Course Title: *Liberty of Conscience*
George Thomas, Professor of Government, Claremont McKenna College

**Overview**

This course explores the historical and philosophical origins of the First Amendment’s protection of speech and religion as an attempt to overcome the “problem of religion.” It begins with arguments for toleration as rooted in the right of conscience and put forward in works such as John Milton’s *Areopagitica* and John Locke’s *A Letter Concerning Toleration*. The idea of toleration puts us at the origins of modern constitutionalism and the birth of secular society. These arguments for conscience are then traced through the American Founders, examining classic works by Thomas Jefferson and James Madison in arguing for the “natural rights” of conscience, and the framing of the First Amendment, which embeds freedom of speech and religion in the Constitution. The course will then turn to the development of arguments for liberty of conscience in the work of John Stuart Mill. From these political thinkers we will turn to Supreme Court opinions that take up the meaning and reach of the First Amendment, asking if liberty of conscience is truly the “first” liberty in our constitutional order and how it attempts to negotiate the divide between the theological and political.

**Books**

John Locke, *Two Treatises & A Letter Concerning Toleration*
John Stuart Mill, *On Liberty*

**Requirements**

Three 10-12 page papers (25% each)
Class participation/Attendance (25%)
All components of the course must be completed to pass the course. As you must be in class to participate, excessive absences may result in failure.

**Readings**

**I. Philosophical Antecedents**

Week 1: Speech and Conscience
Jan. 28 & 30  John Milton, *Areopagitica*

Week 2: Protecting Religion?
Feb. 4 & 6  Roger Williams, The Bloudy Tenet of Persecution

Elisha Williams, The Inalienable Rights of Conscience?

Week 3: Civil Peace
Feb. 11 & 13  John Locke, *A Letter Concerning Toleration* and *Second Treatise* Ch. 9, 11 & 19
II. Shaping the First Amendment

Week 4: Religion
Feb. 18 & 20 Patrick Henry, Religious Toleration
    Virginia Declaration of Rights
    Thomas Jefferson, Draft of a Bill Exempting Dissenters
    George Mason, Amendment to the Bill Exempting Dissenters
    Thomas Jefferson, A Bill for Establishing Religious Freedom
    *Notes on the State of Virginia*, Query 17
    James Madison, Memorial and Remonstrance
    Virginia, Act for Establishing Religious Freedom
    James Madison, Virginia Ratifying Convention
    Patrick Henry, Virginia Ratifying Convention
    George Washington, Thanksgiving Proclamation
    George Washington, Letter to the Hebrew Congregation of Newport

    Thomas Jefferson, Letter to Danbury Baptists
    James Madison, Detached Memoranda

Week 5: Speech
Feb. 25 & 27 William Blackstone, Commentaries
    James Wilson, Pennsylvania Ratifying Convention
    Alien and Sedition Acts
    Kentucky Resolutions
    Virginia Resolutions
    John Marshall, Report of the Minority on Virginia Resolutions
    James Madison, Virginia Report
    Thomas Jefferson, First Inaugural

Week 6: Revisiting Foundational Questions
March 3 & 5 John Stuart Mill, *On Liberty*

III. Liberty of Conscience in the Supreme Court

Week 7: Religion, Conscience and the Obligations of the Polity
March 10 & 12 *Reynolds v. United States*
    *Davis v. Beason*
    *The Church of Jesus Christ of Latter-Day Saints v. United States*
    *Ex Parte Garland*
    *Cummings v. Missouri*
    *Schneiderman v. United States*
    *Baumgartner v. United States*

Week 8: Speech, Conscience and the Obligations of the Polity
March 24 & 26 *Schenck v. United States*
Week 9: Religious Exemptions and Equality under the Law
Mar. 31 & 2
Sherbert v. Verner
Wisconsin v. Yoder
Employment Division v. Smith
Braunfeld v. Brown
United States v. Ballard
United States v. Lee
Swann v. Pack
Michael McConnell, “Free Exercise Revisionism and the Smith Decision”
Philip Hamburger, “A Constitutional Right of Religious Exemption”

Week 10: Conscience and Shaping Liberal Citizens
April 7 & 9
United States v. Seeger
Welsh v. United States
Epperson v. Arkansas
Edwards v. Aguillard
Mozert v. Hawkins
Stephen Macedo, “Transformative Liberalism”

Week 11: Liberalism, Secularism and the Establishment Clause
April 14 & 16
Everson v. Board of Education
Engel v. Vitale
Lemon v. Kurtzman
Wallace v. Jaffree
Lee v. Weisman
McCreary v. ACLU
Van Orden v. Perry

Week 12: Religion as Speech?
April 21 & 23
Cantwell v. Connecticut
Gobitis v. West Virginia
West Virginia v. Barnette
Rosenberger v. Rector
Good News Club v. Milford Central School
Zelman v. Simmons-Harris

Week 13: Secular Orthodoxy: Fighting Words, Obscenity, & Profanity
April 28 & 30
Roth v. United States
Miller v. California
Cohen v. California
Beauharnais v. Illinois
R.A.V. v. City of St. Paul
Hadley Arkes, “Civility and the Restriction of Speech”
Michael Sandel, “The Procedural Republic and the Unencumbered Self”

Week 14: The Persistence of the Theological-Political Problem
May 5 & 7
- Gary Jacobsohn, “Three Models of Secular Constitutional Development”
- Peter Berkowitz, “On Secularism and Tolerance”
- Mark Lilla, “The Politics of God”