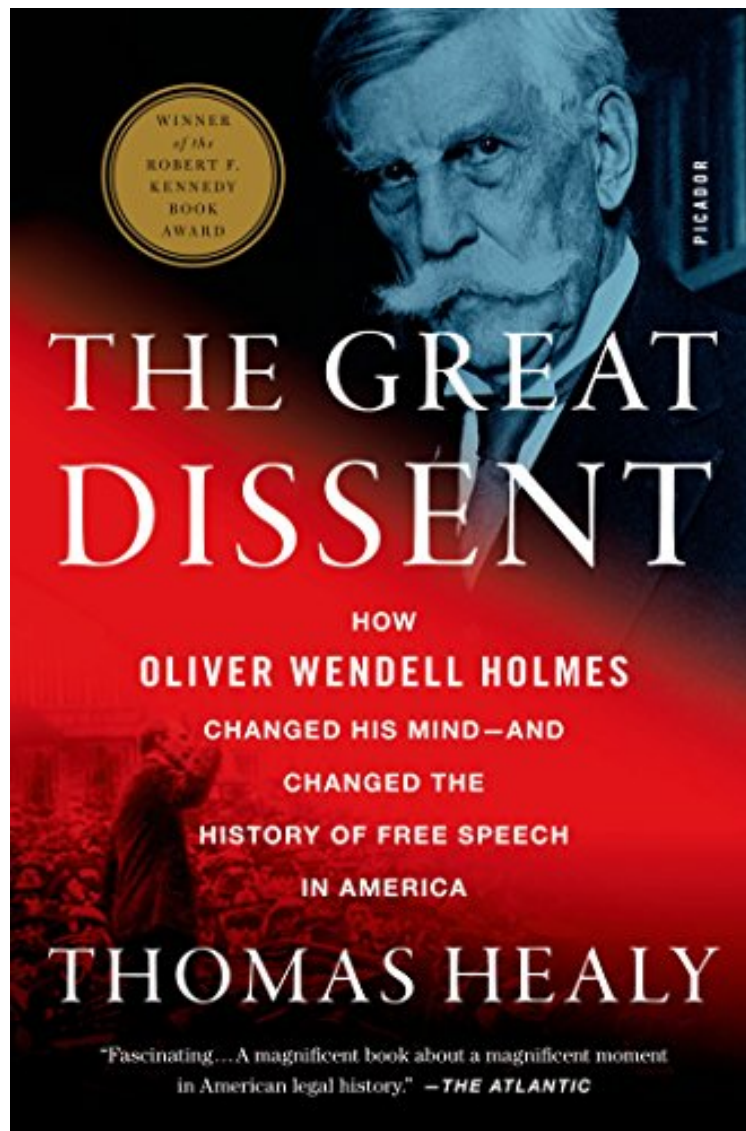


[Mobile book] The Great Dissent: How Oliver Wendell Holmes Changed His Mind--and Changed the History of Free Speech in America

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Thomas Healy

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#237540 in Books 2014-09-09 2014-09-09Original language:EnglishPDF # 1 9.21 x .93 x 6.19l, .0 #File Name: 1250058694352 pages | File size: 69.Mb

Thomas Healy : The Great Dissent: How Oliver Wendell Holmes Changed His Mind--and Changed the History of Free Speech in America before purchasing it in order to gage whether or not it would be worth my time, and all praised The Great Dissent: How Oliver Wendell Holmes Changed His Mind--and Changed the History of Free Speech in America:

1 of 1 people found the following review helpful. History is Not What You Were Taught By C. Henig For those of us who came of age in the seventies, free speech, especially to protest public policy, is a given. We never learned about the Sedition/Espionage Acts passed during World War One. It comes as a shock to discover that the mildest and most elliptical expression of opposition to that war brought severe punishment. It also comes as a shock to find out how much fear and hatred German and Russian immigrants engendered. The Germans were feared and hated because it was assumed that they might be loyal to their former country. The Russians because they might foment a Bolshevik revolt in this country. Anyone and anything that seemed to threaten the war effort was ruthlessly punished. And the end of the war didn't end the prosecution and punishment. So this book is an eye-opening discussion of a rather shameful period in which free speech as we know it today was an invitation to a jail sentence. What happened to change the legal philosophy about the rights American have to disagree vocally as well as in print w/ public policy is a fascinating subject. Mr Healy understands that many people don't understand the circumstances which lead to this change in philosophy and addresses this very well. I found this book to be thoughtful, well-researched, extremely well written and a book I can recommend to anyone. So why did I not give it five stars? I did not see the point of speculation about Justice Holmes's sexual life. It adds nothing to the book. It adds nothing to the topic of free speech. And it seemed petty and unnecessary to include the third-hand gossip on page 34. I expected better.

1 of 1 people found the following review helpful. A Change of Heart By Ricardo Mio It was like a religious conversion a softening of the heart, a profound altering of thought, a rechartering of course. For Justice Oliver Wendell Holmes the conversion came late in life, at age 78. We are speaking about *Abrams v. United States* (1919), a Supreme Court decision involving free speech. Holmes dissenting opinion, the result of a significant changing of the mind, is the subject of this fascinating, inspiring and short (250 pages) book by Thomas Healy. Mr. Healy is a graduate of Columbia Law School and a professor of law at Seton Hall Law School, and judging by his prose remarkably free of legalese. His writing is clear, direct, and easily understandable. Abraham Lincoln would have approved. Justice Oliver Wendell Holmes was a brilliant and incisive thinker with a gift for coining memorable turns of a phrase in his Court opinions. Clear and present danger (from *Schenck v. United States*) is one of them. But he had an inflexible and stubborn streak, too. Civil libertarians were drawn to him because of his progressive dissenting opinions, but were appalled by his First Amendment views, which flew in the face of pluralism and political tolerance. In particular, the free speech cases involving the U.S. government *Schenck*, *Frohwerk*, and *Debs* Holmes ruled against the defendants by reasoning that their speeches threatened national security while the nation was at war. The Constitution was quite clear on the issue: Congress shall make no law . . . abridging the freedom of speech. But the Supreme Court itself had never ruled in favor of a free speech claim, and lower courts had approved all manner of speech restrictions, including the censorship of books and films, the prohibition of street corners speeches, and assorted bans on labor protests, profanity, even commercial advertising. Holmes was consistent in agreeing with these rulings. He was, after all, an advocate of judicial restraint the idea that judges should defer to the judgment of elected officials. Enter three individuals determined to change Holmes mind: Learned Hand, a federal judge in New York; Harold Laski, an Englishman and Harvard history professor; and Zechariah Chafee, a Harvard law professor. Over a period of eight months in 1919, they engaged Holmes in person and in letters with what amounted to a series of legal briefs in support of free and unfettered speech as a safeguard of democracy, yes, even in times of war. To support their arguments they quoted from progressive thinkers, notably John Milton and John Stuart Mill. Could their concerted efforts get past Holmes stubborn streak and touch his heart? Were their ideas convincing enough to change his mind? They didn't know for sure until Holmes issued his dissenting opinion in *Abrams*, a case centered on five Russian Jews in New York who had issued leaflets condemning U.S. involvement in World War I. Did their leaflets threaten national security? Seven justices said they did. But Holmes, who was slated to write the Court's opinion, changed his mind. He found nothing in their leaflets that advocated any violation of law or obstruction of war production, nothing that presented a clear and present danger even in time of war. It is evident from the beginning to the end that the only object of the paper is to help Russia and stop American intervention there against popular government, Holmes wrote, not to impede the United States in the war that it was carrying on. Their words didn't so imminently threaten immediate interference with government's lawful purpose or programs that an immediate check is required to save the country. Holmes then went on to get at the heart of the issue: (W)hen men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by the free trade in ideas that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Further on he wrote: While that experiment is part of our system I think we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purpose of the law that an immediate check is required to save the country. Except for Justice Louis Brandeis, who sided with Holmes, the other justices of the Court never embraced Holmes dissenting opinion. But as John Stuart Mill pointed out, opinions change. What passed for truth 1000 or even as recent as 100 years ago, can seem silly today. Supreme Court opinions, however "legal" and well-reasoned, are

merely that--opinions. Like Holmes, the Court would undergo a change of opinion in 50 years. In a 1969 case involving a Ku Klux Klan member who advocated violence against the civil rights movement, the Court held that advocacy of violence or unlawful conduct is protected by the First Amendment except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. This rule is a direct descendant of Holmes test and remains the governing standard today. Holmes dissent in *Abrams* marked not just a personal transformation but the start of a national transformation as well, writes the author. The power of his words and the force of his personality gave his opinions an authority far beyond the normal judicial dissent. Civil libertarians immediately embraced it as an article of faith, and Holmes tribute to the free trade in ideas, along with his concept of clear and present danger became not only cultural catchphrases but, in time, the law of the land. Indeed, it is no exaggeration to say that Holmes dissent the most important minority opinion in American legal history gave birth to the modern era of the First Amendment, in which the freedom to express oneself is our preeminent constitutional value and a defining national trait.

1 of 1 people found the following review helpful. How no can be yes
By Stanley P. Santire
I only now, just a few minutes ago, finished reading this book. While turning the pages the feeling was constant of exploring the workings of a great mind. The book is many things. It is most immediately a primer on the evolution of our unique American approach to the freedom of speech. Thomas Healy vividly shows a great jurist leading the way in shaping a fundamental element of the Constitution. He delves into how a brilliant mind cautiously welcomes the influence of the insightful and sincere thoughts of other jurists and academics, those who gave sincere thoughts to an important subject and saw in Holmes a mind both strong enough to change and most able to express those thoughts. Most of all, the book speaks to, perhaps better said cautions against, the judicial philosophy of some members of the current court who take the Constitution as a simplistic text by which we should be content to interpret important concepts through judicial psychoanalysis of men two centuries dead. The book is a penetrating presentation of what is for a democracy the drama of constitutional law, the constant tension between national security and individual freedom. Yet just as importantly Mr. Healy reveals in Justice Holmes the struggle of a man who never loses sight of the conflict yet goes beyond an initial position to forge a new vision of the struggle and eventually gives birth to an analytical mechanism that, despite far from achieving perfection, helps to reconcile these contending forces. Most of all, we see that by saying no through a dissent, we read how Justice Holmes provided the foundation for saying yes to a fundamental freedom that is a defining element in a truly enlightened society.

No right seems more fundamental to American life than freedom of speech. Yet well into the twentieth century that freedom was still an unfulfilled promise, with Americans regularly imprisoned merely for speaking out against government policies. Indeed, free speech as we know it comes less from the First Amendment than from a most unexpected source: Supreme Court Justice Oliver Wendell Holmes. A lifelong skeptic, he disdained all individual rights, including the right to express one's political views. But in 1919, it was Holmes who wrote a dissenting opinion that would become the canonical affirmation of free speech in the United States. Why did Holmes change his mind? That question has puzzled historians for almost a century. Now, with the aid of newly discovered letters and confidential memos, Thomas Healy reconstructs in vivid detail Holmes's journey from free-speech opponent to First Amendment hero. It is the story of a remarkable behind-the-scenes campaign by a group of progressives to bring a legal icon around to their way of thinking and a deeply touching human narrative of an old man saved from loneliness and despair by a few unlikely young friends. Beautifully written and exhaustively researched, "The Great Dissent" is intellectual history at its best, revealing how free debate can alter the life of a man and the legal landscape of an entire nation."

From Booklist
A longtime skeptic of individual rights, Supreme Court justice Holmes wrote in 1919 the court opinion that solidified free speech rights in American political doctrine. Holmes change of heart has long been pondered by legal scholars and historians. Drawing on newly uncovered letters and memos, legal scholar Healy recounts Holmes long, slow process of advocating for free speech at a time of great national turmoil. WWI had recently ended, but the nation faced bombings and explosions, race riots, and the fear of anarchists. The aging Holmes had developed close relationships with several young progressives who challenged his thinking and ultimately changed the way Americans view the First Amendment. Among the persuaders were Learned Hand, then a federal judge, and Harold Laski, then a Harvard professor and contributor to the *New Republic*. Healy offers a beautifully written history, capturing the lively and passionate debate as Holmes came to see the abiding imperative of free speech and defend it at great cost to his own reputation at the time. --Vanessa Bush
Fascinating...A magnificent book about a magnificent moment in American legal history. The *Atlantic*
Riveting... Healy's informative and readable account deserves an honored place in the intellectual history of the Supreme Court. The *New York Times*
Book Compelling...A fascinating tale--and a charming one. The *Wall Street Journal*
Eye-opening...A stirring mix of intelligent biography and truly significant social and legal history. The *Christian Science Monitor*
The Great Dissent arrives just when its insight is needed. The *Washington Post*
A skillfully rendered slice of history
With appreciable attention to detail, Healy gives this historical tale of jurisprudence a welcome warmth, humanizing one of the nation's critical developments. The *Boston*

GlobeAstutely describes a constellation of influences working on the 78-year-old justice--some strictly intellectual, some a reaction to the Red Scare period, some born of his deep relationships with younger comrades...In *The Great Dissent*, readers who care about the cherished right of free speech will learn just how it got so free. The Dallas Morning NewsSuperb... Healy does an excellent job in bringing Holmes, a complex and fascinating man, to life, [and] masterfully guides us through related cases that the Supreme Court decided during this period.... *The Great Dissent* succeeds as outstanding personal, intellectual, and legal history. BookPageWonderful and engaging...A persuasive account...*The Great Dissent* should be of interest to all who care about the First Amendment and constitutional law. More generally, the book is a wonderful exploration of how justices think and arrive at their positions. Erwin Chemerinsky, California LawyerA brilliant, extraordinary book...A first-rate and original intellectual history [that] reads like a suspenseful historical novel...One of the best books ever written about American law, on a par with classics like *Gideon's Trumpet* by Anthony Lewis and *Simple Justice* by Richard Kluger. New York County LawyerEngrossingAn exceptional account of the development of the Constitution's most basic right, and an illuminating story of remarkable friendships, scholarly communication, and the justice who actually changed his mind. Kirkus s (starred review)Healy masterfully depicts the transition from Holmes's limited view of First Amendment protections to an expansive, eloquent, and precedent-setting interpretation. Along with clear explanations of the legal theories at play, the author provides context to Holmes's decision with informative descriptions of the historical events of the time and insightful forays into Holmes personal psychology. This is a fascinating look at how minds change, and how the world can change in turn. Publishers WeeklyA beautifully written history, capturing the lively and passionate debate as Holmes came to see the abiding imperative of free speech. BooklistThis is the most exciting and illuminating book on the history of the American free speech tradition I have ever read. Thomas Healy's masterful account is a thrilling combination of intellectual detective work, gripping narrative, and psychological biography. If you're looking for a page-turner of constitutional history, this is the book to read: with unforgettable detail, it shows how the crowning achievement of American liberty--the principle that speech can't be banned unless it threatens imminent violence--actually emerged from Holmes's nimble mind, skeptical temperament, broad reading, and concern for his embattled friends. Jeffrey Rosen, author of *The Supreme Court: The Personalities and Rivalries That Defined America*This is a gem of a book, part intellectual detective story, part judicial biography, and all composed with a flair that makes it a pleasure to read. The revelation--it is nothing less than that--of how Justice Holmes came to write the greatest First Amendment opinion in American history is worth the attention and admiration of all. Floyd Abrams, author of *Friend of the Court: On the Front Lines with the First Amendment*Lively and engaging...*The Great Dissent* takes us back to the time when a collection of great men--including Learned Hand, Felix Frankfurter, Ernst Freund, Harold Laski, and Louis Brandeis--nagged, cajoled, and eventually enlightened Oliver Wendell Holmes into writing the most eloquent and most important free speech opinion in American history. Geoffrey R. Stone, author of *Perilous Times: Free Speech in Wartime from the Sedition Act of 1798 to the War on Terrorism**The Great Dissent* is that rare book that combines first-rate scholarship with brilliant storytelling. Bursting with intimate details and colorful characters, it brings to life the ideas underlying our First Amendment tradition. Free speech, it reminds us, does not come from the Constitution alone, but from passionate personal struggles. Nadine Strossen, former president of the American Civil Liberties Union and author of *Defending Pornography: Free Speech, Sex, and the Fight for Women's Rights*About the AuthorThomas Healy is a professor of law at Seton Hall Law School. A graduate of Columbia Law School, he clerked on the U.S. Court of Appeals for the Ninth Circuit and was a Supreme Court correspondent for *The Baltimore Sun*. He has written extensively about free speech, the Constitution, and the federal courts.*The Great Dissent* is his first book.