

WHAT FREE SPEECH BOUNDARIES DO WE WANT?

Curricular Assignment



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When people talk about free speech or freedom of expression, does that mean we can or should say anything we want? Like most important values, the answer is not simple. Free speech as a First Amendment right means that we cannot be punished by the government for what we say (though it's important to know that there are some time and place restrictions). Our democracy in theory protects us from those who would not want us to talk about unpopular ideas or criticize the government. This protection is not one held as a universal value in other parts of the world.

Democracy depends on public spaces and the expression of free speech in open-air debates, club meetings, town halls, demonstrations, and rallies where people voice their hopes, dreams, or dissent toward customs, institutions, and authorities. In doing so, free speech may confront competing values surrounding morality, diversity, public safety, and notions of a just society. Yet, for all the struggles that define and emerge from free speech, we continue to protect its prominence as a cherished American freedom.

Some argue that since the First Amendment encourages us to seek truth and liberty without fear of punishment or government restrictions, we must tolerate hate speech and racist discourse. Others argue that our speech should be self-monitored to uphold respect and dignity for all people. In response to the practical difficulty of distinguishing the boundaries of hate speech, our U.S. Supreme Court has ruled repeatedly, that such restrictions would suppress the public debate that democracy requires.

We know that tolerating hate speech, speech that intentionally demeans the value of other human beings, not only hurts the individuals to whom the speech is targeted, but also undermines a foundational equality principle as stated in the Declaration of Independence, namely that all people (not only men) are created equal.

We are living in a time where people are speaking up, as demonstrated in our cities and around the world recently by young people taking charge of conversations for police accountability, climate justice, immigration reform, and the elimination of school gun violence, to name just a few of the topics around which they have galvanized wide support.

To stand up and speak out in the public sphere requires courage and persistence in the face of inevitable resistance, dismissiveness, rudeness, and sometimes even threatening responses. Thus, all of us, students, teachers, community members, elected leaders, and judges, need to ask what are the tasks we need to

undertake as part of our evolving standards of creating an ethical, just world? How do our cherished ideals of free speech, equality for all, and democracy best operate together? It is clear from our community actions that we are never far from debates and disputes over the scope and meaning of how speech can and should be used in public spaces.

On college campuses, for example, when, if ever should speakers be disinvited or prevented from being on campus? Or, under what conditions, if any, should we insist on safe spaces and/or trigger warnings to protect students? How should we respond to hate speech on campuses? Why has taking a knee during the national anthem elicited both support and outrage?

In our communities, people like you have considered if stepping on the American Flag as a teaching moment is prudent, even if it is a protected right. They have also discussed panhandling, and asked is begging for money protected free speech? Is it different from unsolicited requests for donations? How and why?

In this activity, you'll increase your *knowledge* by thinking about:

- What is permissible according to the First Amendment and what are its limits?
- What different speech responses are best surrounding a public issue and why?

You can consider your *values* and that of others by asking:

- How do you balance the legal protections afforded to free speech with a consideration of other legal protections and ethical obligations?
- Who benefits most and who bears the burdens most from free speech?

Putting what you learn into *action* means asking:

- How and where can you speak out on an issue?
- What actions can you take to demonstrate you tolerate or appreciate how others speak out on issues with which you may or may not agree?

The Activity

Read about a free speech issue of concern. Then, write up to 750 words in a statement that identifies the free speech concern, how the first amendment is related, what ethics and communication might suggest, and your views about the demands and limits of free speech. The goal of your writing is to educate others and assert your position with regard to ethics and the boundaries of free speech.

Tips for organizing your paper:

1. Use the introduction to detail the free speech concern. Provide enough details so the reader understands the background and current state of affairs.
2. Discuss how specifically the first amendment is related to this case.
3. Detail what ethical perspectives/theories and issues need to be considered and why.
4. Conclude with a discussion of how ethics and First Amendment legal protections should be weighed in this case to assert your view.

For Instructors:

Rationale

Many students will be unfamiliar with the boundaries of free speech. As a nation, we are not in agreement about those boundaries or even if the First Amendment (free speech) or the Fourteenth Amendment (equal protection) should take precedence. For a discussion of the latter, see <https://www.forbes.com/sites/daviddavenport/2017/10/18/the-culture-wars-latest-battlefront-the-1st-versus-the-14th-amendments/#7847435f683f>. Thus, this activity encourages students to learn about current and historical instances of free speech and employ critical thinking skills to better understand how and why speech is protected.

Objectives

1. Learn about free speech cases and outcomes.
2. Evaluate the usefulness of the first amendment in consideration of other legal protections and ethical obligations of living in a free society.
3. Determine who benefits and who bears the burdens of free speech.
4. For students to reflect on what they consider to be issues worthy of free speech activity and protection.

Preparing Students for the Activity

Students will benefit by discussing in advance of this activity that the human spirit invigorates democracy through the myriad voices and in so doing, builds the political and cultural commitments necessary for us to sustain our communities, even as we grapple with the meaning and impact of our differing views and values.

Discussion Questions

In a debrief with the class once the assignment is completed, the instructor may ask:

- What emerged as your biggest concerns about freedom of speech?
- How would you like to see responses to offensive speech handled?
- What policies or rules guide free speech and expression on our campus?
- How do you feel about campus free speech legislation? See <http://www.icnl.org/usprotestlawtracker/> for where legislation exists or is being introduced.
- How do you balance the need for uncensored expression with the responsibility for its impact?
- How do norms of civility make freedom of expression possible and also limit expression?
- What should a community (or university) do to protect people from hate speech and also protect the free expression of ideas?
- On what issues would you be willing to stand up and speak out?

Time Required

To Set up the Assignment:

- 20 minutes to explain assignment, introduce readings, and field questions.
- 30-45 minutes for follow-up discussion.

Class Size

This activity can be adapted for any size class, in face-to-face or online instruction.

Alternative or Additional Assignment

Have students read their papers in small groups to prompt further discussion. A discussion worksheet is available to help students carefully listen and evaluate positions.

Suggested Readings

- Anderson, Greta (2020, May 5). Contradictions on free speech. <https://www.insidehighered.com/news/2020/05/05/gallupknight-foundation-survey-shows-students-conflicted-about-free-speech>
- Chemerinsky, E & Gillam, G. (2017). *Free Speech on Campus*. New Haven, CT: Yale University.
- Downes, S. (2016, September 10). Trigger warnings, safe spaces, and free speech, too. <https://www.nytimes.com/2016/09/11/opinion/trigger-warnings-safe-spaces-and-free-speech-too.html>
- Milo Yiannopolous countering political correctness <https://www.cnn.com/2017/02/02/us/milo-yiannopoulos-ivory-tower/>
- Rose, F. (2017, March 30). Safe spaces on campuses are creating intolerant students. *Huffington Post*. <https://www.cnn.com/2016/09/21/health/teacher-flag-lesson-trnd/index.html>)
- Dewberry, D. R., Burnette, A., Fox, R. & Arneson, P. (2018). Teaching free speech across the communication studies curriculum. *First Amendment Studies*, 52 (1-2), 80-95.
- <https://www.insidehighered.com/advice/2018/09/21/colleges-and-politicians-promote-free-speech-some-insist-civility-others-opinion>
- <https://www.aaup.org/article/balancing-classroom-civility-and-free-speech#.XNg-WWS6Px4>
- <https://www.thenation.com/article/freedom-of-speech-v-civility/>

Discussion Worksheet

As you listen to others read their statements on free speech, use this worksheet to listen carefully so that you can respond with specific comments.

	Writer #1	Writer #2	Writer #3	Writer #4
What about the issue was not represented as fairly or completely as you would have liked?				
What questions do you have that the writer did not address sufficiently for you?				
What specific ethical values were used or implied by the writer to justify the reasoning offered?				
What other ethical values or theories do you think apply here?				
On what basis should this issue receive 1 st amendment protection, or not?				