

Index

The phrase “used as example” which qualifies some subject headings in this index indicates that the topic was discussed to illustrate a point rather than being a discussion of the freedom of expression merits of the topic *per se*.

- Abood v. Detroit Bd. of Educ.*, 102
 abortion rights, 19, 65, 112, 152, 155, 172
 Ackerman, Bruce, 152, 155–6
 administrative laws, 17
 advertising, 88, 90, 98, 100
 advocacy-incitement distinctions, 75–7, 79, 81, 191
Ahmed and Others v. United Kingdom, 109
Albertson’s, Inc. v. Young, 120
 Alien and Sedition Act, 74
 Al Qaeda operatives (used as example), 77
Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 120
 animal rights, 152, 155
 anonymous speech, xii, 118–19
 antidiscrimination laws, 46, 105–6, 115–18, 170
Arkansas Educ. Television Comm’n v. Forbes, 86, 98
Arkansas Writers’ Project, Inc. v. Ragland, 89
 Arons, Stephen, 91
 artistic speech, 137, 138, 141
 association, freedom of, xii, 107–11, 115–18, 123, 147–8, 164–73
 attorney/client communications. *See* confidentiality
 audiences: hostile, 23, 76, 112, 113; responsibility of, 77–9, 80; rights of, 8–9. *See also* Principles 3, 4, and 5
 authors, dead (used as example), 8, 10
 autonomy, xii, 130–2, 133; balancing/ weighing tests and, 131; evaluation of information and, 35, 74, 80; liberalism and, 175–6; Principle 5 and, 176; public discourse and, 143; Strauss on, 68, 70
A v. Germany, 108
Bailey v. Alabama, 167
 Baker, Edwin, 58
 Bakke, Allan, 44
 balancing/weighing tests, 20–37, 57–9, 61, 66, 106, 131, 188
Barfod v. Denmark, 69
Barnes v. Glen Theatre, Inc., 60
Barnette, West Virginia State Board of Education v., 11, 28, 91, 97
 Barry, Brian, 173
Bartnicki v. Vopper, 58
Batchelder v. Allied Stores Int’l, Inc., 120
 belief, freedom of, 107–11, 123
 Benzanson, Randall P., 91
 Berlin, Isaiah, 173
 Berman, Mitchell N., 84

- Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 116
- Board of Educ., Island Trees Union Free Sch. Dist. v. Pico*, 89
- Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 167
- Board of Educ. v. Pico*, 9, 15
- Board of Regents of the Univ. of Wisconsin v. Southworth*, 102
- Bobo v. Spain*, 106
- bomb building (used as example), 76
- Bonneville v. Frazier*, 69
- Boos v. Barry*, 19
- Bork v. Westminster Mall Co.*, 120
- Boy Scouts of Am. v. Dale*, 115–18, 170
- Brandenburg v. Ohio*, 66, 69, 70, 75, 76–7, 107
- Branti v. Finkel*, 109
- Brink, David, 72–3
- broadcasting, xii, 19, 21, 74, 113–15, 123
- Brown v. Harilage*, 69
- Brown v. Socialist Workers*, 118
- Buchanan, Allen, 3, 6
- Buckley v. Valeo*, 35
- Burson v. Freeman*, 85
- Buss, William G., 91
- Butler v. Southam, Inc.*, 69
- C, Re* (German court case), 58
- California Democratic Party v. Jones*, 117
- campaigns. *See* election campaigns
- Carey v. Brown*, 35, 86, 93–4
- cartoons, satirical, 143
- Case of Appleby and Others v. The United Kingdom*, 120
- Chamberlain v. Surrey Sch. Dist. No. 36*, 89
- Chaplinsky v. New Hampshire*, 76
- Christiano, Thomas, 144
- City Council of Los Angeles v. Taxpayers for Vincent*, 19
- City of Cleburne v. Cleburne Living Center*, 110
- City of Montreal v. Buczynsky*, 19
- City of Renton v. Playtime Theatres*, 60
- Clark v. Community for Creative Non-Violence*, 23
- Cohen v. California*, 16, 59, 115
- Cohen v. Cowles Media Co.*, 59, 65
- Coles Book Stores Ltd. v. Ontario*, 19
- collective action problems, 26
- commercial speech, 138, 140, 141–2
- Committee for the Commonwealth of Canada v. Canada*, 14, 19
- Communist Party, 108–9
- “compelling interest” arguments, 61
- Conant v. Walters*, 78
- Condon v. Prince Edward Island*, 109
- confidentiality: attorney/client (for example) relationships and, 56, 57, 140; contract law and, 65; liberalism and, 174; public discourse and, 143; Rubenfeld on, 61; Schauer on, 81; speaking the truth and, 135; Track One laws and, 189–90
- congestion, regulation of (used as example), 17
- Connick v. Myers*, 104
- Connolly v. Comm'n of the European Communities*, 106
- Conrad, Southeastern Promotions Ltd. v.*, 86, 87, 89
- consequentialist theories, xii, 6, 127–34, 185
- content-neutral regulations, 18, 19, 20, 35, 39, 82
- content regulations: balancing/weighing of, 20–37, 57–9, 61, 66, 106, 131; broadcasting and, 114–15; categories of speech and, 29, 95–6, 141–2; “compelling interest” arguments and, 61; direct harms and, 56–66, 80, 135, 174, 189–90; speech-specific laws as, 19, 113; time/place/manner and, 35; two-step harms and, xii, 66–81, 111, 135, 175, 190–2. *See also* Track One laws
- contract law, 17, 56, 59, 61, 65, 189
- copyright. *See* intellectual property
- Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 14
- Corporation of Presiding Bishop of the Church of Latter-Day Saints v. Amos*, 117
- cosmopolitanism, 165, 169–70, 171
- Costco Companies, Inc. v. Gallant*, 120

- counter-speech, 75, 76, 79
Cox Broadcasting Corp. v. Cohn, 58
 crimes, incitement/solicitation of, 67–70, 75, 77, 135, 143, 175, 191
 criminal laws, 17
 cross burnings, 85, 94
Curtis Pub. Co. v. Butts, 69, 107
- Daggett v. Comm'n on Governmental Ethics and Election Practices*, 88
Dandridge v. Williams, 43
Day v. Holahan, 88
 deceptive speech, 67, 68–70, 119, 143, 175, 191
 defamatory speech, 67, 68–70, 105, 107, 175. *See also* libel
 democracy, 136–45, 186; associations and, 117; human rights limited to, 5, 144–5; informed citizenry and, 136–9; public discourse theory and, 136, 139–44; Track Three laws and, 101; virtues and, 132
 demonstrations. *See* protests and demonstrations
 deontological theories, xii, 6, 134–5, 185
DiGuida, People v., 120
 discrimination: antidiscrimination laws and, 46, 105–6, 115–18, 170; employment, 70, 117; private prejudices and, 109–10; religious, 117; sexual, 105–6, 115–18; subject matter, 93–8; viewpoint, 14–15, 25, 93–8
 distortion, of messages, 98–9
Douglas v. Hello!, 58
 draft card burning (used as example), 16, 17, 23
 drug use, 75
 Due Process clauses, 45
 Dworkin, Ronald, 152, 154, 155, 173
- economic theory, 24–6
 education, public, 21, 33, 89–90, 94, 97, 103
 election campaigns: advertising and, 88, 98; candidates' debates and, 98; public financing of, 21, 33, 35, 74
- Elrod v. Burns*, 109
 Ely, John, 42
 embarrassing personal facts, 56, 57, 81, 135, 174
 emotional distress, infliction of, 56, 58, 105, 174
 employees, government, xii, 103–11, 123
 employment discrimination, 70, 117
 “epistemic abstinence,” xii, 147
 Equal Protection Clause, 45, 121
Erie v. Pap's A.M., 60
Erznoznik v. City of Jacksonville, 115
Estes v. Kapiolani Women's and Children's Med. Center, 120
 European Convention on Human Rights, 116, 148
 evaluative neutrality: autonomy and, 131; balancing/weighing and, 28; as core of freedom of expression, 11–12, 148, 175, 176–81, 185; democracy and, 139; direct harms and, 61, 66, 174; “fair use” and, 62; freedom of association and, 148; freedom of religion and, 148, 149; government employee speech and, 106–7; inconsistency in application of, 86; liberalism and, 148–9, 165–9, 171, 174; “matters of public concern” and, 105; normative theory and, xii, 176–81, 185; Principle 4 and, 35–7; Principle 5 and, 147; Track One laws and, 101, 106–7, 190; Track Two laws and, 20–1, 28, 112, 188; Track Three laws and, 85, 91, 97, 101
 evidence, admissibility of, 56
 expressivist harms, 41
Express Newspapers v. Keys, 69
- F. C. C. v. League of Women Voters*, 84, 87
F. C. C. v. Pacifica Found., 59, 115
 fact-opinion distinctions, 70–1, 72–3, 75, 79, 135, 191
 fact-value distinctions, 70, 71–5, 79, 135, 191
 “fair use,” 62, 107
 false assertions-beliefs distinctions, 77–9

- Faurisson v. France*, 69
 feeble-minded persons, 3
Feiner v. New York, 76, 112
 fighting words, 76, 85, 105, 175, 191
 Finnerty, Kevin, 92
 Fish, Stanley, 79, 148, 164, 178–80
 Fiss, Owen, 29–31, 138, 143
 flag burning (used as example), 16, 38–9, 41, 42, 45, 46, 47–8, 49
The Florida Star v. B. J. F., 58
 Fourteenth Amendment, 42, 121
Fraser v. Canada, 106
Frieson v. Hammell, 69
Frisby v. Schultz, 19
- gag orders, 56
 gambling, 75
 genetically-engineered foods, 74, 138, 140
Gertz v. Robert Welch, Inc., 69, 107
Glaserapp v. Germany, 108
Goduto, People v., 120
Golden Gateway Center v. Golden Gateway Tenants Ass'n, 120
 Golove, David, 3, 6
Good News Club v. Milford Central Sch., 94–5, 97, 141
 governments: distrust of, 145; as duty-bearer, 7; employees of, xii, 103–11, 123; evaluative neutrality and, 11–12, 28, 33, 85, 86, 91, 97, 105; libeling of, 74; means of expression and, 4, 7; optionality and, 40, 42–3, 44–6, 48, 50–1; regulatory purposes of, xi, 9–11, 13, 38–41, 45–6, 48–51, 55; speech by, xii, 89–91, 99, 101–2; subsidies granted by, xii, 22–3, 33, 35, 37, 87–9, 95–9, 101–2
 Gray, John, 172–3
 Greenawalt, Kent, 77, 152–3
Green Party v. Hartz Mountain Indus., Inc., 120
Greer v. Spock, 86
Groppera Radio AG v. Switzerland, 114
 group homes, 109
 group intentionality, 40
- Habermas, Jürgen, 29–31, 160
Harper & Row Publishers, Inc. v. Nation Enters., 60, 107
Harris v. McRae, 113
 hate speech, 58–9, 110, 143
Hazelwood Sch. Dist. v. Kuhlmeier, 15
Herceg v. Hustler Magazine, Inc., 77
Hill v. Colorado, 19
 Holmes, Oliver Wendell, 42
 hostile audiences, 23, 76, 112, 113
Hudgens v. NLRB, 14, 120
 human rights, 3–7, 48–51, 111, 144–5, 185, 193
Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, 79, 116, 170
- ideal speech situations, 158
 incitement. *See* advocacy-incitement distinctions; crimes, incitement/solicitation of
 income inequality, 17, 73
 indirect consequentialist theories, 186, 187–8, 189–90, 193
 information effects: evaluative neutrality and, 28, 33; ignorance of, 20, 24–7, 57; knowledge of, 20, 24, 26–32, 57; public goods problem and, 25–6
Informationsverein Lentia v. Austria, 102
 “innocent instrumentality” scenarios, 78
 insane/deranged persons, 3, 67, 81
 intellectual property: liberalism and, 174; limits on, 190; Principle 5 and, 62–5; public discourse and, 143; speaking the truth and, 135; violation of, as direct harm, 56, 58, 107, 189
 intentionality, 40, 76
 International Covenant on Civil and Political Rights, 4–5, 116
International Society for Krishna Consciousness, Inc. v. Lee, 14, 23, 27, 29, 34, 35, 85
 interracial adoptions, 109
 irresponsible actors, 67, 81, 135
Islamic Unity Convention v. Independent Broadcasting Auth. and Others, 69

- Jackson, Robert H., 11, 175, 177
 Jacobs, Leslie, 92
 Jewish students, Orthodox, 170–2
 “judgmental necessity” subsidies, 95, 96–8
- Kamenshine, Robert, 91
Keller v. State Bar of Calif., 102
 Kessler, Daryl, 95–8
Kleindienst v. Mandel, 9
K Mart Canada Ltd. v. U.F.C.W., Local 1518, 19
Konigsberg v. State Bar, 108
Kosiek v. Germany, 108
 Ku Klux Klan (used as example), 86
- Lacey, State v.*, 120
Laguna Publ’g Co. v. Golden Rain Found., 120
Laguna Publ’g Co. v. Golden West Publ’g Co., 120
Lamb’s Chapel v. Moriches Union Free Sch. Dist., 94–5, 97
Lamont v. Postmaster General, 9
Landmark Communications, Inc. v. Virginia, 58
Lange v. Atkinson, 69
Lange v. Australian Broadcasting Corp., 69
 Larmore, Charles, 152, 155
Leathers v. Medlock, 25
Lee, International Society for Krishna Consciousness, Inc. v., 14, 23, 27, 29, 34, 35, 85
Legal Servs. Corp. v. Velazquez, 86, 88, 89
 legislative motivation, 45–6, 49
Lehman v. City of Shaker Heights, 86
 Levinson, Nan, 192–3
Levy v. State of Victoria, 23
 libel, 69, 74, 191
 liberalism: autonomy and, 175–6; as cosmopolitanism, 165, 169–70, 171; evaluative neutrality and, 148–9, 165–9, 171, 174; illiberal groups and, 164–73; illiberal religions and, 149–64, 172; Principle 5 and, 174–5; Track Two laws and, 174
 libertarianism, 31, 50, 63
 liberty: of action, 185; harms and, 60, 72; human/moral rights and, 4, 6; Rawls on, 5; restriction of, 19, 82, 101–2; subsidies and, 101–2
 libraries, 89–90, 95
 litter, regulation of, 20, 22
Lloyd Corp. v. Tanner, 120
Lochner v. New York, 42
 Locke, John, 63, 177
 lying, 70
- Madsen v. Women’s Health Center, Inc.*, 19
Maher v. Roe, 113
 Marshall, William, 161
Marsh v. Alabama, 14, 120, 167
Martin v. City of Struthers, 9
McIntyre v. Ohio Elections Comm’n, 118
 means of expression, 4, 7
 media of expression, regulation of, 7–8, 19, 22–3, 59, 188
Melvin v. Reid, 57
Miami Herald Publ’g Co. v. Tornillo, 114
 military secrets. *See* secrets
Milkovich v. Lorain Journal Co., 70, 72
 Mill, John Stuart, 72–3, 166, 173, 175, 192
 “Millian Principle,” 68, 177
Minister of Foreign Affairs v. Magno, 19
Ministry of Attorney-General, Corrections Branch & British Columbia Government Employees’ Union, Re, 106
Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue, 19, 25
Minnesota State Bd. for Community Colleges v. Knight, 15, 86
 minors, 3
 misrepresentations. *See* deceptive speech
 moral rights, 3–7, 12, 111
Mt. Healthy City Bd. of Educ. v. Doyle, 39
- N. A. A. C. P. v. Alabama*, 118
N. E. A. v. Finley, 87
Nafria v. Spain, 106
 Nagel, Thomas, 152, 155–7, 160–1

- National Ass'n for the Advancement of Psychoanalysts v. Cal. Bd. of Psychology*, 69
- National Endowments for the Arts/Humanities, 96–8
- National Enquirer* stories (used as example), 77–8, 142
- natural rights, 63
- Neal, Patrick, 162
- New Jersey Coalition Against the War in the Middle East v. J. M. B. Realty Co.*, 120
- New York State Club Ass'n, Inc. v. City of New York*, 116
- New York Times Co. v. United States*, 130
- New York Times v. Sullivan*, 69, 107
- noise, regulation of (used as example), 10, 17, 83
- nonappropriation theory, 134
- normative theories, comprehensive, xii, 31–2, 33, 50, 176–81
- Nozick, Robert, 43, 173
- Obligations of Contracts Clause, 44
- O'Brien, United States v.*, 15, 22–3
- offensive speech, 56, 58–9, 115, 189, 190
- O'Hare Truck Serv., Inc. v. City of Northlake*, 109
- Olivia N. v. Nat'l Broadcasting Co.*, 77
- Ontario Attorney Gen. v. Dieleman*, 19
- Ontario Public Serv. Employees Union v. The Nat'l Citizens' Coalition, Inc.*, 61
- opinions. *See* fact-opinion distinctions
- optionality, 40, 50–1; legislative motivation and, 45–6; rules and, 42–3; switching and, 44–5, 48
- Osborne v. Canada*, 109
- “owned” content (used as example), 56
- P. G. A. Tour, Inc. v. Martin*, 118
- Palmore v. Sidoti*, 109
- pamphleteering, 19, 22, 35
- partisanship, 33, 109, 147, 172
- patronage, political, 109
- Peel Bd. of Educ. v. O. S. S.T. F.*, 108
- Pentagon Papers* case, 130
- People v. DiGuida*, 120
- People v. Goduto*, 120
- People v. Sterling*, 120
- permissibility, moral, 40, 41–2, 46
- Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 14, 86
- Personnel Adm'r of Mass. v. Feeney*, 46
- “Persuasion Principle,” 68
- physician/patient communications. *See* confidentiality
- Pickering v. Bd. of Educ.*, 104
- picketing. *See* protests and demonstrations
- Planned Parenthood v. Am. Coalition of Life Activists*, 65
- poisoning of water supplies (used as example), 77
- Police Dept. v. Mosley*, 35, 86, 93–4
- political association, right of, 117
- political correctness, 171
- political speech, 28–9, 69, 137–8, 140, 141–2
- Posner, Richard, 36–7, 72, 180
- Post, Robert, 128–41, 143–4
- Post, Robert C., 31
- preemptive actions, 111
- prejudices, private, 109–10
- priest/penitent communications. *See* confidentiality
- Principle 1 (suppression of expressive conduct), 9–10, 55
- Principle 2 (suppression of conduct intended to communicate a message), 9–10, 55
- Principle 3 (audience prevented from receiving a message), 9, 10–11, 55
- Principle 4 (suppression of conduct intended to communicate a message that results in audience being prevented from receiving it), 9, 11, 13, 35–7, 55, 139
- Principle 5 (suppression of conduct for the purpose of preventing audience reception of a message), 9, 11, 13, 80–1; autonomy and, 176; direct harms and, 56–66, 80, 174; evaluative neutrality and, 147; government purpose and, 38, 55, 60–1, 147; intellectual property law and, 62–5; liberalism and, 174–5; message effects and, 48, 120–1; private regulation of

- speech and, 119; Rubenfeld on, 36, 61; satirical cartoons and, 143; Track One laws and, 37, 39; Track Two laws and, 31, 147; two-step harms and, 67, 80–1, 175
- privacy, 118–19; Rubenfeld on, 61, 65; Track One laws and, 190; Track Two laws and, 17, 119; violation of, as direct harm, 56, 57, 189
- private regulation of speech, xii, 105–6, 119–23
- professional speech, 98–9, 138, 140–1
- Progressive, Inc., United States v.*, 77
- ProLife Alliance v. British Broadcasting Co.*, 115
- property law, 17
- Proposition 209 (Calif.), 46
- protests and demonstrations, 16, 19, 20, 35, 93
- publication of dangerous information, 76–7, 175, 191
- “public concern” exceptions, 104, 105, 106
- public confidence, damage to, 104
- public discourse theory, 136, 139–44
- public fora, 14–16, 33, 35, 86–7, 92–3
- public goods problems, 25–6
- publicness of speech, 77, 79, 141
- R. A. V. v. City of St. Paul*, 85, 94, 97
- R. v. Lucas*, 69
- racial discrimination, 105–6
- Ramsden v. Peterborough*, 21
- Rankin v. McPherson*, 104
- Rawls, John, 5, 43, 152, 155, 161, 173
- Rawlsianism, 31–2, 50
- Raz, Joseph, 173, 176
- reading, 10
- reasonable rejectability, 149–50, 156–62
- recklessness, 50
- Redish, Martin, 92, 95–8
- Red Lion Broadcasting Co. v. F. C. C.*, 114
- Reform Party of Canada v. Attorney Gen. of Canada*, 98
- Regan v. Taxation with Representation of Washington*, 89
- Regents of the Univ. of Calif. at Davis v. Bakke*, 44
- Regina v. Lewis*, 19
- Regina v. Richards*, 19
- regulatory laws, 17
- relationship-damaging speech, 104–6, 110
- religion, freedom of, xii, 147–8, 149–64, 172
- religious discrimination, 117
- religious speech, 141–2
- research grants/subsidies, 21, 33
- resource allocation decisions, 23, 75, 112–13, 123
- Reynolds v. Times Newspapers Ltd.*, 69
- Rice v. Paladin Enters.*, 77
- Robel, United States v.*, 108
- Roberts v. U. S. Jaycees*, 116, 167
- Robins v. Pruneyard Shopping Center*, 120
- Roe v. Wade*, 113
- Rosen, Mark, 167
- Rosenberger v. Rector & Visitors of the Univ. of Va.*, 15, 89, 94–5, 97, 138, 141
- Ross v. New Brunswick Sch. Dist. No. 15*, 109
- Rubenfeld, Jed, 27–8, 36–7, 39, 61–5, 72
- Rust v. Sullivan*, 87–8
- Rutan v. Republican Party of Ill.*, 109
- S. O. S., Inc. v. Mirage Casino-Hotel*, 120
- Sable Communications of Calif. v. F. C. C.*, 59
- Sam Andrews' Sons v. Agric. Labor Relations Bd.*, 120
- Scalia, Antonin, 94, 95, 118
- Scanlon, Thomas, 68–70, 78, 80, 81, 134–5, 175, 177
- Schauer, Frederick, 80, 81, 91, 137
- Schmid, State v.*, 120
- Schneider v. State*, 19, 21–2, 29, 35
- schools and universities. *See* education, public
- scientific speech, 137, 138, 140, 141
- secrets: contract law and, 65; disclosure of, as direct harm, 56; liberalism and, 174; public discourse and, 143; Rubenfeld on, 61; Schauer on, 81; speaking the truth and, 135; Track One laws and, 189, 190

- Sedition Act (1798), 74
 senile persons, 3
 sexual discrimination, 105–6, 115–18
 Shapiro, Scott, 144
Shelley v. Kraemer, 121–2, 167
 Shiffrin, Steven, 92
Sidis v. F-R Publ'g Corp., 57
 significant government interest test, 15–16, 18–19
Simon Fraser University and Ass'n of Univ. & College Employees, Re, 106
 Smith, Steven, 129–32, 177
Smith v. Daily Mail Publ'g Co., 58
Snapp v. United States, 65
Southeastern Promotions Ltd. v. Conrad, 86, 87, 89, 93
 speakers: discrimination against certain, 93–8; preferential treatment of, 86, 114; protection of, xii, 23, 111–13, 123; responsibility of, 77–8; rights of, 8–9; subsidies for, 98
 speech, freedom of, 7–8
 speech-acts, 79
Speiser v. Randall, 84
 Spencer, Herbert, 42–3
 Spragens, Thomas, Jr., 154
 standing, 44
Stanley v. Georgia, 9
State v. Lacey, 120
State v. Schmid, 120
State v. Wicklund, 120
Sterling, People v., 120
 Stevens, John Paul, 94
 Stolzenberg, Nomi, 171–2
Stranahan v. Fred Meyer, Inc., 120
 Strauss, David, 68–70, 75, 78, 79, 80, 81, 134–5, 175
 subject matter discrimination, 93–8
 subsidies, xii, 22–3, 35; liberty and, 101–2; of media, 35; message distortion and, 98–9; research grants and, 21, 33; Rubenfeld on, 37; for speakers, 98; of subject matter, 95–8; Track Three laws and, 87–9, 95–8. *See also* public goods problems
 Sunstein, Cass, 18, 138, 143
 swimming pool segregation (used as example), 41–2, 45
 symbolic speech, 8, 14, 15–16
 Takings Clause, 44
Talley v. California, 118
Tashjian v. Republican Party, 117
 tax law, 17, 18
Taylor v. Georgia, 167
Terry v. Adams, 117, 118
Texas v. Johnson, 16, 41
 threats, 56, 65
 time, effects over, 41–2, 47–8
Time, Inc. v. Bernard Geis Assocs., 58
 time, place, and manner tests, 15–16, 35, 85
 tolerance, 132–3
Toronto v. Quickfall, 21
 tort law, 17
 Track One laws, xi–xii, 82, 83–4; broadcasting and, 114; confidentiality and, 189–90; direct harms and, 56–66, 80, 135, 174, 189–90; evaluative neutrality and, 101, 106–7, 190; government employee speech and, 106–7, 111, 123; hostile audiences and, 113; indirect-consequentialist theories and, 189–90; liberty, restriction of, and, 82, 101–2; nonappropriation theory and, 134; Principle 5 and, 13–14, 37, 39; privacy and, 190; public discourse and, 139, 141; secrets and, 189, 190; two-step harms and, xii, 66–81, 111, 135, 175, 190–2
 Track Two laws, xi, 13–37, 82, 187–9; balancing/weighing and, 20–37, 57–9, 61, 66, 188; broadcasting and, 113–14, 123; content categories and, 142; courts and, 33, 35; evaluative neutrality and, 20–1, 28, 112, 188; freedom of association and, 116, 118, 123; governmental purpose and, 39; indirect-consequentialist theories and, 187–8; legislation and, 33–5; liberalism and, 174; liberty, restriction of, and, 82; message effects and, xi, 17–18, 23–4, 48, 120; nonappropriation theory and, 134;

- normative theories and, 31–2, 33, 50;
 Principle 4 and, 11, 13; Principle 5
 and, 147; privacy and, 17, 119;
 private regulation of speech and, 120–2,
 123; public discourse and, 139, 141;
 public fora and, 14–16, 33; public
 goods problems and, 26–7; resource
 allocation decisions and, 23, 112–13,
 123; symbolic speech cases and, 14,
 15–16; tests applied to, 15–16, 18–19;
 ubiquity of, 13–19; as violation of
 freedom of expression, 33
- Track Three laws, xii, 82–102, 113;
 approaches to, 91–9; broadcasting and,
 114–15; comparisons of, 84–91; content
 categories and, 142; democracy and, 101;
 evaluative neutrality and, 85, 91, 97, 101;
 liberty, restriction of, and, 82, 101–2;
 subsidies and, 87–9, 95–8; varieties of,
 82–3
- trade secrets. *See* secrets
- traffic laws. *See* congestion, regulation of
- traumatic content (used as example), 56, 58
- Tribe, Laurence, 11, 13, 82
- truth, xii, 73, 128–30, 133, 135
- United States Civil Serv. Comm'n v. Nat'l
 Ass'n of Letter Carriers*, 109
- United States v. O'Brien*, 15, 22–3
- United States v. Progressive, Inc.*, 77
- United States v. Robel*, 108
- Universal Declaration of Human Rights,
 4–5, 116
- utilitarianism, 31–2, 50, 173
- value-pluralism, 172–3
- values. *See* fact-value distinctions
- Vancouver v. Jaminer*, 19
- viewpoint discrimination, 14–15, 25, 93–8
- Virginia v. Black*, 66, 85
- virtue, xii, 132–3
- Vogt v. Germany*, 108
- Waldron, Jeremy, 144
- Walzer, Michael, 158
- Ward v. Rock Against Racism*, 14
- Washington v. David*, 46
- Wasserman, Howard, 92
- Waters v. Churchill*, 104
- Wayte v. United States*, 39, 46
- Weinstein, James, 139, 140–1
- welfare grants (used as example), 43
- Wenz, Peter, 153
- West Virginia State Board of Education v.
 Barnette*, 11, 28, 91, 97, 177
- Wicklund, State v.*, 120
- Widmar v. Vincent*, 15, 35
- Williams, Susan, 16, 17–18
- Wisconsin v. Yoder*, 168
- work relationships. *See*
 relationship-damaging speech
- Yale University, 170–2
- Young v. American Mini-Theatres*, 60
- Yudof, Mark, 91
- Zacchini v. Scripps-Howard Broadcasting
 Co.*, 58
- Ziegler, Edward, 92