

## WHAT'S WRONG WITH THE FIRST AMENDMENT?

*What's Wrong with the First Amendment?* argues that the US love affair with the First Amendment has mutated into free speech idolatry. Free speech has been placed on so high a pedestal that it is almost automatically privileged over privacy, fair trials, equality, and public health, even protecting depictions of animal cruelty and violent video games sold to children. At the same time, dissent is unduly stifled and religious minorities are unduly burdened. The First Amendment benefits the powerful at the expense of the vulnerable. By contrast, other Western democracies provide more reasonable accommodations between free speech and other values though their protections of dissent and religious minorities are inadequate. Professor Steven H. Shiffrin argues that US free speech extremism is not the product of broad cultural factors, but rather of political ideologies developed after the 1950s. He shows that conservatives and liberals have arrived at similar conclusions for different political reasons.

Steven H. Shiffrin is Charles Frank Reavis, Sr, Professor of Law Emeritus at Cornell University. He is the author of *The Religious Left and Church-State Relations* (2009), *Dissent, Injustice, and the Meanings of America* (1999), and *The First Amendment, Democracy, and Romance* (1990), as well as the winner of the Thomas J. Wilson Award. He is also a coauthor of *Constitutional Law*, 12th edition (2015), and *The First Amendment*, 6th edition (2015). His writings have appeared in many publications, including the *Cornell Law Review*, *Harvard Law Review*, *Michigan Law Review*, *Northwestern Law Review*, *UCLA Law Review*, *Virginia Law Review*, *Commonweal*, the *New York Times Book Review*, and the *Washington Monthly*.

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Steven H. Shiffrin  
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*For Neesa Levine, Seana, Benjamin, and  
Jacob Shiffrin*

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## ACKNOWLEDGMENTS

This book has emerged from a long journey with many people to thank. I first opposed absolute First Amendment protection with an article in 1978. My belief was that absolutism did not account for the views that “absolutists” actually held. But, with some exceptions, I had no particular brief for the view that free speech was significantly overvalued. In fact, for twenty-five years I have insisted that dissenting speech is undervalued.

Indeed, I have regarded myself as a strong proponent of free speech. But I have never thought that free speech should be absolutely protected, and since the dawn of the twenty-first century, the Court has pushed me over the edge. It never occurred to me that tobacco advertising would garner First Amendment protection. And the cases in the Roberts Court involving intentional infliction of emotional distress at funerals, depictions of animal cruelty, gruesomely violent video games sold to children, and campaign finance struck me as wrong-headed, even outrageous. I knew it was time to write a book.

I no longer think that the “nuanced” absolutists and I merely disagree about method. We strongly disagree about substance, and among First Amendment scholars, my perspective is distinctly in the minority. I am grateful that my wonderful acquisitions editor John Berger found two readers who endorsed the book and offered valuable suggestions and criticisms. One of those readers profoundly disagreed with my views, and my other readers for the most part disagree as well. They are in no way responsible for my excesses and mistakes. The book is far better than it would have been were it not for their criticisms and constructive suggestions.

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