

Comm 3631: Freedom of speech

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office hours (Ford 284)
TuTh 10-11a, Th 230-330p and by appointment

Course description and objectives

This is a course about the theory and practice of “freedom of speech” as it has shifted and changed in the US over the past century or so. Some of the major questions we’ll examine this semester include:

- Where does the idea of “free speech” come from? Why is it something our culture values?
- Is free speech a right or a privilege?
- Who is allowed to speak and what are they allowed to say?
- What responsibilities (if any) go along with the right to free speech?
- Should free speech encompass non-verbal forms of communication?
- Is free speech a necessary feature of a democracy?
- What limits (if any) do we need to place on free speech?
- What types of restriction on expression count as censorship?
- How do we distinguish “expression” from “action”?
- And who’s empowered to make these decisions anyway?

None of the big questions we’ll address this semester have easy answers. Your grades will depend on (1) your ability to think *critically* about the ideal role of free speech in a democratic society, and (2) your ability to *argue* your positions on those issues persuasively, rather than your ability to memorize and repeat the “right” answers.

Readings

All the required readings are available via the course Canvas site.

Canvas

If you’re on the roster, you should already have access to the course Canvas site. Log in to the U’s main Canvas page (<https://canvas.umn.edu/>) and select “COMM 3631” from either the Dashboard or the Courses menu. We will use Canvas for several things this semester:

- access to the official course documents and assignments
- access to all our required readings
- a graded course blog where you will contribute posts and comments about the course material
- a repository for various media examples relevant to our required readings
- occasional business-related announcements about the course

More information on Canvas can be found at:

- <https://community.canvaslms.com/docs/DOC-10701> [text-based guide]
- <https://community.canvaslms.com/videos/1124-canvas-overview-students> [video tutorial]

[N.B.: There are Canvas smartphone apps (search for “Canvas Student”) for both iPhone and Android, though these are probably not the most efficient way to use Canvas on a regular basis.]

Grades

This course follows the University’s published standards for A-F grading:

- A: “achievement that is outstanding relative to the level necessary to meet course requirements”
- B: “achievement that is significantly above the level necessary to meet course requirements”
- C: “achievement that meets the course requirements in every respect”
- D: “achievement that is worthy of credit even though it fails to meet fully the course requirements”
- F: “signifies that the work was . . . completed but at a level of achievement that is not worthy of credit.”

Final course grades will be calculated using the following schedule:

- Attendance/participation (A/P): 25 points maximum
- Course blog: 25 points maximum
- Thought paper (TP): up to 10 points
- Case studies (CSs): up to 10 points each

N.B.: Regardless of your other grades, the upper limit for course grade is your final A/P grade multiplied by 4 (e.g., if your final A/P grade is 21, your maximum possible course grade is 84).

Point totals at the end of the semester will translate to letter grades as follows:

A	93+	B+	87-89	C+	77-79	D+	67-69
A-	90-92	B	83-86	C	73-76	D	60-66
		B-	80-82	C-	70-72	F	0-59

- There will be occasional opportunities to earn points via in-class quizzes and/or extra assignments. Such opportunities will be the exception, rather than the rule, and they will not be offered on an individual basis.
- “S/N” grades will only be given to students who have registered for the course on an S/N basis.
- “I” grades will only be given under extraordinary circumstances (i.e., major life emergencies).

Attendance/participation (A/P)

This is not a lecture-based course. Our class meetings will be structured around discussions, so you’ll need to:

- attend class regularly,
- do the required readings carefully, and
- come to class prepared to discuss those readings in thoughtful fashion.

On any given day, I will do my best to make sure that everyone gets a chance to make meaningful contributions to our conversations. This may mean that I will call on you if you have been exceptionally quiet or, alternately, that I will ask you not to speak for a while if you have been extra talkative and other students have not been heard from.

For grading purposes, any day when you are “present in name only” (PINO) is the equivalent of an absence. As the name implies, a PINO day happens when you are physically present for a scheduled class meeting, but you do not contribute to our discussion in a substantive fashion. This includes (but is not limited to) days when:

- you are present for less than half of a given class meeting,
- you have clearly not done the assigned reading, and/or
- you are primarily a passive spectator in our in-class activities.

Decisions about what counts as a PINO day will be based on my assessment of your in-class performance, and I will email you about any such decision within 24 hours of the class meeting in question.

There are no excused absences in this course. If you miss class (for any reason), then you can’t contribute to our discussions, and so you can’t earn A/P points for that day. Significantly late arrivals and/or early departures will result in lower A/P scores for the days in questions.

We have 28 class meetings this semester, each of which allows you to earn up to 1 point toward your A/P grade. The maximum number of A/P points you can earn overall is 25.

Course blog

The blog is an online forum where you and your classmates will stake out clear positions on the major issues raised by our required readings and in-class discussions, and offer persuasive arguments to support those positions. Posts/comments that (1) are primarily summaries of the readings/discussions, (2) focus on minor facets of the readings/discussions, (3) focus on topics outside of the course content, and/or (4) are largely simple statements of (dis)agreement will not count towards your grade.

Blog contributions will be graded every course week: i.e., the seven-day period that begins each Tuesday at 11:15 am. (N.B.: For grading purposes, the last course week of the semester begins at 11:15 am on 11 Dec and ends at 1:30 pm on 15 Dec.) For any given course week, there are two ways to earn points:

- You create a post of at least 300 words of thoughtful commentary about the assigned readings and/or our in-class discussions/exercises. You can earn a maximum of 1 point each course week for such posts.
- You create a comment of at least 300 words of thoughtful response to one of your classmates' posts or comments. You can earn a maximum of 1 point each course week for such comments.

For grading purposes, only your own words count: e.g., 75 words from you plus 250 words quoted from elsewhere counts as 75 words, rather than 325. Similarly, if your contributions include large amounts of filler prose, only the substantive words will count toward your grade. Any given blog contribution must be substantially different from your other contributions to the blog: i.e., you don't earn additional points for rephrasing an argument you've already made in previous posts/comments. Posts/comments shorter than 300 words will not earn points.

There are 15 course weeks in the semester, each of which allows you to earn up to 2 points toward your Course Blog grade. The maximum number of Course Blog points you can earn overall is 25.

Technical instructions

- Access the blog using the "Discussions" link in the lefthand menu of the course Canvas site.
- Create a new post using the "+Discussion" button in the upper righthand corner of the page.
- Comment on an existing thread using the "Reply" link beneath that thread's box.

Tips

- There are no reading-related deadlines for the blog: i.e., you can still earn points for "late" posts/comments on "old" readings, as long as you're adding something new to the conversation.
- Your comments should be respectful and constructive -- especially if you are disagreeing with something one of your classmates has written.

Thought paper (TP)

In a well-crafted and thoughtful essay of at least 1000 words, address both of the following questions:

- Pick one controversial form of expression that you believe should be subject to governmental restrictions of some sort and, in as persuasive a fashion as you can, explain what sort of restrictions you think are appropriate and why you believe this form of expression needs to be legally limited.
- Pick one controversial form of expression (one that's different from the first one) that you believe should not be subject to governmental restrictions of any sort and, in as persuasive a fashion as you can, explain why you believe this form of expression merits such strong protection.

This assignment will be ungraded. Assuming you turn the paper in, you should receive full credit (10 points) for doing so -- though I reserve the right to assign lower grades (including zeros) to TPs that fail to meet the assignment's requirements. This paper is due by 11:15 am on 11 September. No late TPs will be accepted.

Tips

- Make sure that what you've chosen to write about are forms of expression. The line between "expression" and "action" is sometimes fuzzy, but do your best to choose phenomena that clearly belong on the "expression" side of that line. (Example: Murder is an action. An essay explaining the best way to murder someone is a form of expression. A TP arguing for the legalization of murder would not fit the assignment properly, but a TP arguing that "how to" essays on murder should be legal would fit.)
- Make sure that your chosen forms of expression are controversial. Your grandma's recipe for hotdish is a form of expression, but unless it includes contraband or poison, it's probably not very controversial -- and if there's no controversy, then there's not much of an argument about whether it should be legal.
- Your arguments should focus on potential restrictions made by the government (rather than by private employers, social media platforms, etc.): e.g., a TP about whether the state of Minnesota should ban "hate speech" fits the assignment, but a TP about whether Twitter should ban "hate speech" does not.

- Your main goal in this assignment is to make persuasive arguments about what the law *should be* -- which may not be the same as what the law actually is. Even if you agree with what the law says about your chosen forms of expression, you need to be able to explain *why* you think the law is correct.
- This essay is not just a chance to state your opinions. Simply sharing an opinion doesn't require much thought, especially without a rationale for why you believe what you do. You should approach this essay as an opportunity to *change* your audience's opinion about the forms of expression in question.
- Think carefully about how your answers to the two pieces of this assignment relate to each other. If I can swap your two forms of expression with your two rationales and find your arguments to be just as persuasive, then those arguments aren't as strong as they should be.

Case studies (CSs)

Over the course of the semester, I will post 10 different CS narratives to the course Canvas site -- 5 during the first week of October, 3 during the first week of November, and 2 during the first week of December -- each of which will describe a hypothetical free speech case. For each of these, you can write and submit a report that explains how you would resolve the case in question and why you think your solution is the best one.

For each CS that you submit, your completed report must consist of two parts:

- Two short *lists* -- one for each of the two main positions in the case -- of the most important facts and arguments that support those positions. Each list should be *at least five items long* and each item on your lists should consist of complete sentences.
- An *essay* of *at least 1000 words* that explains how you would resolve the case in question and -- most importantly -- presents a *persuasive argument* in support of your chosen resolution. Your argument should demonstrate that you are familiar with the required readings that are most relevant to the case in question. [N.B.: Your lists do *not* count towards the 1000-word requirement. Essays that fall short of 1000 words will *not* receive passing grades.]

Each CS is worth a maximum of 10 points. CSs that earn grades of D or F will be worth a fixed number of points on a sliding scale: the first such CS you submit will earn 5 points, the second will earn 4 points, and so on. Other CSs will be worth points on a scale proportionate to the grading schedule on page 2 of the syllabus: e.g., a B- paper is worth 8 points, a B paper is worth 8.3 points, and so on.

You can submit as many (or as few) CSs as you like. It is, however, mathematically impossible to pass the course without submitting at least 1 CS, and the average student will need to submit 3-4 Case Studies in order to pass the course. The final deadline -- which is firm and non-negotiable -- for all CSs is *1:30 pm on 15 Dec*. The only *potential* exceptions to this rule involve situations where you have a *documented* major life emergency of some sort.

Other CS advice/rules:

- There is no single "right" answer that I will look for when I grade CSs. The overall quality of the argument you make in any given CS matters more than the specific position you take. That said, some positions are much harder to defend successfully than others. Whatever position you take should be well supported by (a) the available facts and (b) a persuasive, well-constructed argument.
- Do *not* attempt to respond to the CSs by inventing additional "facts" that magically make the complications and tensions in the case disappear (e.g., a new amendment to the Constitution, ratified just last week, that somehow settles the case at hand in a clear and obvious way).
- You should take relevant arguments from our required readings into account when you write up your CSs. You are *not* obligated to agree with those arguments, but you also aren't allowed to simply ignore them. And even if you *do* agree with those arguments, you still need to make a persuasive argument of your own for how and why the reading in question is the most appropriate guide to resolving the scenario in the CS.
- The items on your lists should focus on the specific details of the case in question, rather than generic claims related to free speech. (Example: "The First Amendment protects speech" is *not* a helpful list item, but "The SCOTUS has consistently held that parades (such as the one in this CS) count as a kind of speech and are subject to First Amendment protection" would be.)

- Remember that your goal isn't simply to demonstrate that you have an opinion: it's to *persuade* your reader that your position on the issue at hand is correct. Essays that merely assert a position without arguing it will *not* meet the requirements of this assignment, and the *highest* grade they will earn is a D. That same grade ceiling also applies to CSs that devote more time/space to summaries and/or paraphrases of the relevant readings than they do on presenting your argument.

Paperless (mostly) assignments

Everything you'll submit for a grade this semester *must* be submitted digitally. Blog contributions can (obviously) only happen online. All other written assignments must be submitted *via email* to rodman@umn.edu as *file attachments* in one of the following formats:

- LibreOffice/OpenOffice (.odt)
- Microsoft Word (.doc or .docx)
- Rich Text Format (.rtf)

Assignments submitted in other formats (including PDFs, paper, links to online documents) will *not* be accepted.

Academic dishonesty

The following is a *partial* list of examples of academic dishonesty:

- plagiarism in any of its forms
- copying assignments (in whole or in part) produced by other students
- "double-dipping" (i.e., using the same work to earn more than one grade -- including attempts to reuse work that you have submitted for a grade in some other course)
- having someone else research and/or write substantial portions of any graded assignment for you
- deleting and/or re-editing blog posts/comments after they've been placed on the course Canvas site
- knowingly assisting someone else in their efforts to engage in any of the above practices

The *minimum* penalty for academic dishonesty is a *zero* for the assignment in question. Put bluntly, the risks are high (plagiarism is usually easy to identify), the penalties are higher (e.g., expulsion from the U), and the potential benefits are usually trivial (e.g., you "earn" enough points to turn a C into a C+).

Some helpful resources to avoid academic dishonesty include:

- <https://communitystandards.umn.edu/avoid-violations/avoiding-scholastic-dishonesty>
- <http://www.gilrodman.com/2015/03/01/how-to-plagiarize-well-tips-for-my-undergraduates-rerun-sunday/>

Miscellaneous

- Our discussions will cover topics that are likely to evoke strong differences of opinion. I don't expect our class meetings to produce unanimous agreement about those topics, but I do expect our discussions to be characterized by mutual respect and collegiality. Strong opinions are acceptable; verbal bullying and personal attacks, on the other hand, will *not* be tolerated under any circumstances.
- Significant disruptions of the normal flow of course-related business -- e.g., using cell phones in class, excessive side chatter, premature leave-taking behavior -- may result in grade penalties.
- You may make audio and/or video recordings of class meetings for your personal use, provided you do so without disrupting the ordinary flow of the class. The purchase and/or sale of either written notes or recordings of class meetings is strictly prohibited.
- I will make every reasonable effort to accommodate students' needs relating to religious holidays and/or documented disabilities. By University policy, you must provide written notice (for religious holidays) and/or official documentation (for disabilities) with enough lead time for accommodations to be arranged.
- University policy prohibits sexual harassment as defined in the January 2018 policy statement (see <https://policy.umn.edu/hr/sexharassassault>). In my role as a University employee, I am required to share information that I learn about possible sexual misconduct with the campus Title IX office that addresses these concerns. Questions or concerns about sexual harassment should be directed to the Office of Equal Opportunity and Affirmative Action (274 McNamara).

Reading/assignment schedule

[Readings should be completed prior to the dates listed. All readings can be found on our Canvas site.]

4 Sep	no reading
6 Sep	this syllabus "How to Do Well in This Course" Lamott, "Shitty First Drafts" Milton, <i>Areopagitica</i> (part 1)
11 Sep	Thought paper deadline Milton, <i>Areopagitica</i> (part 2)
13 Sep	Mill, <i>On Liberty</i> (chs. I-II)
18 Sep	Mill, <i>On Liberty</i> (chs. III-IV)
20 Sep	Mill, <i>On Liberty</i> (ch. V) Declaration of Independence US Constitution (including Amendments) "A Too-Brief Guide to the US Supreme Court"
25 Sep	<u>"clear and present danger"</u> Schenck v. United States, 249 US 47 (1919) Gitlow v. New York, 268 US 652 (1925) Whitney v. California, 274 US 357 (1927) Brandenburg v. Ohio, 395 US 444 (1969)
27 Sep	<u>"fighting words"</u> Chaplinsky v. New Hampshire, 315 US 568 (1942) Terminiello v. Chicago, 337 US 1 (1949) Cohen v. California, 403 US 15 (1971)
2 Oct	<u>political speech</u> Debs v. United States, 249 US 211 (1919) Stromberg v. California, 283 US 359 (1931) De Jonge v. Oregon, 299 US 353 (1937) Watkins v. United States, 354 US 178 (1957) Lamont v. Postmaster General, 381 US 301 (1965)
4 Oct	Tinker v. Des Moines, 393 US 503 (1969) Ladue v. Gilleo, 512 US 43 (1994) Minnesota Voters Alliance v. Mansky, 585 US ____ (2018)
9 Oct	<u>hate speech</u> R.A.V. v. St. Paul, 505 US 377 (1992) Wisconsin v. Mitchell, 508 US 476 (1993) Virginia v. Black, 538 US 343 (2003)
11 Oct	<u>the pledge of allegiance</u> Minersville v. Gobitis, 310 US 586 (1940) West Virginia v. Barnette, 319 US 624 (1943)
16 Oct	<u>flag burning</u> Street v. New York, 394 US 576 (1969) Texas v. Johnson, 491 US 397 (1989) United States v. Eichman, 496 US 310 (1990)
18 Oct	<u>the press and national security</u> New York Times v. United States, 403 US 715 (1971)

- 23 Oct** libel and defamation of character / emotional distress
New York Times v. Sullivan, 376 US 254 (1964)
Hustler v. Falwell, 485 US 46 (1988)
Snyder v. Phelps, 562 US 443 (2011)
- 25 Oct** obscenity, nudity, and pornography
Jacobellis v. Ohio, 378 US 184 (1964)
Miller v. California, 413 US 15 (1973)
- 30 Oct** Barnes v. Glen Theatre, 501 US 560 (1991)
Erie v. Pap's, 529 US 277 (2000)
- 1 Nov** Ashcroft v. Free Speech Coalition, 535 US 234 (2002)
United States v. Williams, 553 US 285 (2008)
- 6 Nov** broadcasting
FCC v. Pacifica Foundation, 438 US 726 (1978)
- 8 Nov** FCC v. Fox TV (I), 556 US 502 (2009)
FCC v. Fox TV (II), 567 US 239 (2012)
- 13 Nov** internet
Reno v. ACLU, 521 US 844 (1997)
United States v. American Library Association, 539 US 194 (2003)
- 15 Nov** libraries and the arts
Board of Education v. Pico, 457 US 853 (1987)
- 20 Nov** NEA v. Finley, 524 US 569 (1998)
- 22 Nov** **NO CLASS -- THANKSGIVING**
- 27 Nov** corporate speech
Citizens United v. FEC, 558 US 310 (2010)
- 29 Nov** government speech
Pleasant Grove City v. Summum, 555 US 460 (2009)
- 4 Dec** Walker v. Sons of Confederate Veterans, 576 US ____ (2015)
Matal v. Tam, 582 US ____ (2017)
- 6 Dec** parades
Forsyth County v. Nationalist Movement, 505 US 123 (1992)
Hurley v. Irish-American Gay Group of Boston, 515 US 557 (1995)
- 11 Dec** United States v. Alvarez, 567 US 709 (2012)
- 15 Dec** **Final deadline for all Case Studies, Blog posts/comments**
(1:30 pm)