


NOT YOUR FATHER'S FIRST AMENDMENT





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Schedule

8:00–8:30 Registration and Light Breakfast

8:30–8:45 Dean's Welcome and Introductions

8:45–10:00 Panel One: The Freedom of Speech and the Equality of Citizenship

Stephen Feldman, Professor of Law, University of Wyoming College of Law

Mary Anne Franks, Professor of Law, University of Miami School of Law

Gregory Magarian, Professor of Law, Washington University in St. Louis School of Law

Moderator: Maggie Blackhawk, Assistant Professor of Law, University of Pennsylvania Law School

10:00–10:15 Break

10:15–11:30 Panel Two: The First Amendment and the Press in the Digital Age

Erin Carroll, Professor of Law, Legal Practice, Georgetown Law

RonNell Andersen Jones, Professor of Law, University of Utah College of Law

G. Michael Parsons, Acting Assistant Professor of Lawyering, New York University School of Law

Moderator: Assistant Professor Hannah Bloch-Wehba, Thomas R. Kline School of Law

11:30–12:00 Lunch

12:00–12:45 Keynote Address: Is Freedom of Speech a Positive or a Negative Liberty?

Genevieve Lakier, Assistant Professor of Law, University of Chicago Law School

1:00–2:00 Panel Three: Economic Progressivism and the First Amendment

Tabatha Abu El-Haj, Associate Professor of Law, Thomas R. Kline School of Law

Sophia Lee, Professor of Law and History, University of Pennsylvania Law School

David Pozen, Professor of Law, Columbia Law School

Moderator: Professor Chapin Cimino, Thomas R. Kline School of Law

2:00–2:15 Coffee Break

2:15–3:45 Panel Four: The Digital Age, the First Amendment and the Future of Democracy

Chapin Cimino, Professor of Law, Thomas R. Kline School of Law

Kate Klonick, Assistant Professor of Law, St. John's University School of Law

Amanda Shanor, Assistant Professor of Legal Studies and Business Ethics, Wharton School at the University of Pennsylvania

Moderators: Matthew Schwartz and Michael Vuolo, Hosts of WAMU 88.5's Unprecedented



Panel Discussions

Keynote Address: Is Freedom of Speech a Positive or a Negative Liberty?

Genevieve Lakier, Assistant Professor of Law, University of Chicago Law School

Panel 1: The Freedom of Speech and the Equality of Citizenship

First Amendment doctrine, as it was developed in cases like *Whitney v. California*, was grounded on the belief that “discussion affords ordinarily adequate protection against the dissemination of noxious doctrine.” An array of new social movements including Black Lives Matter and #MeToo increasingly challenge that assumption, arguing that this faith under-appreciates the significant harm and violence inflicted by hateful speakers and their speech. In doing so, like voices in the past, they and their fellow LGBTQ activists invite us to re-imagine how the freedom of speech can be reconciled with constitutional commitments to equal citizenship.

Panel 2: The First Amendment and the Press in the Digital Age

The First Amendment’s answer to harmful or destructive speech has always been more speech, but is this premise sustainable? Nowhere is this tension more pronounced than in debates surrounding freedom of the press. As the media faces attacks from within and without, is it time to reconsider our faith in the marketplace of ideas?

Panel 3: Economic Progressivism and the First Amendment

The foundations of the modern First Amendment emerged during the height of American progressivism. Today, however, the Supreme Court increasingly insists on an irreconcilable tension between the rights of the First Amendment and the goals of progressive economic policies. What accounts for why the First Amendment did not seem at odds with government regulation to promote equality in the period of its formation?

Panel 4: The Digital Age, the First Amendment, and the Future of Democracy

With the advances of the digital age have come an array of new methods of speech control, often employed by private individuals and organizations. As we are increasingly confronted with the Janus-faced nature of the Internet as a mode for free expression and the risks of private tyranny, it is worth asking whether First Amendment doctrine has the capacity to respond to these challenges. And what is in store for our democracy if it does not?

Not Your Father's First Amendment Speaker Profiles

Tabatha Abu El-Haj

Associate Professor of Law, Drexel University Thomas R. Kline School of Law

Tabatha Abu El-Haj is a First Amendment scholar, whose principal interest is the American political process. With a focus on increasing democratic accountability and responsiveness, her interdisciplinary research is shaped by the conviction that American democracy must be understood as involving an array of political practices and that citizens' role in democratic politics does not begin or end on Election Day—an argument introduced in her 2011 *NYU Law Review* article, “Changing the People: Legal Regulation and American Democracy.” She has thus written not only about political parties and campaign finance, but also about public assemblies (both historically and in relation to Occupy and Black Lives Matter) and civic associations (including unions) as critical mechanisms for ensuring democratic responsiveness and accountability. Her most recent essay, “Networking the Party: First Amendment Rights and the Pursuit of Responsive Party Government,” appeared in the spring 2018 issue of the *Columbia Law Review*.

Maggie Blackhawk

Assistant Professor of Law, University of Pennsylvania Law School

Maggie (McKinley) Blackhawk (Fond du Lac Band of Lake Superior Ojibwe) researches and teaches in the fields of constitutional law, federal Indian law, and legislation. Her recent projects examine the ways that American democracy can and should empower minorities, especially outside of traditional rights and courts-based frameworks. She is particularly interested in those formal legal institutions that empower minorities to govern and engage in lawmaking—petitioning, lobbying, distributed sovereignty, etc.—and how those institutions might be harnessed to better mitigate constitutional failures, like colonialism and slavery. Her research has been published or is forthcoming in the *Harvard Law Review*, *Stanford Law Review*, *Yale Law Journal*, and *Cambridge University Press*. Her empirical projects have been supported by the American Political Science Association and the Edmond J. Safra Center for Ethics, among others.

Erin Carroll

Professor of Law, Legal Practice, Georgetown Law

Erin Carroll is a Professor of Law and Legal Practice at Georgetown Law. She teaches courses on technology and the free press, narrative, and legal writing and analysis. Her scholarship focuses on changes to the press in the past several decades and how law might respond to those changes. Prior to coming to Georgetown, she was a litigator in California and taught as an adjunct at University of the Pacific, McGeorge School of Law. She is a graduate of Berkeley Law and Yale University.

**Chapin Cimino****Professor of Law, Drexel University Thomas R. Kline School of Law**

Chapin Cimino brings a cross-disciplinary approach to her research. Her public law scholarship focuses on virtue and sincerity in the application of the First Amendment and anti-discrimination law. She applies a similar cross-disciplinary perspective to her private law research challenging traditional assumptions about the utilitarian goals of contract, as well as the values best served by contract law. Her work includes explorations of contract law through the lens of Aristotle's virtue theory and Adam Smith's theory of moral sentiments, as well as a reconsideration of contract law in light of new empirical data establishing that contractors seek goals beyond financial gain. Professor Cimino's publications have appeared in the *University of Chicago Law Review*, the *Oregon Law Review*, and the *Brigham Young Law Review*, among other places. She also authored the Virtue Jurisprudence chapter in the *Oxford Handbook of Virtue*. She continues to bring her legal skills to bear on issues of public concern, recently representing a journalist in a high-profile freedom of information lawsuit involving the 2016 Democratic Convention, out of which she wrote an article called "Freeing Speech," forthcoming in *Thurgood Marshall Law Review*, and published an op-ed in US News exploring dangers to a free press.

Stephen Feldman**Jerry H. Housel/Carl F. Arnold Distinguished Professor of Law,
University of Wyoming College of Law**

Stephen M. Feldman is the Jerry W. Housel/Carl F. Arnold Distinguished Professor of Law and Adjunct Professor of Political Science at the University of Wyoming. He has published six books with Oxford University Press, University of Chicago Press, N.Y.U. Press, and Palgrave Macmillan. His writings have been translated into Japanese, Chinese, and Portuguese. He is the author of *Free Expression and Democracy in America: A History* (University of Chicago Press, 2008), which was featured in a joint National Archives and First Amendment Center book forum and chosen as Book of the Month by the American Booksellers Foundation for Free Expression. Palgrave Macmillan designated Professor Feldman's most recent book, *The New Roberts Court, Donald Trump, and Our Failing Constitution*, a Hottest Title of 2017.

Mary Anne Franks**Professor of Law and Dean's Distinguished Scholar, University of Miami
School of Law**

Dr. Mary Anne Franks is a Professor of Law and Dean's Distinguished Scholar at the University of Miami School of Law, where she teaches First Amendment law, Second Amendment law, criminal law and procedure, and law and technology. She serves as the President and Legislative and Tech Policy Director of the Cyber Civil Rights Initiative. Franks is the author of *The Cult of the Constitution: Our Deadly Devotion to Guns and Free Speech*. Her scholarship has also appeared in publications such as the *Harvard Law Review*, *California Law Review*, and *UCLA*

Law Review. Franks drafted the first model criminal statute on non-consensual pornography (aka “revenge porn”) and regularly advises legislators and tech industry leaders on issues relating to online abuses. Franks earned her master’s and doctorate degrees in Modern Languages and Literature from Oxford University, where she studied as a Rhodes Scholar, and a juris doctorate degree from Harvard University.

RonNell Andersen Jones

Lee E. Teitelbaum Endowed Professor of Law and Associate Dean of Research, University of Utah College of Law

RonNell Andersen Jones is the Teitelbaum Chair and Associate Dean of Research at the University of Utah College of Law and an Affiliated Fellow at Yale Law School’s Information Society Project. A former newspaper reporter and editor, Jones teaches, researches, and writes on legal issues affecting the press and on the intersection between media and the courts. Her scholarly work has appeared in numerous books and journals, including the *Northwestern Law Review*, *Michigan Law Review*, *UCLA Law Review*, and the *Harvard Law Review Forum*. A regular public commentator on press freedom issues, she has published op-eds with CNN and *The New York Times*, and her research has been quoted in *Newsweek*, the *Washington Post*, and *The New York Times*. Jones graduated first in her law school class and clerked for Judge William A. Fletcher on the Ninth Circuit and for Justice Sandra Day O’Connor on the United States Supreme Court.

Kate Klonick

Assistant Professor of Law, St. John’s University School of Law

Kate Klonick is an Assistant Professor at St. John’s University Law School. Her research on networked technologies’ effect on social norm enforcement, freedom of expression, and private governance has appeared in the *Harvard Law Review*, *The New York Times*, *The New Yorker*, *The Atlantic*, *The Guardian* and numerous other publications. Professor Klonick holds an A.B. with honors from Brown University where she studied both modern American History and cognitive neuroscience, a J.D. from Georgetown University Law Center where she was a Senior Editor on the *Georgetown Law Journal*, and a Ph.D. in Law from Yale Law School where she was also a resident fellow at the Information Society Project. She clerked for Judge Eric N. Vitaliano of the Eastern District of New York and Judge Richard C. Wesley of the Second Circuit. She is an affiliated fellow at the Yale Law School Information Society Project where she is spending the Fall of 2019 while on research leave to write on the topics of platform governance and oversight.

**Genevieve Lakier****Assistant Professor of Law, Herbert and Marjorie Fried Teaching Scholar,
University of Chicago Law School**

Genevieve Lakier's research explores the connections between culture and law. She is currently engaged in a long-term project exploring the cultural history of the First Amendment, and another project exploring the changing role of the state in the regulation of sex. Genevieve has an A.B. from Princeton University, a J.D. from New York University School of Law, and an M.A. and Ph.D. in anthropology from the University of Chicago. Between 2006 and 2008, she was an Academy Scholar at the Weatherhead Center for International and Area Studies at Harvard University. After law school, she clerked for Judge Leonard B. Sand of the Southern District of New York and Judge Martha C. Daughtrey of the Sixth Circuit. Before joining the faculty, Genevieve taught at the Law School as a Bigelow Fellow and Lecturer in Law.

Sophia Lee**Professor of Law and History, University of Pennsylvania Law School**

Sophia Lee is a legal historian whose scholarship synthesizes constitutional and administrative law. She has written about administrative agencies' role in shaping constitutional law; civil rights and labor advocates' challenges to workplace discrimination during the early Cold War; and conservative legal movements in the post-New Deal era. Her book, *The Workplace Constitution from the New Deal to the New Right*, was published in 2014 by Cambridge University Press. She is currently working on a history of constitutional privacy.

Gregory Magarian**Thomas and Karole Green Professor of Law, Washington University in
St. Louis School of Law**

Gregory P. Magarian is the Thomas and Karole Greene Professor of Law at Washington University School of Law in St. Louis. He teaches and writes about U.S. constitutional law, with emphasis on the freedom of expression. His first book, *Managed Speech: The Roberts Court's First Amendment*, was published in 2017 by Oxford University Press. His writing also examines church and state, firearms regulation, and regulations of the media and the political process. Professor Magarian received his B.A. summa cum laude from Yale and his J.D. magna cum laude, as well as a master's degree in public policy, from the University of Michigan, where he was editor-in-chief of the *Michigan Law Review*. He served as a law clerk for Justice John Paul Stevens of the U.S. Supreme Court and Judge Louis Oberdorfer of the District of Columbia, and he practiced law at Jenner and Block in Washington, D.C.

G. Michael Parsons

Acting Assistant Professor of Law, New York University School of Law

G. Michael Parsons is an Acting Assistant Professor at New York University School of Law and an Adjunct Fellow at FairVote. His scholarship focuses on voting rights, election law, and the political process, with an emphasis on gerrymandering, money in politics, and alternative models of representation. Michael served as a law clerk to Judge Norman H. Stahl in the First Circuit and Judge Robert E. Payne of the Eastern District of Virginia. Michael received his J.D., magna cum laude, from the Georgetown University Law Center, and his A.B., cum laude, from Davidson College. For updates and commentary on voting rights, money in politics, and other election law developments, follow Michael on Twitter @GMikeParsons.

David Pozen

Professor of Law, Columbia Law School

David Pozen is a Professor of Law at Columbia Law School, where he teaches and writes about constitutional law and nonprofit law. During the 2017-2018 academic year, Pozen was the inaugural visiting scholar at the Knight First Amendment Institute at Columbia University. Pozen's scholarship has been discussed in *The New Yorker*, *The New York Times*, *The Washington Post*, *Harper's*, *Politico*, *Salon*, *Slate*, *Time*, *American Scholar*, and numerous other publications. In 2019, the American Law Institute named Pozen the recipient of its Early Career Scholars Medal, which is awarded every other year to "one or two outstanding early-career law professors whose work is relevant to public policy and has the potential to influence improvements in the law."

Matthew S. Schwartz

**Co-host of the Unprecedented podcast on NPR affiliate WAMU 88.5 |
AMERICAN UNIVERSITY RADIO**

Matthew S. Schwartz is a journalist and recovering attorney. As a feature reporter for WAMU, he won the 2015 national Edward R. Murrow award for best feature reporting in large market radio, as well as regional Associated Press awards for feature reporting and use of sound. Matt has also worked as an audio producer for *NPR* and *Slate Magazine*, and as a technology reporter covering the intricacies of Internet regulation. When he's not reporting, Matt sings tenor with the Basilica of the National Shrine, and occasionally with the Washington National Opera. Matt is an alumnus of the University of Michigan and the Georgetown University Law Center.

Amanda Shanor

**Assistant Professor of Legal Studies and Business Ethics, Wharton School
at the University of Pennsylvania**

Amanda Shanor is an Assistant Professor at the Wharton School at the University of Pennsylvania, where her scholarship focuses on constitutional law, and in particular the First Amendment. Shanor is a graduate of Yale Law School and Yale College,



and a Ph.D. candidate at Yale University. She clerked for Judges Cornelia Pillard and Judith Rogers on the D.C. Circuit and Judge Robert Sweet in the Southern District of New York. She has taught at Yale and Georgetown law schools and published in the *New York University Law Review* and *Harvard Law Review Forum*, among others. She is a contributor to *Take Care* and the co-author of a textbook on counterterrorism law.

Michael Vuolo

**Co-host of the Unprecedented podcast on NPR affiliate WAMU 88.5 |
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Michael Vuolo was reared in the bucolic wilds of New Jersey, on a neighborhood block populated entirely with Italians and Jews—including his own childhood home, which contained both. It was a time filled with exaggerated hand gestures, loving care, and hysterical worry, all now channeled productively into radio and podcasting. He began his career at New York City's public radio affiliate WNYC, where he produced the Peabody Award-winning "On the Media." For *Slate Magazine*, he created and co-hosted *Lexicon Valley*, a podcast about language that won the 2015 Academy of Podcasters award in the Education category. While at *Slate* he also produced *Political Gabfest*, *Hang Up and Listen* and *John Dickerson's Whistlestop*. Mike is an alumnus of Brown University and the Columbia Graduate School of Journalism.



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