



Freedom of Expression—Lesson Plan

Student Objectives

- Discuss the fundamental role of freedom of expression in a democratic society.
- Appreciate the tension between the exercise of freedom of expression in a democracy and the protection of individuals and minority or disfavored groups.
- Understand the concept of hate speech—speech that promotes hatred or violence against other persons or groups in society.
- Examine how democracies that share common principles and face similar problems can still develop very different solutions.
- Explore the influence of history on the specific balance of values and legal protections in different democratic societies.
- Analyze the reasons supporting and opposing the government’s permitting hate speech.
- Identify areas of agreement and disagreement with other students.
- Decide, individually and as a group, whether the government should permit hate speech; support decisions based on evidence and sound reasoning.
- Reflect on the value of deliberation when deciding issues in a democracy.

Question for Deliberation

Should our democracy permit hate speech?

Materials

- Lesson Procedures
- Handout 1—Deliberation Guide
- Handout 2—Deliberation Activities
- Handout 3—Student Reflection on Deliberation
- Reading
- Selected Resources
- Deliberation Question with Arguments
(optional—use if students have difficulty extracting the arguments or time is limited)



Freedom of Expression—Reading

1 Almost all 192 members in the United Nations have agreed to follow the Universal
2 Declaration of Human Rights. Article 19 of that Declaration states that “Everyone has the right
3 to freedom of opinion and expression; this right includes freedom to hold opinions without
4 interference and to seek, receive, and impart information and ideas through any media regardless
5 of frontiers.” In the words of the non-governmental organization Freedom House, “The operative
6 word is ‘everyone.’ To deny that doctrine is to deny the universality of information freedom—a
7 basic human right.”

8 Democracies believe that free expression is essential to their societies. Free expression, they
9 argue, distinguishes them from non-democratic countries. Even democracies, however, limit or
10 prohibit certain kinds of speech they consider harmful or dangerous. An example of this tension
11 between free expression and other democratic values is hate speech—speech that promotes
12 hatred or violence against other persons or groups in society.

13 **The Role of Free Expression in Democratic Societies**

14 Self-government requires that citizens have accurate, adequate, and current information about
15 issues facing their society. When ideas can be heard, examined, and questioned, society can
16 develop culturally, economically, and scientifically. Free expression also allows people to vent
17 their anger or frustration with the government and with other problems. It therefore decreases the

18 likelihood that people will turn to violent means to express themselves. Freedom of expression
19 remains one of the most basic rights in a democracy.

20 **Democratic Government: Protector and Regulator of Free Expression**

21 Democratic governments in both North America and Europe protect freedom of expression.
22 They also retain certain powers to limit it. For example, the First Amendment to the U.S.
23 Constitution states that “Congress shall make no law... abridging the freedom of speech, or of
24 the press.” Yet freedom of speech has never been considered absolute in the United States. In
25 recent years the U.S. Supreme Court has increased protections for those who support unpopular
26 ideas. American civic educators Lee Arbetman and Ed O’Brien note, however, that the Court has
27 also held that the government retains the power to limit or punish the content of certain kinds of
28 speech, such as obscenity, commercial speech, defamation, “fighting words,” and incitement.

29 Other countries’ laws also balance protections and limits on freedom of expression. The 48-
30 nation Council of Europe states in Article 10 of its Convention on Human Rights that “Everyone
31 has the right to freedom of expression.... without interference by public authority and regardless
32 of frontiers.” Yet Article 10 also includes a long list of exceptions. This freedom can be limited
33 to prevent crime and protect national security, public safety, the public health and morality, the
34 judiciary, and “the reputation or rights of others.” The Council includes Azerbaijan, Czech
35 Republic, Estonia, Lithuania, Macedonia, Romania, the Russian Federation, Serbia, and Ukraine.

36 **Democracies and Free Expression: Law Shaped by History**

37 Many democratic societies are composed of people from different races, cultures, languages,
38 religions, or ethnicities. Often tension arises between the majority and distinct religious, ethnic,
39 cultural, or ideological minorities. This tension can increase during times of economic or social

40 unrest, or when a group believes that it is being treated unfairly. Some of these grievances go
41 back many centuries.

42 More fundamentally, the histories of democratic societies have shaped their laws.
43 Democracies share a common devotion to free expression, equality, and respect for their citizens.
44 But how they balance these values depends, in part, on their specific histories.

45 ***Free Expression and Hate Speech in Europe.*** Many democracies in Europe fought against
46 Nazi Germany during World War II. Nazism asserted German racial supremacy and classified
47 entire groups of persons as “unworthy of life.” Because the Nazis murdered millions of people
48 because of their race, ethnicity, or religion, European democracies today are dedicated to
49 preventing such terrible events from happening again. Thus, the Russian Constitution states both
50 that “everyone shall be guaranteed the freedom of ideas and speech” and that “the propaganda of
51 social, racial, national, religious or linguistic supremacy shall be banned.” Lithuania’s “Law on
52 the Provision of Information to the Public” and the Constitution of Azerbaijan include similar
53 provisions.

54 In the Czech Republic, which the Nazis occupied during World War II, the criminal code
55 punishes anyone who publicly defames a nation or its language, a race or a group of inhabitants;
56 publicly incites hatred against a nation or race; or calls for restrictions on the rights and freedoms
57 of its members. Yet several Czech political leaders have been challenged for statements against
58 the Romani population. In April 2007, for example, Romani advocates filed a criminal complaint
59 against Deputy Prime Minister Jiri Cunek. Cunek was quoted as saying that anyone who wants to
60 receive state support “should get sunburnt, make a mess with their family and put up fires on the
61 squares” (“Czech Romanies File Complaint,” 2007). Although Cunek claimed he was referring
62 to politicians, not the Romani, observers noted that anti-Roma extremists welcomed his remarks.

63 In another incident, Leana Janackova, a Czech senator and mayor of the north Moravian city
64 of Ostrava, was caught on audiotape in 2006 making remarks about the Roma in a controversial
65 settlement called Bedriska. "I'll tell you this," Janackova is heard saying, "I don't agree with any
66 kind of integration. Unfortunately, I'm a racist. I don't believe in integrating gypsies so that
67 they'd be living throughout the district. Unfortunately we chose Bedriska, so that's where they'll
68 be, surrounded by a high fence, an electric fence if you like, and I'll happily shout that out to the
69 whole world" ("Senator in Hot Water," 2007). Although Janackova says the recording was
70 leaked by her political opponents, other observers are worried. "We are still just one generation
71 away from the horrors of the 30s and the 40s," said Kumar Vishwanathan, who provided the
72 audiotape to the Senate's human rights committee. "If a responsible, respected senator and a
73 mayor of a town says these things, even if it was a joke, I think the person should bear
74 responsibility for these words." The committee decided not to investigate the affair.

75 ***Free Expression and Hate Speech in the United States.*** The United States was born in a war
76 for independence from Great Britain. Americans understood the war in part as a rebellion against
77 British restrictions on their rights. As one result, the First Amendment to the U.S. Constitution
78 protects freedom of expression. Yet after independence, the United States sanctioned legal
79 slavery for millions of persons of African descent. Only after 80 years and a civil war did
80 Americans abolish slavery. Another century passed before African Americans began to gain their
81 full and equal rights, often in the face of vicious racism and violent resistance.

82 As one result, many American cities and states have identified certain symbolic acts as hate
83 speech. For over 50 years, Virginia had a law forbidding the burning of a cross with "an intent to
84 intimidate a person or group of persons." The law stated that a burning cross in itself was
85 sufficient evidence "of an intent to intimidate." In 1998, Barry Black burned a cross at a small

86 rally of the Ku Klux Klan held on private property. Black had the permission of the land's
87 owner, who also participated. A police officer observed the burning cross and arrested Black.

88 Black was found guilty of violating the anti-cross burning law. He appealed his decision to
89 the U.S. Supreme Court. In 2003, the Court made a distinction between *the act* of burning the
90 cross and *the intent* of the persons who burned it. The Court held that “the First Amendment
91 permits Virginia to outlaw cross burnings done with the intent to intimidate.” However, the
92 Court also held that the act of cross-burning can be protected expression: if a burning cross were
93 used at a political rally, for example, it would be a statement of ideology or group solidarity. The
94 act of cross burning cannot be unconstitutional, the Court said, because such a law might infringe
95 on the “lawful political speech at the core of what the First Amendment is designed to protect”
96 (*Virginia v. Black*, 2003).

97 **Prohibiting Hate Speech: Supporters and Opponents**

98 Some people believe that hate speech is not a crime. They think that although certain
99 expressions are painful and hateful, they are a small price to pay for freedom. What is legal is not
100 necessarily acceptable or desirable. The better way to counter hateful expression is to condemn
101 such thoughts and to shun those who say them. With arguments, persuasion, and even “loving”
102 speech, everyone can use free expression to promote the kind of society he or she desires.

103 Others who would permit hate speech argue that laws prohibiting it are unworkable. Such
104 laws require the government to determine the intent of the speaker. This is a difficult and often
105 impossible task. If a word or symbol can mean something to one person and something very
106 different to another person, then the law is the wrong way to classify such expressions. The
107 government can use its time better by punishing hateful actions, not presumed hateful intent.

108 People who want to punish hate speech argue that there is no absolute freedom of expression.
109 Instead, society must decide—through its laws—the limits of free speech. By prohibiting hate
110 speech, government balances freedom of expression with other democratic values like respect
111 and tolerance. If government gets the balance wrong, then the people can always change it.

112 Opponents also believe that punishing hate speech increases equal protection for all persons,
113 not only the powerful. Hate speech directed against marginal or despised minority groups is
114 particularly damaging. It strikes against persons who lack power. Punishing hateful speech helps
115 prevent unequal power relations from turning into overt discrimination.

116 People who would permit hate speech worry that laws punishing it will have the effect of
117 “chilling” free speech: people will be less likely to say what they really mean. They argue that
118 once the government has the power to punish expression, the definition of prohibited speech will
119 grow. Governments should be permitted to control only what people can and cannot do, not what
120 they say or believe.

121 People who would not permit hate speech also worry about its “chilling” effect: a message of
122 hate, spoken once, can be more powerful than a message of tolerance spoken many times.
123 History has shown that speech is frequently the first act of persecution against specific persons
124 and groups. Punishing hate speech establishes necessary and appropriate limits on what can be
125 said in a democratic society.

126 The struggle to balance freedom of expression with dignity and respect for all remains a
127 central challenge for every democracy.



Freedom of Expression—Selected Resources

- Arbetman, Lee P., and Edward L. O'Brien, "Freedom of Speech" (Chapter 37), *Street Law: A Course in Practical Law*, 7th Edition (Columbus, OH: McGraw-Hill, 2005), pp. 445-462.
- Cameron, Rob, "Current Affairs: Senator in Hot Water after Secret Recording Captures Racist Remarks," *Česky Rozhlas* (July 11, 2007), <http://romove.radio.cz/en/article/21548>.
- "Charter of Fundamental Laws and Freedoms: Article 17" (Czech Republic), <http://www.psp.cz/cgi-bin/eng/docs/laws/listina.html> (Czech); <http://www.freedominfo.org/countries/czech.htm> (English).
- "Czech Republic: Criminal Penalties for Discrimination (Articles 198 and 198a)," European Commission against Racism and Intolerance, http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/3-legal_research/1-national_legal_measures/czech_republic/Czerch_Republic%20SR.asp.
- Congressional Research Service, "First Amendment: Annotations, p. 7, Freedom of Expression: The Philosophical Basis," *The Constitution of the United States of America: Analysis and Interpretation* (Washington, DC: Library of Congress, 1992; updated 2000 by FindLaw.com), <http://caselaw.lp.findlaw.com/data/constitution/amendment01/07.html#1>.
- "Constitution of Azerbaijan Republic: Article 47: Freedom of Thought and Speech," <http://www.transparency-az.org/legislation.html>.
- Constitutional Rights Foundation, "Should Hate Be Outlawed?" *Bill of Rights in Action*, 10:3 (Summer 1994, updated July 2000), http://www.crf-usa.org/bria/bria10_3.html#hate.
- Constitutional Rights Foundation, "Chapter 1: A Free Press," *The Challenge of Information* (Los Angeles: Constitutional Rights Foundation, 1998), pp. 6-23.
- "Czech Romanies File Complaint against Deputy Prime Minister," *Cheb* (April 16, 2007), http://www.romea.cz/english/index.php?id=detail&detail=2007_265.
- "European Convention on Human Rights: Article 10, Freedom of Expression" (Strasbourg: Council of Europe, 1950), <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.
- "Law on Provision of Information to the Public" (Lithuania), 2 July 1996 No. I-1418 (as amended by 20 June 2002, No. IX - 972), <http://www3.lrs.lt/cgi-bin/getfmt?c1=w&c2=170831>; in English at <http://www.freedominfo.org/countries/lithuania.htm>.
- "Russian Constitution: Chapter Two, Rights and Freedoms of Man and Citizen, Article 29," <http://www.constitution.ru/en/10003000-03.htm>.
- "Universal Declaration of Human Rights: Article 19" (New York: United Nations, 1948), <http://www.un.org/Overview/rights.html>.
- Virginia v. Black*, 538 U.S. 343 (2003), <http://laws.findlaw.com/us/538/343.html>.



Freedom of Expression—Deliberation Question with Arguments

Deliberation Question

Should our democracy permit hate speech?

YES—Arguments to Support the Deliberation Question

1. Hate speech is despicable, but it is not a crime. While certain words hurt and are hateful, they are only words—the pain they cause is a small price to pay for freedom.
2. Just because something is legal does not mean it is necessarily acceptable or desirable. A better way to fight hateful speech and ideas is through the use of free expression and “loving” speech to promote the kind of society that people want.
3. Laws that prohibit hate speech will have the effect of “chilling” free speech. If the government has the power to punish expression, the definition of prohibited speech will grow. All governments resist giving up powers they already have. Governments should be permitted to control only what people can and cannot do, not what they say or believe.
4. In order for laws to be effective, they have to be workable. Laws that prohibit hate speech keep the government involved in making never-ending lists of “permitted” and “forbidden” expressions. That wastes public money and effort. The police and the courts can use their time better by prosecuting and punishing actions, not thoughts.
5. Expression is ambiguous. A symbol of hate for one group is a symbol of solidarity for another group. Government should punish only the actions people take against each other. Government should not punish how people think or how people express themselves.



Freedom of Expression—Deliberation Question with Arguments

Deliberation Question

Should our democracy permit hate speech?

NO—Arguments to Oppose the Deliberation Question

1. No democracies allow absolute freedom of expression. By defining hate speech as unacceptable, the government balances freedom of expression with other essential democratic values such as respect and tolerance for diversity. The balance is established through laws, which citizens in a democracy can always change.
2. Punishing hate speech provides equal protection for all persons in a democracy. Punishing hate speech helps to prevent unequal power relations from becoming overt discrimination. When hate speech is directed against weak or despised groups, such groups suffer not only from the hatred itself but also because they lack the power of the majority.
3. A message of hate, spoken once, can be more powerful than a message of tolerance spoken many times. The “chilling” effects of hate speech on other, more positive forms of democratic speech should not be underestimated.
4. Throughout history, words have been used to identify persons and groups for persecution. By the time popular opinion or the legal process can act, it may be too late. A law that punishes hate speech sends the right message about society’s real intentions.
5. Certain symbols and expressions are clearly hateful and have no meaningful social content. Like the Nazi swastika, these expressions are designed solely to create fear and to intimidate other people. Such symbols have no useful purpose. Society loses nothing by banning them.