

History of Free Speech in the U.S. [HIST-2702]

Fall 2024 (2 credits)

(Wednesday 8-10 a.m.; Anderson Academic Commons 340)

Professor Mary Clark
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SYLLABUS

Course description

This undergraduate seminar examines the origin, evolution, and application/impact of freedom of expression principles in the United States. The course draws on primary source materials and asks students to frame in-class discussions and a final analytical essay around important debates regarding freedom of expression.

This course promotes the following learning outcomes:

1. Diverse perspectives

Students will be exposed to diverse perspectives throughout the class readings and discussions. Students will delve into the complexities of the history of free speech in the U.S. by examining multiple and conflicting points of view in primary source and other materials. Students will be expected to demonstrate openness and understanding in engaging with conflicting points of view in class discussions.

2. Critical communication skills

Students will hone their critical communication skills through drafting of reading response memos, participation in class discussions, and crafting of a final analytical essay.

3. Critical reading skills

Students will engage closely and critically with historical and legal texts. Students will be asked to articulate authors' main points and formulate critiques thereof to hone their critical reading and analysis skills.

4. Reflection

Students will draft bi-weekly reading response memos, analyzing questions and/or concerns prompted by that week's readings. The reading response memos require students to engage in reflective analysis. The reading response memos will serve as the basis for in-class discussion.

Discussion topics and readings* (*All readings posted to Canvas)

Class 1 (9/11/24)

A. Introduction to course, including reading response memos and final analytical essay

B. Introduction to Enlightenment principles on freedom of expression

John Locke, *Two Treatises on Government* (1689)

Voltaire, *Philosophical Letters* (1734)

Montesquieu, excerpt from *The Spirit of Laws* (1748)

Declaration of the Rights of Man and Citizen (1789)

Class 2 (9/18/24) “A” reading response memos due this week

A. Trial of John Peter Zenger: Freedom of expression in colonial New York (1734-35)

B. Declaration of Independence

C. Freedom of expression and Constitutional debates

Alexander Hamilton, *Federalist No. 84*

James Madison, *Speech in Support of Amendments* (1789)

Floyd Abrams, *The Soul of the First Amendment*, pp. 3-10

D. The First Amendment

E. The Alien and Sedition Acts (1798)

F. Thomas Jefferson, *First Inaugural Address* (1801)

G. John Stuart Mill, “On Liberty” (1859)

Class 3 (9/25/24) “B” reading response memos due this week

First Amendment principles developed by the U.S. Supreme Court

Schenk v. U.S. (1919)

Cox v. New Hampshire (1941)

Chaplinsky v. New Hampshire (1942)

NYT v. Sullivan (1964)

Tinker v. Des Moines (1969)

Brandenburg v. Ohio (1969)

Class 4 (10/2/24) “A” reading response memos due this week

First Amendment principles developed by U.S. Supreme Court (cont’d)

Cohen v. California (1971)
Miller v. California (1973)
Hazelwood v. Kuhlmeier (1988)
Texas v. Johnson (1989)
Snyder v. Phelps (2011)

Class 5 (10/9/24) “B” reading response memos due this week

Free speech principles and movements for civil, political, social and economic rights

A. Nineteenth century women’s rights movement

Declaration of Sentiments (1848)
Comstock Act (1873)

B. Labor rights

Thornhill v. Alabama (1940)

C. Civil Rights

Courts struck down efforts of Southern states to limit speech rights of civil rights movement participants – see Erwin Chemerinsky and Howard Gillman, *Free Speech on Campus*, pp. 43-44

D. Rights of LGBTQ individuals

Excerpts from Carlos A. Ball, *The First Amendment and LGBT Equality: A Contentious History*

Class 6 (10/16/24) **“A” reading response memos due this week**

A. AAUP Academic Freedom principles

AAUP principles (1915 and beyond)
Chemerinsky, *Free Speech on Campus*, at 59-61
Robert Post in Lee Bollinger & Geoffrey Stone, *Free Speech Century*, at 112-122

B. 1950s McCarthyism, including on university campuses

Chemerinsky, *Free Speech on Campus* at 61-62

C. Student free speech movements, including at Berkeley, and their ongoing impact

Chemerinsky, *Free Speech on Campus*, at 74-78
Keith Whittington, excerpt from *Speak Freely: Why Universities Must Defend Free Speech*

D. DU’s Freedom of Expression Policy

E. DU’s Interim Demonstrations Policy

*** TOPIC PROPOSAL FOR FINAL ANALYTICAL ESSAY DUE SUNDAY 10/20/24 BY 5 P.M. ***

Class 7 (10/23/24) **“B” reading response memos due this week**

A. Hate speech and its regulation, and current debates on freedom of expression and diversity, equity, and inclusion

Mari Matsuda, “Public Response to Racist Speech,” in *Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment*, pp. 35-51

Chemerinsky, *Free Speech on Campus*, pp. 82-110

B. Free speech and regulation of social media

Twitter v. Taamneh (U.S. 2023) (refusing to limit scope of Section 230 of Communication Decency Act’s liability shield for social media companies)

Monika Bickert in Bollinger & Stone, *Free Speech Century*, pp. 254-59

Suzanne Nossel (CEO, PEN America), excerpt from *Dare to Speak*

Class 8 (10/30/24) **“A” and “B” reading response memos due this week**

A. In-class debate: “The best remedy for offensive speech is more speech”

B. Contemporary comparative perspectives on freedom of expression

Abrams, *The Soul of the First Amendment*, pp. 37-58

Tom Ginsburg in Bollinger & Stone, *Free Speech Century*, pp. 193-209

New York Times, “‘Who Gets to Wear a Headscarf?’ Free Expression in France”

New York Times, “Is There Freedom of Speech in Germany?”

***WELL-ADVANCED DRAFT OF FINAL ANALYTICAL ESSAY DUE SUN. 11/3/24 BY 5 P.M. ***

Class 9 (11/6/24) **In-class peer review of final analytical essays**

Class 10 (11/13/24) **In-class peer review of final analytical essays**

***FINAL ANALYTICAL ESSAY DUE WEDNESDAY 11/20/24 BY 5 P.M. ***

Assessment

1. 4 bi-weekly reading-response memos (constituting 40% of course grade)

Preparation of bi-weekly reading response memos will promote learning outcomes of: (1) understanding diverse perspectives and managing complexity; (2) practicing critical written communication skills; and (3) engaging in critical reflection on course texts.

The reading response memos should be 2 pp. in length and will promote more focused class discussion. The reading response memos will also inform students' analyses for their final essays.

Please email your reading response memos to me (mary.clark@du.edu) by Monday at 5 p.m. for the upcoming Wednesday's class session.

No late submissions will be accepted, as that defeats the purpose of the reading response memo, *i.e.*, I am interested in knowing what strikes you most about the week's readings so that I can shape the class discussion accordingly. Whether you are an "A" or "B" for reading response memo purposes will be determined at the first class, and I will share a "prompt" in the first class for the first reading-response memo.

2. Participation in class discussions (constituting 35% of course grade)

Participation in class discussions will promote learning outcomes of: (1) understanding diverse perspectives and managing complexity; (2) developing critical understanding of course texts; and (3) practicing critical oral communication skills.

Participation in class discussions will hone students' critical analysis of key texts and argument strategies. This will in turn further the quality of your final analytical essay. Participation in class discussions involves regular attendance, active listening, and regular participation through questions and/or comments that contribute to overall class learning.

3. Using the texts assigned in the course, students will compose a final analytical essay on a topic related to freedom of expression (constituting 25% of course grade)

Students' work on their analytical essay will promote learning outcomes of: (1) understanding diverse perspectives and managing complexity; (2) promoting critical written communication skills; (3) engaging in close, critical reading of key texts; and (4) honing skills of reflective analysis.

Topic proposal for the final analytical essay is due via Canvas on 10/20/24 by 5 p.m.

A well-advanced draft of the final analytical essay is due via Canvas on 11/3/24 by 5 p.m.

We'll conduct peer reviews of the draft analytical essays in class in Weeks 9 and 10. I'll share assignments as to who is commenting on whose draft essays in advance of those class sessions.

The final analytical essay is due via Canvas on 11/20/24 by 5 p.m.; 6-8 pages in length.

Course grading system

The course grade will be composed of the following elements:

- 4 Reading response memos -- 40%
- Participation in class discussions -- 35%
- Final analytical essay -- 25%

Class attendance

The learning outcomes of this class are not possible without regular attendance in class; in view of this, students should plan to attend every class meeting.

Technology use in class

Students are expected to remain fully engaged with class discussions at all times. Therefore, laptop use is strongly discouraged. Cell phone use is prohibited.

Course policy on social media

Students are not permitted to make visual or audio recordings, including live-streaming, of classroom lectures or any class-related content, using any type of recording devices (*e.g.*, smart phone, computer, digital recorder, etc.) unless prior permission from the instructor and fellow classmates is obtained. If permission is granted, personal use and sharing of recordings and any electronic copies of course materials (*e.g.*, lecture notes and any classroom discussions online or otherwise) is limited to the personal use of students registered in the course and for educational purposes only, even after the end of the course.