Freedom of expression: is it the primary right? The divide between Europe and United States.

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Course Description

Why protect freedom of expression? Should freedom of expression be protected over other constitutional values? Why is there a difference in the degree of protection between Europe and the United States? The course will start by exploring the philosophical justifications of the right to freedom of expression. It will study deontological and consequentialist defenses of freedom of expression and evaluate each one of these theories concerning their contribution to providing a foundation. The course will further examine the question of what are the legitimate limits of freedom of expression in cases where it conflicts with other rights. The study of recent controversies such as the occupy movement, wikileaks, and independent expenditures during political campaigns, will provide insights concerning the legitimate limits of freedom of expression. The course will further study cases where the divide between Europe and USA concerning the protection of freedom of expression is obvious. The course will discuss a number of controversies such as flag burning, hate speech, the Danish cartoons, lying and the law, pornography, artistic expression, offense to religion and academic freedom. The course will further assess the legitimacy of the headscarf ban by the French state. The divide in the case law of the United States Courts and the European Court of Human Rights on most of these issues will be instructive as to the different techniques of “balancing” between rights in conflict. It will analyze the case law of the Supreme Court of the USA and of the European Court of Human rights, as well as European Union regulations, which indicate a divergence in order to propose an interpretation of the socio-political context of the elaboration of the relevant legal rules, which can help understand the divergence. It will discuss philosophical and historical interpretations of the difference in the protection of freedom of expression in Europe and the US. How can the divergence between the European and the American perspective be instructive towards elaborating better solutions to concrete conflicts of rights?

Course Requirements:

A research paper on one of the topics covered by the course. Attendance and participation in class discussions is obligatory. Final grade distribution will be evaluated on the basis of class participation 40% and quality of research papers 60%.
Syllabus

Week 1
Why protect Freedom of Expression?
Consequentialist and Deontological defenses of free speech
Immanuel Kant’s *What is enlightenment*, in Political Writings (Cambridge, 1970, p. 54-60.

Week 2
The Occupy Movement
Suppressing Protest: Human Rights Violations in the U.S. response to Occupy Wall Street, (on website)
Waller v. City of New York, 933 N.Y.S.2d 541 (on website)
Occupy Boston et al. v. City of Boston et al., 29 Mass. L. Rep. 337 (on website)

Week 3
Wikileaks, National Security and Flag Burning
Kent Greenawalt, Fighting Words, Individuals, Communities and Liberties of Speech, p. 28-46

Week 4
Funding of political parties, Independent Expenditures

Week 5
The divide Europe-US; defamation of public officials; lying and the law
ECHR Lindon v. France, 2008, Application Nos. 21279/02, 36448/02 (on website).

Week 6
Understanding the divide between Europe-US : The understanding of liberty
Philippe Raynaud “American Revolution” in François Furet’s and Mona Ozouf’s ed., A Critical Dictionary of the French Revolution, p. 593-603,

Week 7
Hate speech
U.S. Supreme Court: Snyder v. Phelps, 000 U.S, 09-751 (2011)
European Court of Human Rights: Vejdeland and Others v. Sweden, Feb. 9th 2012
Kent Greenawalt, Fighting Words, Individuals, Communities and Liberties of Speech, p. 47-98.
Benoît Frydman and Isabelle Rorive, “Regulating Internet Content through Intermediaries in Europe and the USA”, 23 Zeitschrift für Rechtssociologie, 41 (2002).

Week 8
Free Speech versus Privacy and Dignity
European Court of Human Rights: Von Hannover v. Germany, June 24, 2004, application n°59320/00
American Perspective: Jackson v. Playboy Enterprises, 574 F. Supp. 10 (1983)

Week 9
Freedom of Expression and Pornography
Roth v. United States and Alberts v. California, 354 U.S. 476 (1957)
Kent Greenawalt, Fighting Words, Individuals, Communities and Liberties of Speech, p. 47-98.
Ronald Dworkin, “Pornography and Hate”, in Freedom’s Law, p. 214-226.

Week 10
The islamic Headscarf

Week 11
Artistic expression

European Court of Human Rights: Otto Preminger Institut v. Austria, September 20 1994, Application no. 13470/87 (on website)

U.S. Supreme Court: Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (on website)


Week 12
The Danish Cartoons case
Week 13
Academic Freedom
Scholars at Risk Presentation