnon, 349-top of 351 only;

Michelman, 359; Schauer, bottom of 367-369 only;

Gey, 369.

Th Feb. 4 Campaign Finance; Public Forum;

Freedom of Association

Buckley v. Valeo, 578.

Schneider v. NJ, 388; Cox v. NH, 389; Frisby v. Schultz, 411; Madsen v. Women's Health Center, 415.

reserve article to be announced

Tu Feb. 9 Hate Speech

Beauharnais v. Illinois, 59; Chaplinsky v. NH, 151;


Amar, 404.

*Charles R. Lawrence III, "If He Hollers Let Him Go': Regulating Racist Speech On Campus," in Mari J. Matsuda et al., Words That Wound (R)

Th Feb. 11 Hate Speech, cont'd.

Collin v. Smith, 196.

Nazis in Skokie, Preface, chs. 1-3

Tu Feb. 16 Hate Speech, cont'd.

Nazis in Skokie, chs. 4-6

**TAKE-HOME MIDTERM DUE**

Th Feb. 18 Hate Speech, cont'd.

Nazis in Skokie, chs. 7-9

FREEDOM OF RELIGION

Tu Feb. 23 Philosophical Foundations


Michael W. McConnell, "Free Exercise As the Framers Understood It," in Eugene W. Hickok, Jr., ed., The Bill of Rights (R)

Howe, 436; Garvey, 587.

Reynolds v. U.S., 695; Cantwell v. CT, 695; West Virginia Board of Education v. Barnette, 696.

Wisconsin v. Yoder (R)

Th Feb. 25 Free Exercise


Tu March 2 Establishment Clause and Public Schools

Engel v. Vitale (R)

Lupu, 445; Laycock, 460; Johnson, 492; Paulsen, 503; *Bellah, 534; *Note, 540; Dellinger, 544; Smith, 546; Goldberg, 555; Carter, 558.

Th March 4 Accommodation of Religion

Board of Ed. of Kiryas Joel v. Grumet (R)

Agostini v. Felton (R)


McConnell, 472; Tushnet, 478.

Tu March 9 Establishment Clause

Board of Ed. v. Mergens, 639; Zobrest v. Catalina Foothills School District, 657; Rosenberger v. University of VA, 661;

Allegheny Co. v. ACLU, 670; Lynch v. Donnelly, 685;

Lee v. Weisman, 686; Capitol Square v. Pinette, 689.

Smith, 496; Sherry, 621; Choper, 625; Greene, 630.

PAPER DUE

Tu March 16

FINAL EXAM (time to be announced)