

Spring 2011

## Liberal Democracy and the First Amendment

Political Science 4774

David Leitch

### Course outline:

This course is designed to introduce students to some of the core theoretical and philosophical underpinnings of case law surrounding the First Amendment to the US Constitution. It is divided into X main sections. The first outlines some of the political theory literature on liberal democracy and legal theory. The second addresses the relationship between speech and violence, both during and outside of wartime. The third takes up the limits to the press's freedom of speech. We then examine obscenity, religious expression, and the freedom of association.

### Course texts:

Stone et al, *The First Amendment*, third edition (Aspen Law and Business) 2008

Additional texts will be placed on the course's Blackboard site

### Assignments:

Participation (note that participation is active, not passive) - 25%

Weekly summaries - 25%

Midterm test - 25% (Week 8)

Final paper - 25%

### Readings:

#### Week One - Liberal democracy

John Stuart Mill, *On Liberty*, Chapter Two

Immanuel Kant, selection from *Introduction to the Grounding of the Metaphysics of Morals*

Bernard William, "The Marketplace of Ideas"

#### Week Two - Constitutionalism and the Court

John Locke, *Second Treatise of Government*, Chapter Nine and "A Letter Concerning Toleration"

Publius (Alexander Hamilton) - "Federalist Paper #78"

*Marbury v Madison*

John Rawls, *Political Liberalism*, Lecture VI, §6

#### Week Three - Legal theory

Brian Bix, "Legal Positivism"

Thomas Myles and Cass Sunstein, "The New Legal Realism"

Ronald Dworkin, "Law as Interpretation"

Stanley Fish, "Working on the Chain Gang"

Week Four – Speech in wartime

Alien and Sedition Acts

Geoffrey Stone, *Perilous Times*

*Schaefer v US*

*Gravel v US*

*Tinker v Des Moines Independent Community School District*

Week Five – Dangerous speech

*Schenck v US*

*Debs v US*

*Abrams v US*

*Yates v US*

*Dennis v US*

*Brandenberg v Ohio*

Ronald Collins and David M. Skover, "What is War? Reflections on Free Speech in  
Wartime"

Robert Bork, "Neutral Principles"

Week Six – Fighting words and hate speech

*Terminiello v Chicago*

*Cantwell v Connecticut*

*Feine v New York*

*Chaplinsky v New Hampshire*

*National Socialist Party of America v Skokie*

*R.A.V v St. Paul*

*Virginia v Black*

Week Seven – Freedom of the press

*New York Times v US*

*US v Washington Post*

*Hustler v Falwell*

*Bank Julius Baer et al v Wikileaks*

Week Eight – The Pentagon Papers

Ellsberg, "The Pentagon Papers"

In-class movie, "The Pentagon Papers"

Midterm

Week Nine – False statements of fact

*New York Times v Sullivan*

*Curtis Publishing Co. v Sullivan*

*Gertz v Robert Welch, Inc.*

*Dunn and Bradstreet, Inc. v Greenmoss Builders*

Week Ten – Obscenity

*Cohen v California*

*Erznoznik v Jacksonville*

*FCC v Pacifica*

*Miller v California*

*Paris Adult Theater v Slaton*

Week Eleven

**Spring Break**

Week Twelve – Obscenity (cont'd)

*CBS v FCC*

In-class movie, “Robert Mapplethorpe”

Week Thirteen – Religious freedom

*Lee v Weisman*

*Lynch v Donnelly*

*Mueller v Allen*

*Zelman v Simmons-Harris*

*Reynolds v US*

*Braunfeld v Brown*

Week Fourteen – Religious freedom (cont'd)

*Sherbert v Verner*

*Wisconsin v Yoder*

*Mozert v Hawkins County Board of Education*

*Stanley Fish*

Week Fifteen – Freedom of association

*NAACP v Alabama*

*Roberts v Jaycees*

*Hurley v Irish-American Gay, Lesbian, and Bisexual Group of Boston*  
*Boy Scouts of America v Dale*  
*Log Cabin Republicans v US*  
*Citizens United v US*

Week Sixteen – Review for final