

Freedom of speech

Comm 3631 / Spring 2020

Prof. Gil Rodman (rodman@umn.edu) office hours (Ford 284): TuTh 10-11a, 12:30-1:30p 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?
- 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. What you learn 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. [N.B.: You can find summaries and “translations” of most of our readings online. If you use summaries/translations/etc. at all, I would recommend you only do so as *supplemental* reading, rather than as substitutes for the required versions.]

Canvas

If you’re on the course roster, you should already have access to the course’s 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 course blog where you will contribute posts and comments about the course material
- a repository for supplemental materials (e.g., writing aids, optional media examples)
- 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 Android and iOS, though these are probably not the most efficient way to use the site on a regular basis.]

Philosophy

Ideally, any worthwhile university course is like a gym membership: i.e., what you get out of the experience will depend heavily on how much time and effort you put into it. In abstract terms, there are at least three different kinds of things that you will learn in this class:

- new facts (i.e., information about the world that you have not encountered before)
- new viewpoints (i.e., ways of seeing and understanding the world that are different than your own)
- new skills (i.e., techniques and abilities that are either new to you or that help you improve existing skills)

To make this kind of learning happen, you will need to:

- Read a lot. Many -- if not most -- of the new facts and new viewpoints you’ll encounter this semester will come from the readings. Those facts and viewpoints will help you build the arguments you’ll need to make in your written work. If you don’t do the reading (or do it too casually), you will have a very hard time making strong contributions to our discussions or writing well-informed, persuasive essays.
- Speak a lot. One of the major skills you should learn during your college years is the ability to express yourself effectively in a public forum. This is a difficult skill to learn, however, if you don’t practice it. Additionally, one of the most important ways that you will be exposed to new viewpoints this semester is through hearing what your classmates think about the course material . . . but in order for everyone to get this benefit, *everyone* has to contribute to our discussions on a regular basis.

- Write a lot. As with speaking, one of the major skills that any college graduate should have is the ability to write clearly and persuasively. And, again, the best way to learn this skill is by practicing it. No one becomes a better writer without actually writing a lot.

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 either (1) completed but at a level of achievement that is not worthy of credit or (2) was not completed"
- I: incompletes will only be given under "extraordinary circumstances" (i.e., major life emergencies)
- S/N: only students who have registered for the course on an S/N basis are eligible for these grades

You will assign yourself a final grade for this course. Sort of. There is a set of baseline requirements that you must meet in order to earn a final grade of C- (i.e., the minimum grade necessary for the course to count toward your degree requirements) or higher:

- 20+ In-Class Participation days
- Blog contributions (2000+ words)
- Reflection Essay (1000+ words)
- 2 Case Studies (1000+ words each)
- Self-Assessment Essay (1500+ words)

For any grade above a C-, you should aim to produce a quantity and quality of work above and beyond those baseline requirements that matches the University standards quoted above. My working assumption is that the grade you assign yourself will be the grade I officially assign you at the end of the semester -- but that assumption depends on your ability to back up your claim with solid evidence and a persuasive argument. I reserve the right to assign you a different final grade -- higher or lower -- in cases where there is a significant gap between the grade you assign yourself and your actual performance.

If you fall short of any of the baseline requirements, the highest grade you can earn for the course is a D+. In such a scenario, precisely what grade you will earn will depend on how far short of those requirements you fall.

In-class participation (ICP)

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,
- come to class prepared to discuss those readings in thoughtful ways,
- contribute to in our in-class discussions/activities in a non-trivial 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.

To be clear, this is a participation requirement, rather than an attendance requirement . . . but if you miss one of our class meetings, you cannot participate in the discussion/activity that takes place in class that day which, in turn, means that you will not earn ICP credit for that day.

Similarly, if you are "present in name only" (PINO) for one of our class meetings, you will not earn ICP credit for that day. As the term implies, a PINO day happens when you are physically present, 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 27 class meetings this semester. You must earn ICP credit on at least 20 of those days in order to meet the baseline requirements for the course.

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 this requirement.

Blog contributions will be measured every course week: i.e., the seven-day period that begins each Tuesday at 2:30 pm. (N.B.: For assessment purposes, the last course week of the semester begins at 2:30 pm on 28 Apr and ends at 12:30 pm on 9 May.) For any given course week, there are two ways to earn credit toward the Blog requirement:

- You create a post of at least 200 words of thoughtful commentary about the assigned readings and/or our in-class discussions/activities.
- You create a comment of at least 200 words of thoughtful response to one of your classmates' posts or comments.

Any given blog contribution must be substantially different from your other contributions to the blog. Posts/comments shorter than 200 words will *not* count toward the Blog requirement. See "Word count rules" below for more information.

There are 15 course weeks this semester. To meet the baseline requirements for the course:

- you must contribute to the Blog during at least 8 different course weeks,
- you must contribute at least 2000 words to the Blog overall,
- at least 750 of those words must be posts of your own, and
- at least 750 of those words must be comments in responses to other students' posts/comments.

Technical instructions

- Access the blog using the "Discussions" link in the left-hand menu of the course Canvas site.
- Create a new post using the "+Discussion" button in the upper right-hand 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 credit 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. Respond to your classmates' contributions with the same care and consideration that you want them to use in responding to your contributions.
- This assignment is designed to promote consistent, semester-long engagement, rather than isolated bursts of "extra" effort. As such, you may find it helpful to pick a regular day/time each week to make your blog contributions.

Reflection essay (RE)

In a well-crafted and thoughtful essay of at least 1000 words, explain what you (think you) already know about freedom of speech. This is *not* a research paper. It is a deliberately open-ended essay in which you summarize your current knowledge, opinions, and questions you have about the course's central theme. It will provide a useful touchstone when you write your Self Assessment Essay at the end of the semester. Some questions that you might want to consider in your RE include:

- Does free speech matter? Why or why not? What (if any) are the dangers in placing restrictions on free speech? What (if any) are the dangers in *not* placing any restrictions on free speech?
- What kinds of speech (if any) should *not* be permissible? What sorts of penalties should be imposed on people who engage in such speech? Why should these kinds of speech be subject to more severe restrictions than other speech?
- Whose responsibility (if anyone's) is it to impose and enforce restrictions on speech? What makes them the best choice to take on such a task?
- What (if any) questions or concerns do you have about free speech as you begin the course? Are there specific free speech issues that you want to know more about?

To be clear, this is not an exhaustive list of questions to think about as you write your RE, nor are you obligated to address them all.

This paper is due by 2:30 pm on 4 Feb. Please remember that the RE is one of the baseline requirements you must meet for the course. To that end, the following rules also apply:

- Every day (or fraction thereof) that your RE is late will add a full day to the number of ICP days that you will need in order to meet the baseline requirements.
- Every 100 words (or fraction thereof) that your RE falls short of the 1000 word requirement will add a full day to the number of ICP days that you will need in order to meet the baseline requirements.
- REs that stray too far from the prompt will not count as successful fulfillment of the requirement, and you will need to submit a fresh RE that does address the prompt properly. That “second chance” RE will be subject to the same penalties described above for lateness and/or shortness.

Case studies (CSs)

I will post 10 different CS narratives on Canvas -- 5 during the first week of March, 3 during the first week of April, and 2 during the first week of May -- 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 most relevant to the case in question. [N.B.: Your lists do not count towards the 1000-word requirement.]

You must submit at least 2 successful CSs in order to meet the baseline requirements for the course. You are free to submit as many additional CSs as you like -- and should almost certainly do so if you are aiming for a course grade higher than a C-. The final -- firm and non-negotiable -- deadline for all CSs is 12:30 pm on 9 May. The only potential exceptions to this rule involve situations where you have a documented major life emergency.

Other CS advice/rules:

- There is no single “right” answer that I look for with respect to CS essays. 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.
- 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.
- Remember that your goal isn’t simply to demonstrate that you have an opinion: it’s to persuade your reader why your position on the issue at hand is the best one (or, at the very least, a better one than most others). CSs that merely assert a position without arguing it will not meet the requirements of this assignment. That same rule applies to any CS essay that presents extended summaries of readings/sources, rather than an argument of your own.
- 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).
- 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.)

Design-your-own assignment (DYOA)

This is your opportunity to design and complete assignments that go beyond those listed in the baseline requirements for the course. To be clear, you are not obligated to do this, and the course is already designed so that you can justify an above-average final grade by submitting more than 2 successful CSs. But there are definitely other viable ways for you to demonstrate that you have learned something of value in this course.

For example:

- You can write your own Case Study narrative
- You can do research to find other First Amendment court cases worth adding to the syllabus
- You can research and write an essay about some significant free speech issue

This is not an exhaustive list -- not even close -- and you are free to invent and pursue other options if you want.

If you choose to exercise this option, a few important rules apply to any DYOAs that you submit:

- They do not replace any of the baseline requirements for the course.
- They must focus primarily on issues relevant to the course's main theme.
- They must result in an argumentative essay of at least 1000 words (or the multimedia equivalent).
- You must consult with me about your DYOAs well in advance of the final deadline.

Revisions

Any CSs or DYOAs that you submit prior to 2:30 pm on 14 April will come back to you with feedback from me no later than 2 May (and sooner, if that's feasible), and you can -- if you so desire -- revise and resubmit that work in order to help justify a higher final grade for the course. To be clear, the sort of revision that would serve that goal in a meaningful way will require you to make more than just minor proofreading or copy-editing corrections. Precise details will vary, but you should assume that any suitable revision will involve reorganizing and/or restructuring your original essay, discarding sections that didn't work well, writing fresh prose, rethinking key pieces of your original argument, and/or undertaking fresh research. Put simply, if your initial version of an essay is so strong that all it really needs to improve it is for you to fix a few typos (or something similarly minor), I will tell you so explicitly in my feedback.

Self-assessment essay (SAE)

In a well-crafted and thoughtful essay of at least 1500 words, tell me the final grade that you believe you deserve for the course, and make a persuasive argument for why that grade is appropriate. Some important things to consider in your SAE include:

- The quantity of the work you did. How far above and beyond the baseline requirements did you go? If you barely exceeded them (e.g., 2 "extra" ICP days and 200 "extra" words worth of Blog), you'll have a much harder time justifying an A than if you successfully completed 5 CSs, contributed to all our class meetings in significant ways, and blogged 13 out of 15 weeks.
- The quality of the work you did. Did you write exceptionally strong and polished CSs? Or did you do just enough to meet the technical requirements? Did my feedback on your work describe it as excellent, or did I suggest that you make significant revisions to it?
- The University's listed standards for grades. You can find these on page 2 of this syllabus. Did your work go "significantly above" the course requirements (e.g., earn a B), or was it "outstanding" relative to those requirements (e.g., earn an A)?
- What you actually learned. Reread your RE before you start writing your SAE. Remind yourself of what you knew (or didn't know) in January, and then compare that with what you know in May. One way to make a strong case for a particular grade is to evaluate the distance you've traveled between the start and end of the semester and/or to write an essay that visibly demonstrates what you've learned.

To be clear, this is not an exhaustive list of issues to cover in your SAE, nor are you obligated to address them all.

This paper is due by 12:30 pm on 9 May. Please remember that the SAE is one of the baseline requirements you must meet for the course. To that end, every 100 words (or fraction thereof) that your SAE falls short of the 1500 word requirement will result in a penalty of a fractional grade deducted from your course grade (e.g., if you otherwise would have earned a B, but your SAE is only 1420 words long, you will receive a B- for the course).

Word counts

Your goal for any given assignment should be to submit high quality work, rather than a certain quantity of words. The word count requirements for any given assignment represent the minimum amount of writing necessary to produce acceptable work. A good CS essay (for example) needs to establish what the major legal question is that needs to be resolved, draw on relevant readings from our syllabus in appropriate ways, support your own position on the case with sufficient evidence and persuasive logic, and refute the major arguments from the other side of the case effectively (not necessarily in that order). That's a lot of work to do well in less than 1000 words. You should consider your essay complete only after all that work is done, even if that means you wind up writing 1200 or 1500 words instead of "only" 1000.

Some additional word count rules/tips:

- The minimum word count requirement for any given assignment is *firm*. There is no such thing as getting “close enough” to the requirement to count. If something you’ve written falls short of the listed word count, you will *not* receive credit for that assignment.
- Different word processing programs use slightly different rules for counting certain kinds of text (e.g., hyphenated words, abbreviations, numbers). As such, it is possible for an essay to produce slightly different word counts depending on which program is doing the counting. Aiming to write essays that are “just barely” long enough is bad practice in general, but it also comes with the risk that what looks to be long enough on your end will register as too short on my end -- and the latter is the count that matters.
- Don’t pad out your writing with “empty” words. If (by my estimate) more than 10% of any given piece of written work consists of filler prose (e.g., extended summaries of the readings, generic greetings, etc.), *only the non-filler words will count* toward meeting the word count requirement: e.g., a 1200-word CS essay that includes 200 words that merely summarize the underlying scenario and another 200 words of filler (e.g., “I thought for a long time about what to do with this case, which was very interesting and thought provoking to me, and I think it raises some important issues about free speech that I will attempt to address in the pages that follow . . .”) will count as an 800-word essay.
- For the Blog: Only your own words count: e.g., 75 words from you plus 250 words quoted from elsewhere will count as 75 words, rather than 325.
- For the RE, CSs, DYOAs, and the SAE: Only the main body of your text counts. Headers, footers, titles, reference lists (etc.) and the list portion of CSs do not count. Quotes from other sources *do* count, but *only* if those quotes are trimmed to an appropriate length (e.g., do *not* quote a 75-word passage from one of our readings if only 10 of those words are actually necessary for your argument to work well).

Paperless assignments

Everything you’ll submit for credit this semester *must* be submitted digitally. Blog contributions can (obviously) only happen online. All other written work 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, hard copies, 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 credit more than once -- including attempts to reuse work that you have submitted in some other course)
- having someone else research and/or write substantial portions of any 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 that you earn *zero* credit 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 “successfully” complete an assignment that allows you turn a C into a C+).

Some helpful resources to avoid academic dishonesty include:

- <https://communitystandards.umn.edu/avoid-violations/avoiding-scholastic-dishonesty>
- <https://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, sale, and/or public distribution 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 rule, 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 the course Canvas site.]

21 Jan	no reading
23 Jan	this syllabus "How to Do Well in This Course" Milton, <i>Areopagitica</i> (part 1)
28 Jan	Milton, <i>Areopagitica</i> (part 2)
30 Jan	Mill, <i>On Liberty</i> (chs. I-III)
4 Feb	Reflection Essay deadline Mill, <i>On Liberty</i> (chs. IV-V)
6 Feb	Declaration of Independence US Constitution (including Amendments) "A Too-Brief Guide to the US Supreme Court" Bragg, "Equality"
11 Feb	<u>"clear and present danger"</u> Schenck v. United States (1919) Gitlow v. New York (1925) Whitney v. California (1927) Brandenburg v. Ohio (1969)
13 Feb	<u>"fighting words"</u> Chaplinsky v. New Hampshire (1942) Terminiello v. Chicago (1949) Cohen v. California (1971)
18 Feb	<u>political speech</u> Debs v. United States (1919) Stromberg v. California (1931) De Jonge v. Oregon (1937) Watkins v. United States (1957) Lamont v. Postmaster General (1965)
20 Feb	Tinker v. Des Moines (1969) Minnesota Voters Alliance v. Mansky (2018)
25 Feb	<u>public signs</u> City Council v. Taxpayers for Vincent (1984) Ladue v. Gilleo (1994)
27 Feb	<u>hate speech</u> R.A.V. v. St. Paul (1992) Wisconsin v. Mitchell (1993) Virginia v. Black (2003)

- 3 Mar** the pledge of allegiance
Minersville v. Gobitis (1940)
West Virginia v. Barnette (1943)
- 5 Mar** **NO CLASS**
- 10 Mar** **NO CLASS**
12 Mar **NO CLASS**
- 17 Mar** expressive conduct / flag burning
United States v. O'Brien (1968)
Street v. New York (1969)
Texas v. Johnson (1989)
United States v. Eichman (1990)
- 19 Mar** prior restraint / national security
Near v. Minnesota (1931)
New York Times v. United States (1971)
- 24 Mar** libel / defamation / emotional distress
New York Times v. Sullivan (1964)
Hustler v. Falwell (1988)
Snyder v. Phelps (2011)
- 26 Mar** obscenity, nudity, and pornography
Jacobellis v. Ohio (1964)
Miller v. California (1973)
- 31 Mar** Barnes v. Glen Theatre (1991)
Erie v. Pap's (2000)
- 2 Apr** Ashcroft v. Free Speech Coalition (2002)
Packingham v. North Carolina (2017)
- 7 Apr** broadcasting
FCC v. Pacifica Foundation (1978)
- 9 Apr** FCC v. Fox TV (I) (2009)
FCC v. Fox TV (II) (2012)
- 14 Apr** **Soft deadline for Case Studies**
government-funded speech / libraries / the arts
Board of Education v. Pico (1987)
Rosenberger v. University of Virginia (1995)
NEA v. Finley (1998)
- 16 Apr** the internet
Reno v. ACLU (1997)
United States v. American Library Association (2003)
- 21 Apr** government speech
Pleasant Grove City v. Summum (2009)
Walker v. Sons of Confederate Veterans (2015)
- 23 Apr** Matal v. Tam (2017)
- 28 Apr** parades and honors
Forsyth County v. Nationalist Movement (1992)
Hurley v. Irish-American Gay Group of Boston (1995)
- 30 Apr** United States v. Alvarez (2012)
- 9 May**
(12:30 pm) **Final deadline for all written work**