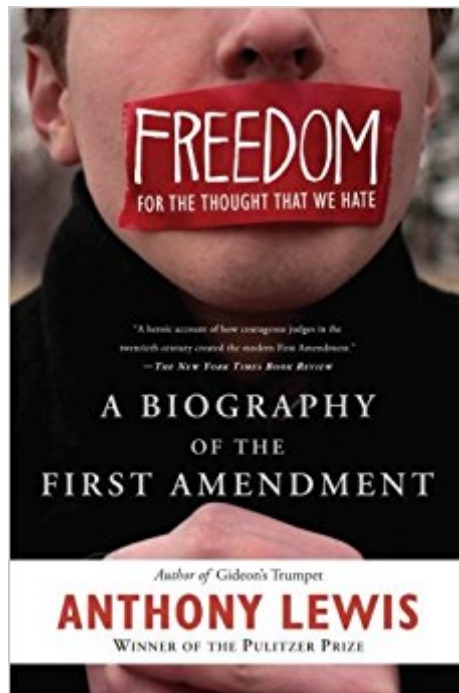




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# Freedom For The Thought That We Hate: A Biography Of The First Amendment



## Synopsis

More than any other people on earth, we Americans are free to say and write what we think. The press can air the secrets of government, the corporate boardroom, or the bedroom with little fear of punishment or penalty. This extraordinary freedom results not from America's culture of tolerance, but from fourteen words in the constitution: the free expression clauses of the First Amendment. In *Freedom for the Thought That We Hate*, two-time Pulitzer Prize-winner Anthony Lewis describes how our free-speech rights were created in five distinct areas: political speech, artistic expression, libel, commercial speech, and unusual forms of expression such as T-shirts and campaign spending. It is a story of hard choices, heroic judges, and the fascinating and eccentric defendants who forced the legal system to come face to face with one of America's great founding ideas.

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## Customer Reviews

The First Amendment's injunction that Congress shall make no law... abridging the freedom of speech, or of the press seems cut and dried, but its application has had a vexed history, according to this lucid legal history, Lewis's first book in 15 years (after *Make No Law* and *Gideon's Trumpet*). Some suppressions of free speech passed constitutional muster in their day: the 1798 Sedition Act criminalized criticism of the president, and the WWI-era Sedition Act sentenced a minister to 15 years in prison for telling his Bible class that a Christian can take no part in the war. Law professor and Pulitzer Prize-winning ex-New York Times columnist Lewis explores other First Amendment legal quagmires, including libel law, privacy issues, the press's shielding of confidential

sources, obscenity and hate speech. Not quite a free speech absolutist, he's for punishing speech that urges terrorist violence to an audience... whose members are ready to act. Lewis's story is about the advancement of freedom by the likes of Oliver Wendell Holmes Jr., Louis Brandeis and others whose bold judicial decisions have made the country what it is. The result is an occasionally stirring account of America's evolving idea of liberty. Copyright © Reed Business Information, a division of Reed Elsevier Inc. All rights reserved. --This text refers to an out of print or unavailable edition of this title.

Two-time Pulitzer Prize-winner Anthony Lewis was a columnist for the New York Times op-ed page from 1969 through 2001. In addition to his long and distinguished career with the Times, Mr. Lewis has been a lecturer on law at Harvard Law School and a visiting professor at the Universities of California, Illinois, Oregon, and Arizona, and, since 1983, the James Madison Visiting Professor at Columbia University. His previous books are *Gideon's Trumpet* and *Make No Law*. He lives in Cambridge, Massachusetts.

Anthony Lewis cut his teeth writing at the New York Times and spent a significant portion of his career there. In this slim book, he traces the history of free speech from the Founding era through the post-9/11 debates about what is appropriate boundary between free expression and national security, and oftentimes ends up discussing cases he had firsthand knowledge of. As Lewis points out, in the first decade following the American Revolution and the establishment of the Constitution, freedom of speech was not a significant issue. Most Americans were bound together, despite often extreme philosophical differences over governmental philosophy, and there were few attempts to oppress those on the opposing side. After John Adams succeeded George Washington to the presidency, however, the partisan chasm widened and harsh feelings grew. Allegedly fearing the tremors of the French Revolution and its possibility for chaos here (but really angered at Jefferson and his Democratic-Republican supporters), the Federalists in Congress passed the Alien & Sedition Acts of 1798 that criminalizes certain types of libelous speech by public figures, and the Adams administration signed off on them. Although relatively small by modern standards, dozens of Jeffersonians were arrested, tried, convicted, and then fined and/or thrown in jail. These actions produced such an uproar that they were soon rendered feckless by the American public, which swept Adams and the Federalists from power. Once Jefferson was inaugurated as president, he pardoned all of those prosecuted under the acts and remitted their fines. As Lewis notes, although the Supreme Court of the United States never ruled on the laws' constitutionality, today they would

almost certainly be struck down as a violation of the First Amendment. In the next section, Lewis covers the persecutions during, and subsequent to, World War One. Unfortunately, this jump forward in time is perhaps my biggest criticism of the book. Although Lewis does give a two-page summary that says there was no federal law restricting speech during this time, he certainly was aware that there were prosecutions during that time for sedition, particularly during the Civil War. Even if he had given a brief summary of whether or not it was the focus of much academic study or discussion in state courts that thereby influenced federal law later on would have been welcomed. However, this is a minor flaw in my opinion. The central figure of the World War One-era free speech trials is Justice Oliver Wendell Holmes, Jr. A thrice-wounded hero of the Civil War, Holmes more than most could speak of what it took to defend or wreck a society, so when he reversed his prior stance of upholding the convictions of communists and labor organizers, it was a strong indication that federal government had gone too far. Lewis also discusses the origins of that famous phrase of law, "fire in a crowded theatre," which I particularly enjoyed. He does offer some criticisms of Holmes, however, noting that certain types of speech may have a cumulative effect that ultimately leads to criminal activity, rather than simply restricting prosecution to immediately approaching events as Holmes advocated. The next chapters cover the Red Scares of McCarthyism, attempts at suppressing the main speakers of the Civil Rights Movement, the protests over the Vietnam War, and some major cases of the modern era. Lewis notes that recently obscenity has been almost totally removed as a justification for speech restrictions, but I wish he had discussed more what caused society and the Court to change its mind on the issue, and also how governments have utilized new tools, such as zoning laws, to achieve the same effects. In his final sections, Lewis discusses where the future of free speech lies and this is perhaps where I have my strongest disagreements with him. In one part, he discusses the path of Europe and its embrace of laws criminalizing hate speech. While I understand that speech can produce serious consequences, I think it is a dangerous idea to throw someone in jail for what they say about a particular religious, ethnic, sexual, or national group, no matter how crude the language. He also discusses issues of national security and the Bush administration (and now Obama administration)'s efforts to combat terrorist activity. I share his concern that we are approaching a dangerous line in what types of activity we are forbidding and what is a justifiable cause for intruding into someone's privacy, but nonetheless I suspect we will not have an accurate idea of what really went on during the War on Terror for another fifty years. On the whole, I found this to be a great book for a layman. Lewis does not go into the more abstract parts of legal theory justifying free speech and unfortunately does not deeply detail the history of free speech leading up to the American Revolution. He does, however,

provide the most important American cases on the subject and occasionally offers his own opinions (which I respect, if sometimes disagree with) without being pedantic. A great way to pass a weekend.

Liberty of thought and liberty of expression are essential in modern democracies. The path to the implementation of the first amendment and the meanings it assumes in American Law are explained in this book. The author refers U.S. Supreme Court decisions to elaborate in the matter, reflecting about liberty of speech, liberty of expression and freedom of the press. The understanding of this constitutional right, so argues Anthony Lewis, evolves through time, broadening its scope. Specially attention is given to the opinions of Justice Oliver W. Holmes, to whom the author attributed a major contribution to the realization of the first amendment. This is a readable book that deals with an important question in modern societies.

Lewis, the author of the terrific *Gideon's Trumpet*, among other legal books, presents an overview of issues, cases, and trends involving the First Amendment. When I was in school, I always thought that cases involving the First Amendment were difficult, often with more than one party having a compelling argument, but they had interesting facts. This book is geared to the non-attorney and is not at all technical. It gets into a lot of interesting First Amendment subjects. Not just freedom of speech, freedom of the press, or freedom of association, but also such topics as obscenity (including the infamous legal line "I know it when I see it"), censorship, hate speech, flag burning, and campaign financing limits. It's interesting for Lewis to suggest why the Court might've changed its mind, as it sometimes does. Unfortunately, the book is from 2007 because I would have loved to have read Lewis' take on more recent First Amendment cases, such as the *Citizens United* case (applying the First Amendment to corporations). Overall, though, I would highly recommend this book.

I enjoyed the book. I am reading the history of each amendment separately and thought this was well written. I understand, more in detail, when the term "judicial activism" is used. The First Amendment, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances", has suffered many bumps and bruises over the years to get to what it means to us today. The book mostly discussed the freedoms of speech and press. Not so much on religion. I do recommend it.

"Freedom For the Thought We Hate" is a non-technical overview of the Supreme Court's main First Amendment cases in the 20th century. One chapter deals with press freedoms, another with privacy, another with freedom of association, and so forth. The writing is clear, the book is short, and pre-law students or other undergrads looking for an introduction to this area of law couldn't find a better place to start. But the book isn't "Gideon's Trumpet" or "Make No Law," outstanding books where Lewis picked apart a single epochal Supreme Court case. Here, no case gets more than 4 or 5 paragraphs of text. Doctrinal subtleties get short shrift, as do historical and biographical details. At its best, the book is a stirring defense of free speech. At its worst, it reads like potted summaries of court opinions.

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