



No Liberty for License: The Forgotten Logic of the First Amendment

David Lowenthal

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In an original and iconoclastic reassessment of the First Amendment, a distinguished political philosopher reaches unorthodox yet compelling conclusions about the place of free speech and religion in the American constitutional order. Revisiting the internal logic of the Amendment's language and the legal culture from which it emerged, Professor David Lowenthal attacks the legacy of Holmes and Brandeis, whose judicial heirs have twisted the First Amendment into a vehicle for degrading and destabilizing the republic it was meant to strengthen and preserve. Professor Lowenthal demonstrates that the framers of the Constitution and Bill of Rights had an understanding of freedom quite different from that to which we have grown accustomed. They saw that freedom without limits degenerates into mere license, itself a threat to freedom, and devised the First Amendment to guarantee the political freedoms requisite for republican self-government. Lowenthal then examines the modern Supreme Court's treatment of revolutionary groups, obscenity, and church-state questions, showing how in each area the Court has been led astray by its fixation on individual rights at the expense of the common good and the health of the republic.



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