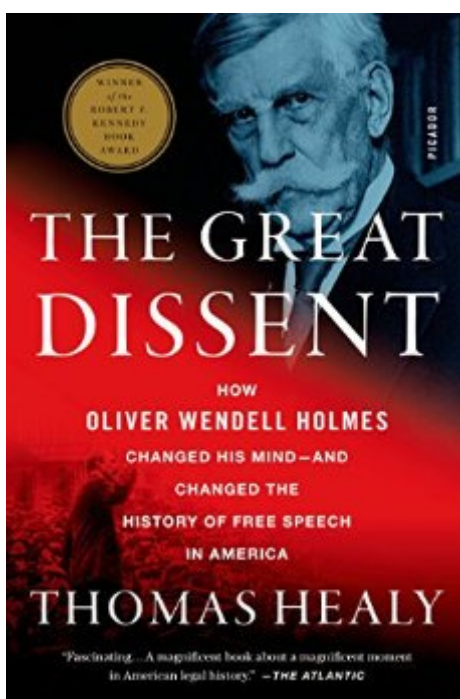


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# The Great Dissent: How Oliver Wendell Holmes Changed His Mind--and Changed The History Of Free Speech In America



## Synopsis

A gripping intellectual history reveals how Oliver Wendell Holmes became a free-speech advocate and established the modern understanding of the First Amendment. No right seems more fundamental to American public 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 Constitutional 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, law professor 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. A Kirkus Reviews Best Nonfiction Book of 2013

## Book Information

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## Customer Reviews

Next year it will be 50 years since the great Anthony Lewis wrote his classic "Gideon's Trumpet" describing the story behind Gideon v. Wainwright in which the Supreme Court ruled that criminal defendants have a right to an attorney even if they cannot afford it. In the intervening almost half century thousands of books have been written about the Supreme Court and its justices and various important court decisions. Not until now however, with the publication of Thomas Healy's "The Great Dissent", has one equalled "Gideon's Trumpet" in terms of presenting outstanding legal research and scholarship regarding a monumental court decision as such a fascinating and riveting tale so superbly told that it won't let you go. Think of your favorite novelist. Or writer of terrific espionage thrillers or mystery or detective stories. How hard is it to put down one of his or her new books? Well if you have any interest at all in either freedom of speech, the Supreme Court, or Oliver Wendell Holmes you will face exactly that same challenge once you are two pages into "The Great Dissent." "Holmes' dissent in *Abrams v United States* was a hinge of history in terms of the First Amendment and freedom of speech in the United States. The Constitution of the United States is what the justices of the Supreme Court say it is. And until Holmes breathed life into our First Amendment, just as Thomas Healy the author of *The Great Dissent* breathes life into how that dissent came about back in 1919, freedom of speech in the United States was not what we presently enjoy as citizens. How that hinge of history swung, and from where. and to where, and why, is an amazing and intriguing story with many strands braided together beautifully by Thomas Healy into a terrific tapestry.

I think this is a valuable book for several reasons. First, I love to read books about Justice Holmes and this is a very good one. While there is nothing startlingly new about OWH here, for the reader less familiar with the Justice, this book is a good introduction--especially since the author relies heavily upon Holmes' published and unpublished letters. Second, the book educates us about the very beginnings of First Amendment theory and reminds us how far we have come in protecting free speech since Holmes confronted the issue back in 1919. I also think the book is interesting in that it focuses upon the various personal and professional influences brought to bear on Holmes that, the

author suggested, persuaded him to issue his famous "Abrams" dissent which generated a whole line of important decisions protecting free speech. The book begins by recounting a meeting between Holmes and three of his colleagues in which they tried to persuade him, in the wake of World War I and the "Red Scare", not to publish his draft dissent in *Abrams*. This is the only such meeting I can remember which has been discussed publicly; fortunately, it was not successful. Next, we learn about the state of First Amendment theory before *Abrams*, basically adopting the old Blackstone approach which did not allow prior restraint (i.e., before publication) but tolerated speech being punished after it had been published. Holmes seemingly held to this view; this book is the story of how he was persuaded to adopt a more aggressive position according speech greater protection. Some key personalities make welcome appearances: Justice Brandeis; Judge Learned Hand; Harold Laski; Herbert Croly; Zechariah Chafee; and Felix Frankfurter.

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