

POLS BC 3254 Lecture Course on First Amendment Values

Prof. Paula Franzese

Office Hours: Tuesdays, 6:00 - 7:00pm

Paula.franzese@shu.edu

Course Description:

This course examines contemporary applications of the first amendment rights of speech and freedom of the press. Analysis of landmark U.S. Supreme Court rulings and scholarly commentary will provide the basis for exploring the theoretical antecedents as well as contemporary applications of first amendment values and many issues related to the importance of a free and open marketplace of ideas. Topics explored include freedom of the press, libel law, ideological insularity, "fake news," the effects of social media, media monopolies, the commodification of information, the role of the academy, campaign finance, and hate speech.

Requirements Students must attend all classes. I understand that there may be occasions where illness or emergencies will keep you from attending class. Please notify me of such as soon as possible. Class participation is required. You must be prepared to discuss the readings during each class session and discussion sections.

The take-home midterm exam will count for 45% of the overall grade, the take-home final will count for 45% of the overall grade and class participation for 10% of the final grade.

Laptops

Please do not use your laptops or cell phones during class. If you are interested in the pedagogical reasons for the ban, see Kevin Yamamoto, *Banning Laptops in the Classroom*, 7 J. LEG. EDUC. 77 (2007). If you have any questions or require an accommodation for medical reasons, please see me.

Learning Objectives:

This course will provide a working knowledge of the legal method of inquiry as it pertains to consideration of first amendment values. Students will learn to:

1. Read leading U.S. Supreme Court cases on first amendment core precepts.
2. Identify the various constitutional standards of judicial review.
3. Apply legal and analytical constructs to contemporary issues of free speech and association, while critically examining historical and theoretical underpinnings of libel law, hate speech, freedom of the press, virtual speech, political discourse, obscenity, bias in the media and free speech on campus.

4. Evaluate the merits and shortcomings of the major theoretical debates within the first amendment narrative.
5. Analyze and assess contemporary scholarly and journalistic writings on free speech values by critically examining their strengths, weaknesses and applicable counterpoints.

Grading: Grades will be calculated as follows:

Class participation: 10%

Take-home Midterm Exam: 45%

Take-home Final Exam: 45%

Discussion Sections:

Discussion sections will meet on Tuesdays from 6:10pm-7:00pm on the following dates:

January 22nd

February 5th

February 19th

March 5th

March 26th

April 9th

April 23rd

Texts (all are available on reserve at the Barnard library, Amazon and at the Columbia University bookstore). Only Rauch, *Kindly Inquisitors*, Waldron, *The Harm in Hate Speech*, and Mayer, *Dark Money*, will be read in their entirety. Otherwise, the assigned excerpts from the texts below will be posted on Courseworks.

1. JONATHAN RAUCH, KINDLY INQUISITORS: THE NEW ATTACKS ON FREE THOUGHT
2. JAMIESON & WALDMAN, THE PRESS EFFECT
3. RICH, THE GREATEST STORY EVER SOLD
4. CHEMERINSKY & GILLMAN, FREE SPEECH ON CAMPUS
5. SCHWARTZ, POLITICAL CORRECTNESS AND THE DESTRUCTION OF SOCIAL ORDER
6. JEREMY WALDRON, THE HARM IN HATE SPEECH
7. TIMOTHY GARTON ASH, FREE SPEECH: TEN PRINCIPLES FOR A CONNECTED WORLD
8. TIM WU, THE ATTENTION MERCHANTS: THE EPIC SCRAMBLE TO GET INSIDE OUR HEADS
9. JANE MAYER, DARK MONEY
10. JAMES HAMILTON, ALL THE NEWS THAT'S FIT TO SELL: HOW THE MARKET TRANSFORMS INFORMATION INTO NEWS

Teaching Assistants:

Malina Welman (Columbia Law School); mmw2181@columbia.edu

Oscar De Los Santos (Union Theological Seminary); od2230@columbia.edu

Readings and Class Schedule

Week One: Jan. 22rd, First Amendment jurisprudence: relevant legal antecedents

- Karl Vick, *The Guardians and the War on Truth*, <http://time.com/person-of-the-year-2018-the-guardians/>.
- Excerpts from Kakutani, *The Death of Truth*. Posted on Courseworks.
- Cornell Legal Information Institute. “First Amendment.” Please read through the “Free Speech” and “Free Press” sections. Available at: https://www.law.cornell.edu/constitution/first_amendment
(Discussion § meets after class)

Week Two: Jan. 29th: The appropriate aims of the marketplace of ideas

- Rauch, *Kindly Inquisitors: The New Attacks on Free Thought*. Please read this book in its entirety.

Week Three: Feb. 5th: The harm in hate speech

- Waldron, *The Harm in Hate Speech*. Please read this book in its entirety. Access available through CLIO: <https://ebookcentral.proquest.com/lib/columbia/detail.action?docID=3301269>.
- *Snyder v. Phelps* (edited version available on Courseworks)
(Discussion § meets after class)

Week Four: Feb. 12th: Free Speech on Campus

- **Excerpts from** Chemerinsky & Gillman, *Free Speech on Campus* and texts posted on Courseworks.
- *Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (edited version available on Courseworks)
- Stephen Ceci and Wendy Williams, *Who Decides What is Acceptable Speech on Campus? Why Restricting Free Speech is Not the Answer* (posted on Courseworks)
- Erwin Chemerinsky, *Free Speech on Campus* (posted on Courseworks)
- Thomas Healy, *Who’s Afraid of Free Speech* (posted on Courseworks and available online: <https://knightcolumbia.org/news/whos-afraid-free-speech>)
- Roger Kimball, *Don’t Cry “Free Speech”* (response to Professor Healy’s article; posted on Courseworks and available online: <https://knightcolumbia.org/news/dont-cry-free-speech>)

Week Five: Feb. 19th: Virtual forms of engagement and ideological insularity

- **Excerpts from** Schwartz, *Political Correctness and the Destruction of Social Order*., *Chronicling the Rise of the Pristine Self* (posted on Courseworks), and Dennis Chong & Morris Levy, *Competing Norms of Free Expression and Political Tolerance* (available on Courseworks)
(Discussion § meets after class)

Week Six: Feb. 26th: Contemporary applications of the harms in hate speech and free speech on campus: guest speakers

- Karen Xiz. “Barnard bans CU student who spewed white supremacist rhetoric outside Butler from campus.” Available at: <https://www.columbiaspectator.com/news/2018/12/12/barnard-bans-cu-student-who-spewed-white-supremacist-rhetoric-outside-butler-from-campus-2/> *Warning: this article contains racism and involves Barnard and Columbia students*
- Columbia Spectator. “Reject BDS and keep Barnard an inclusive environment “ Available at <https://www.columbiaspectator.com/opinion/2018/04/11/reject-bds-and-keep-barnard-an-inclusive-environment/>
- Columbia Spectator. “Bold, beautiful, BDS: The moral case for saying ‘Yes to Divest’” Available at: <https://www.columbiaspectator.com/opinion/2018/04/13/bold-beautiful-bds-the-moral-case-for-saying-yes-to-divest/>

Week Seven: March 5th: The centrality of a free and responsible press in a participatory democracy: government censorship, “fake news,” bots, the commodification of information and the rise of multi-media conglomerates.

- **Readings posted on Courseworks:** excerpts from Hamilton, *All the News That’s Fit to Sell: How the Market Transforms Information Into News*
- Shankar Vedantam, *Fake News: An Origin Story*, <https://n.pr/2Mnmaca>.
- David Roberts, *Why Is This Happening? Assessing America’s Information Crisis with David Roberts*, <https://nbcnews.to/2QNbE3B>.
- Stephanie Busari x TedTalk: How Fake News Does Real Harm, <https://bit.ly/2T1Xidn>.

Take-home midterm due in class at 4:10pm and on Courseworks

(Discussion § meets after class)

Week Eight: March 12th: The ways that journalism frames facts and tells stories

- **Excerpts from** Jamieson & Waldman, *The Press Effect: Politicians, Journalists, and the Stories that Shape the Political World* (posted on Courseworks)
- **Journalists’ role in the #MeToo movement:** Sadie Graham, *#MeToo, a Movement Reliant on Reporting, Reveals the Limits of Journalism*, <https://bit.ly/2QGazM0>.
- **Racism and media bias:** Kirsten West Savali, “Throw Away the Script: How Media Bias Is Killing Black America,” <https://www.theroot.com/throw-away-the-script-how-media-bias-is-killing-black-1790860024>

Week Nine: March 26th: The ways that government frames facts and tells stories

- **Excerpts from** Rich, *The Greatest Story Ever Sold: The Decline and Fall of Truth from 9/11 to Katrina*, posted on Courseworks
- David Cole, “The Supreme Court’s First Great Trump Test: the Muslim Ban” Available at: <https://www.nybooks.com/daily/2018/04/23/the-supreme-courts-first-great-trump-test-the-muslim-ban/>

(Discussion § meets after class)

Week Ten: April 2nd: Libel and slander/prior restraint doctrine/ leading U.S. Supreme Court precedent

- Cases posted on Courseworks: *NY Times v. Sullivan*; *Gertz v. Welch*; *Near v. Minnesota*
- In advance of class, watch the film *Denial* (available on Amazon Prime, the film tells the true story of the lawsuit brought by Holocaust denier David Irving against Prof. Deborah Lipstadt).

Week Eleven: April 9th: Money talks: campaign contributions as “speech”

- Mayer, *Dark Money*. Read this book in its entirety.
- *Citizens United v. FEC* (read Facts of the Case and listen to the Opinion Announcement <https://www.oyez.org/cases/2008/08-205>)
- Please read the Executive Summary of Demos’ “How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy.” Available at: https://www.demos.org/sites/default/files/publications/StackedDeck2_1.pdf

(Discussion § meets after class)

Week Twelve: April 16th: The commodification of our attention spans

- **Excerpts from** Tim Wu, *The Attention Merchants: The Epic Scramble to Get Inside Our Heads* (posted on Courseworks)
- Aimee Pichee. “Facebook: Your personal info for sale” Available at: <https://www.cbsnews.com/news/facebook-your-personal-info-for-sale/>
- Last Week Tonight with John Oliver. “Televangelists” Available on YouTube at: <https://www.youtube.com/watch?v=7y1xJAVZxXg>

Week Thirteen: April 23rd: Toward a unified theory of first amendment values

- **Excerpts from** Ash, *Free Speech: Ten Principles for a Connected World*
- Scott Skinner-Thompson. “The Person is Political” Available at: <https://slate.com/news-and-politics/2018/10/lgbtq-legal-first-amendment-expression-arguments.html>

(Discussion § meets after class)

Week Fourteen: April 30th: The new frontiers for first amendment values

- Tim Wu, *Is the First Amendment Obsolete?* (available on Courseworks)
- Amnesty International Report: Toxic Twitter—A Toxic Place for Women (Preface: <https://bit.ly/2HUfn7D>; Please Read Chapters 1-8 of the Report beginning at: <https://bit.ly/2R4zwwjE>) *Warning: this report contains violence against women*
- Guest speakers

Take-home final exam distributed. Final exam due by submission on Courseworks by Tuesday, May 14th at 12 noon. This is a firm and absolute deadline.