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Free Speech & Title VI Training Symposium

Grand River Solutions

Stetson University College of Law's Center for Excellence in Higher Education Law & Policy

October 27, 2026

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Introductions

Who are we?
Who are you?

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UC National Center for Free Speech and Civic Engagement

To explore the intersection of expression, engagement and democratic learning and consider what can be done to restore trust in the value of free speech on college campuses and within society at large.

Learn more about the Center

freespeechcenter.universityofcalifornia.edu

@ucfreespeech

Follow our work



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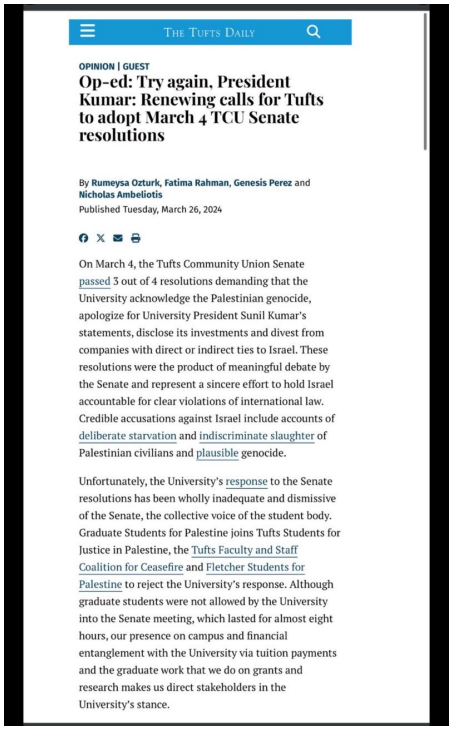
Center Programs and Initiatives

- National Fellowship Program – over 70 total fellows
- VOICE (Valuing Open & Inclusive Conversation & Engagement) Initiative – over 100 total projects across all 10 UC campuses
- Regular webinars on timely issues
- Monthly SpeechMatters Podcast
- Workshops on the First Amendment and campus expression for students, staff, administrators and/or faculty



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Current Higher Education Landscape



The Tufts Daily

OPINION | GUEST

Op-ed: Try again, President Kumar: Renewing calls for Tufts to adopt March 4 TCU Senate resolutions

By **Rumeysa Ozturk, Fatima Rahman, Genesis Perez** and **Nicholas Ambeliotis**
Published Tuesday, March 26, 2024

On March 4, the Tufts Community Union Senate passed 3 out of 4 resolutions demanding that the University acknowledge the Palestinian genocide, apologize for University President Sunil Kumar's statements, disclose its investments and divest from companies with direct or indirect ties to Israel. These resolutions were the product of meaningful debate by the Senate and represent a sincere effort to hold Israel accountable for clear violations of international law. Credible accusations against Israel include accounts of deliberate starvation and indiscriminate slaughter of Palestinian civilians and plausible genocide.

Unfortunately, the University's response to the Senate resolutions has been wholly inadequate and dismissive of the Senate, the collective voice of the student body. Graduate Students for Palestine joins Tufts Students for Justice in Palestine, the Tufts Faculty and Staff Coalition for Ceasefire and Fletcher Students for Palestine to reject the University's response. Although graduate students were not allowed by the University into the Senate meeting, which lasted for almost eight hours, our presence on campus and financial entanglement with the University via tuition payments and the graduate work that we do on grants and research makes us direct stakeholders in the University's stance.



RESOLUTION AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND COLUMBIA UNIVERSITY

I. DEFINITIONS

The terms used in this Agreement shall have the following meaning:

a. "Assistant Attorney General" means the Assistant Attorney General for the Office of Civil Rights within the United States Department of Justice.

b. "Columbia" or "University" means Columbia University, the legal name of





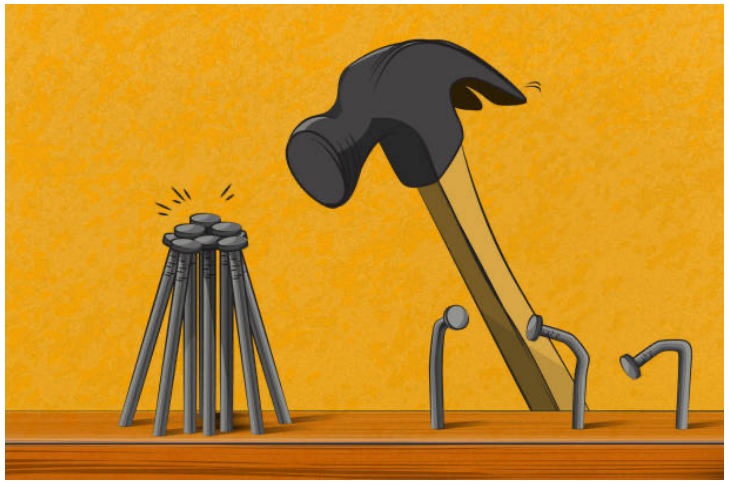
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Themes for Today









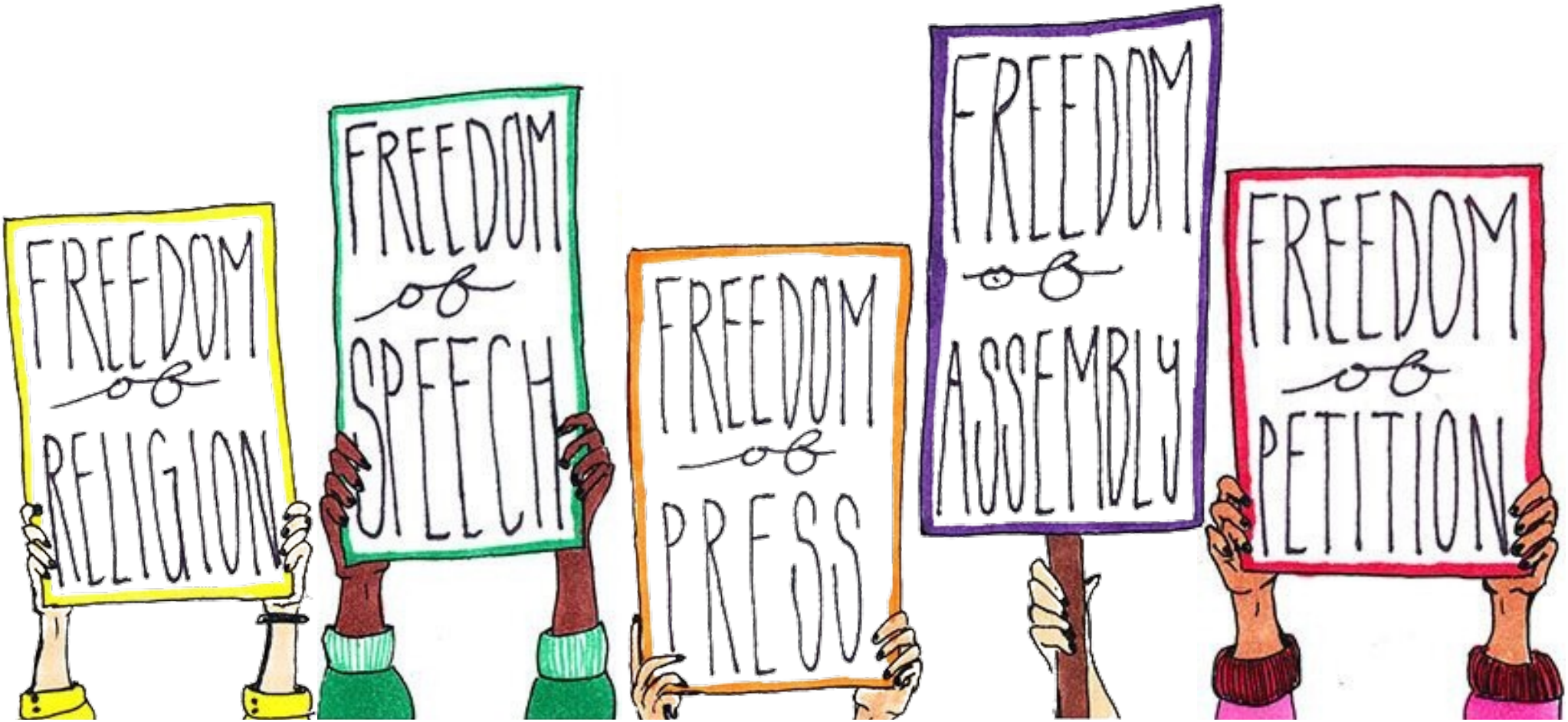
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What is the First Amendment and How Does it Work?

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Does the First Amendment Apply to Private Companies?

NO



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The First Amendment to the U.S. Constitution

- The First Amendment restricts what the government can do.
- Includes state and local governments, including public universities.
- Does NOT apply to private companies (like social media platforms) or private universities (like Harvard) except in California (Leonard Law)
- However, many private colleges and universities choose to abide by First Amendment principles because they are essential to fulfilling the school's mission.

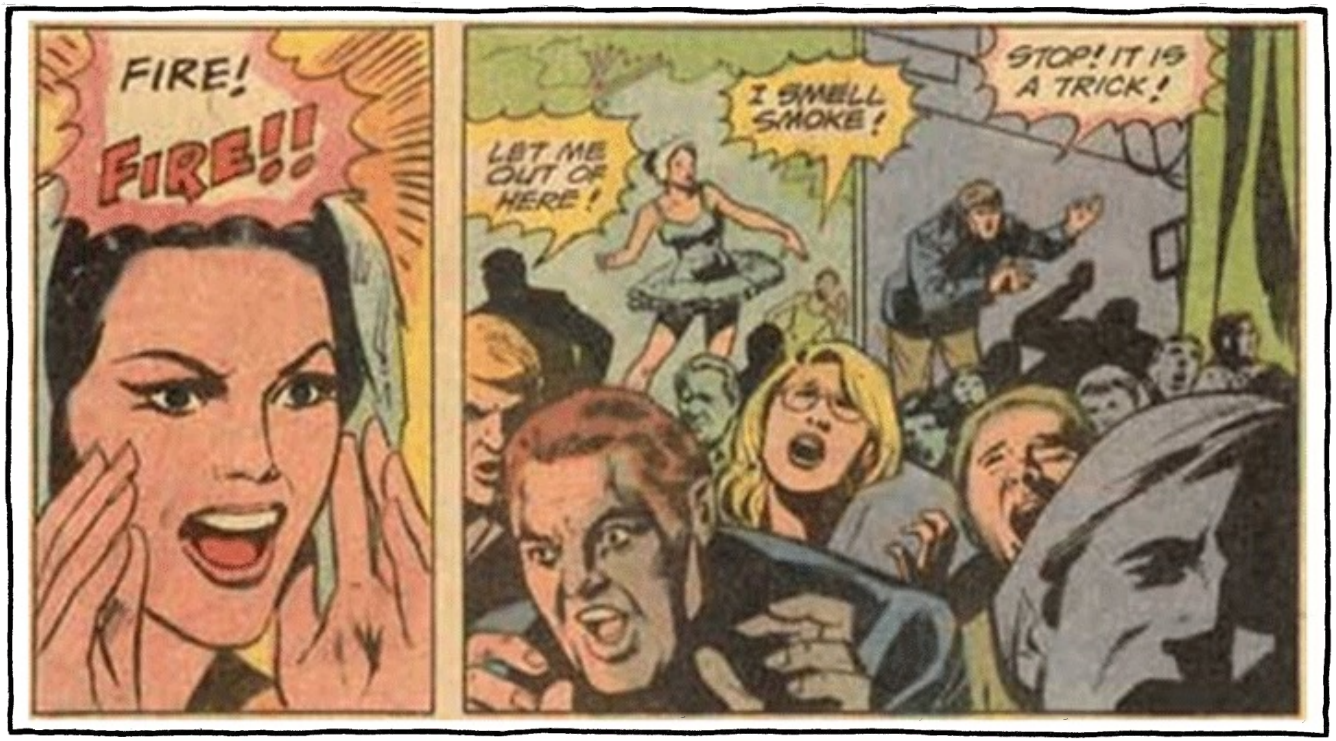
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What Counts as Speech?



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Can you falsely yell “FIRE” in a crowded theater?



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Unprotected Speech

While the "government cannot punish people merely for expressing ideas," some "speech" is NOT protected by the First Amendment.

Narrowly defined, including:

- Incitement to Illegal Activity
- Harassment
- Fighting Words
- True Threats
- Obscenity
- Fraud/Perjury
- Defamation
- Invasion of Privacy

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Legal Definitions of Unprotected Speech

INCITEMENT TO ILLEGAL ACTIVITY

Brandenburg v. Ohio (1969)

An appeal from a criminal conviction by a Ku Klux Klan leader, Clarence Brandenburg, who had advised the hooded crowd at a Klan gathering that "if" the federal government "continue[d] to suppress the Caucasian race, it's possible that there might have to be some revengeance taken." A wooden cross was burned during the rally, and a video revealed weapons.



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Legal Definitions of Unprotected Speech

INCITEMENT TO ILLEGAL ACTIVITY

The Brandenburg Test

1. The speech is "directed to inciting or producing imminent lawless action," AND
2. The speech is "likely to incite or produce such action."

In the Brandenburg case, no acts followed. His exhortation lacked imminence.

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Legal Definitions of Harassment

HARASSMENT

- Conduct is at least "severe or pervasive;"
- Is objectively and subjectively offensive, and;
- Has caused actual, material disruption of the educational experience.

Institutions are sometimes put in a difficult position of balancing the legal obligation to respond to harassment that creates a discriminatory environment versus the legal obligation to protect free speech even when it is hostile or offensive to some.

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Grappling with the Counter Intuitive

Hateful, ugly, mean-spirited, bigoted speech is protected

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Regulating Speech on Campus

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What is Forum Analysis?

Traditional Public Forums:

Spaces such as sidewalks and areas that have traditionally been open to political speech and debate.

In these areas, speakers enjoy the strongest First Amendment protections.



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What is Forum Analysis?

Designated Public Forums:

Spaces where the government chooses to allow speech generally (e.g. quad, area for tabling).

***Regs must be content neutral: BOTH subject matter & viewpoint neutral**



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What are the Four Types of Forums?

Limited Public Forums:

Spaces where the government allows certain types of speech by certain groups (e.g. Department of History bulletin board).

***Regs must ONLY be viewpoint neutral**



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What are the Four Types of Forums?

Nonpublic Forums:

Spaces not made available for public expression (e.g. faculty offices).



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What is a Content Neutral Regulation?

Regulations in designated public forums must be content neutral, which means they are BOTH subject matter and viewpoint neutral

"You can protest here as long as you don't protest about abortion."

*NOT SUBJECT MATTER NEUTRAL

This regulation violates the First Amendment because it is based on the subject of the protest.

"You can protest here as long as you are not pro-choice."

*NOT VIEWPOINT NEUTRAL

This regulation violates the First Amendment because it is based on the viewpoint of the protest.

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Regulating Protected Speech (Time, Place and Manner)

“Amplified sound is permitted in the quad daily between 12pm-1pm only. Sound volumes must be at or below 60 dB inside the surrounding buildings.”

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Content Neutral Regulation

"Amplified sound is permitted daily between 12pm-1pm only. Sound volumes must be at or below 60 dB inside the surrounding buildings."

- Can you use amplified sound between 12-1 if you are talking about abortion? Immigration? Whether you prefer dark or milk chocolate?

- Does it matter if you are pro/anti choice? pro/anti immigration? Only eat dark chocolate?

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Regulating Protected Speech

The government can regulate speech in forums by using something called time, place and manner restrictions (TPMs).

In **Ward v. Rock Against Racism (1989),** the Supreme Court outlined the three-pronged test to determine if the TPM meets constitutional scrutiny for a public or designated public forum.

1. The regulation must be content neutral
2. It must be narrowly tailored to serve a significant government interest and;
3. It must leave open ample alternative channels for communicating the speaker's message.

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Social Media is Treated like Other Forums

WHAT IS THE PURPOSE OF THE SOCIAL MEDIA ACCOUNT? Understanding the purpose of the forum will help determine what regulations exist and when speech can be removed.

EXAMPLE: "This website is a forum hosted by the Anthropology Department in order for the Department to share curricular and co-curricular information with students."

- In this case, a limited public forum has been created. The Anthropology Department is only allowing certain types of speech.
- If a student in the department wants to ask other students if they'd like to buy girl scout cookies from her daughter, can this message be deleted from the forum?
- If the Department posts information about an upcoming panel discussion hosted by the department, and someone wants to comment that they don't agree with the perspectives represented by the panel, can that comment be removed?

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Policy Making

- **Do you have already-existing policies about expressive activity?**
  - Where do they live? Are they together?
  - What policies might be missing? (i.e. does your policy touch on spontaneous events, chalking, camping on campus etc)
- **Policy Review**
  - How often are expressive policies reviewed? (ideal is on a set schedule)
  - Who is part of said review?
  - When policy changes are considered, have you asked: 'why now?'; 'who is impacted,' or 'what message does this send?
- **Dissemination/Training**
  - Partnering with student leaders, staff assembly, academic senate
- **Implementation**
  - Key is consistency

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Responding to Speech That Undermines University Values

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Ways of Responding to Speech

- Protest/counter-protest
- Write an op-ed in the school newspaper
- Buy/register for seats, don't attend
- Create a petition and ask others to sign
- Hand out flyers
- Wear coordinating t-shirts with a message
- Plan an event at the same time but in a different location than the speaker with whom you disagree
- Turn your protest into a fundraiser



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Institutional Statements: Should Universities Respond to Speech?

Arguments against speaking out

- The official position of the university should be to encourage the widest diversity of views to be expressed
- It is a slippery slope

Arguments in favor of speaking out

- Leaders of colleges and universities have a responsibility to speak up when issues or events contravene institutional values or statements of community principles.

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Campus Protest: Birth of Free Speech Movement





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Counter Protest



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Protest on Campus

- Individuals have a right to express disagreement, and a right to protest, but these rights are limited by other principles:
  - Protesters may not interfere with normal operation of the University or obstruct access to buildings
  - Protesters have no right to damage University property or cause injuries
  - Just because something is peaceful does not make it permissible
- University must prevent "heckler's veto" – do not cancel events based on fear of audience reaction to unpopular views
- Disruption/civil disobedience has consequences

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The Heckler's Veto

- An individual exercises a Heckler's Veto when they are so **disruptive** as to preclude the target speaker from being heard; audience from receiving the message.
- Not protected by First Amendment
- Under the rule against a Heckler's Veto, the government is not allowed to **shut down speech simply because of the threat of counter-protests** or Heckler's Vetoes.



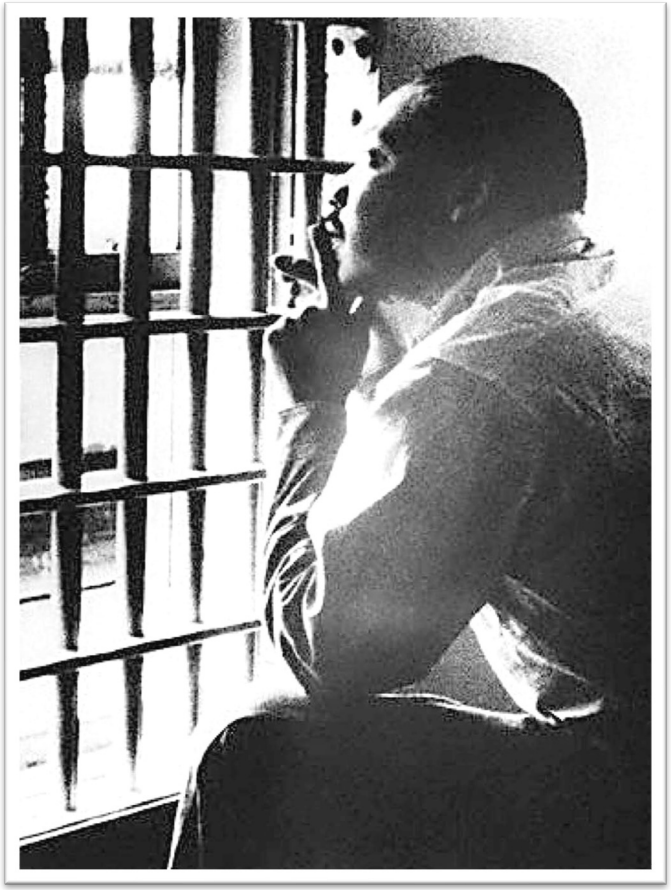
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Civil Disobedience

"One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty."

Martin Luther King, Jr.,

Letter From a Birmingham Jail (April 16, 1963)



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Protected Protest ≠ Civil Disobedience

Protected Protest

- Speech, expression or expressive conduct
- That is not criminal
  - Threats = crime
  - Inciting violence = crime
  - Inciting people to commit a crime = crime
- That does not disrupt others
- That complies with TPM rules

Civil Disobedience

- Intentionally
- Violating a rule or law
- To prove moral, ethical or legal point
- Expecting and accepting the consequences (often publicly)

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Academic Freedom

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How Do Freedom of Speech and Academic Freedom Differ?

- Academic freedom differs from free speech in two main ways:

a) free speech rights are generally applicable while academic freedom principles protect faculty members while they are engaging in the activities of their profession (e.g., in classroom settings faculty members have academic freedom rights not general free speech rights) and;

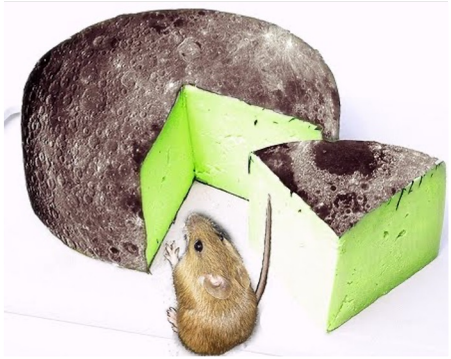
a) general free speech rights are not premised on any special expertise and are not bounded by considerations of professional competence and ethical behavior.

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How Do Freedom of Speech and Academic Freedom Differ?

- For example, government can take no steps against a person who holds up a sign outside of the state capitol proclaiming that the moon is made of green cheese.
- But in an academic setting, an aspiring astronomy professor can have that view assessed by peers and if they believe the view is not consistent with professional standards that person can be denied a position, etc.





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What is Academic Freedom?

- Refers to the privileges of faculty members must have to engage in independent scholarly inquiry, teaching of high-level disciplinary knowledge, and communication of their expertise to broader audiences and students.
  - Limited by the boundaries of peer review (what similarly well-trained professionals believe are defensible areas of inquiry) and professional ethics (faculty codes of conduct).
- Academic Freedom:
  1. Derives from the First Amendment;
  2. Contractual Rights (letters of appointment, faculty handbook, institutional rules);
  3. Academic Custom and Usage;
  4. AAUP 1940 Statement.

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Founding of AAUP and Concept of Academic Freedom

The American Association of University Professors was founded in January 1915 in direct response to a wave of threats against faculty who held unpopular views.

The AAUP created the concept of Academic Freedom when it published its *"Declaration of Principles on Academic Freedom and Academic Tenure."*

It declared:

> "[A university] should be an intellectual experiment station, where new ideas may germinate and where their fruit, though still distasteful to the community as a whole, may be allowed to ripen until finally, perchance, it may become a part of the accepted intellectual food of the nation or of the world."
>
> "Academic freedom … comprises three elements: freedom of inquiry and research; freedom of teaching within the university or college; and freedom of extramural utterance and action."

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AAUP 1940 Update

In 1940 the AAUP elaborated upon its 1915 declaration to clarify that:

1. Teachers are entitled to full freedom in research and in the publication of results, subject to the adequate performance of their academic duties; ….
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no bearing to their subject….

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AAUP 1940 Update – Extramural Utterance

3. Freedom of extramural utterance and action

College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect to the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

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Questions