

Huanced Absolutism

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Wikipedia

When I began we did not really have a lot of First Amendment law. It is surprising to think of it this way, but a lot of the law—most of the law that relates to the First Amendment freedom of the press in America—is really within living memory.

— Floyd Abrams

Nuanced Absolutism

Floyd Abrams & the First Amendment

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To

Paul McMasters

*Who pointed the way many years ago,
and who believes in freedom
enough to defend it, even
when it is unpopular
to do so.*

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A Note to the Reader

Law is not only what lawmakers create and judges interpret, it is also what lawyers do with it. How law originates, develops, changes, and then enters the world is very much determined by what lawyers do. Though this may seem obvious, it is a fact far too often overlooked in public law circles wherein the cult of the judge dominates much legal thinking, especially in the world of legal education.

In this little book the author identifies, explains, and analyzes key aspects of the legal thought of America's most noted contemporary First Amendment lawyer, Floyd Abrams—a man who has had a profound impact on the law of free speech in modern America. In the process of discussing Mr. Abrams's work, the reader is introduced to “nuanced absolutism,” a way of thinking and speaking about the First Amendment.

Nuanced absolutism, as will become apparent in what follows, is a phrase coined to describe a tenet of existing First Amendment law that has emerged over the years and which has taken on a new and somewhat varied life in the decisional law of the Roberts Court. Before it was judge-made law, it was a brand of law argued by lawyers, most notably Floyd Abrams.

To be sure, this approach might prove suspect to some in the legal academy. In it, some may perceive too much protection for First Amendment freedom. Unlike the First Amendment

bar, some academics might prefer the Court to “balance” all of our free speech freedoms in this or that way. Whatever one makes of such arguments, it is well to remember that if it is to survive, the spirit of the First Amendment cannot be cabined in the quarters of ivory towers.

One of the aims of this book is to remind readers of the role played by lawyers in shaping our law, especially our supreme law. By way of an intellectual history and biographical approach to his subject, the author explains how Mr. Abrams’s nuanced absolutism operates in the context of some of the appellate cases he has litigated, the causes he has defended, and the positions he has taken in public. In all of these ways and others, it is a biographical sketch and case study of one man’s life in the law, the law of the First Amendment.