

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 Bloody 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*

Abrams v. United States
Gitlow v. New York
Whitney v. California
Dennis v. United States
Brandenburg v. Ohio

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 *Unites 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"