



Public Demonstrations—Lesson Plan

Student Objectives

- Understand the fundamental importance of public demonstrations in guaranteeing freedom of expression, particularly by disfavored or marginal groups.
- Learn the issues raised by public demonstrations within the conflict between free expression and public order.
- Appreciate the enduring difficulties posed by balancing police powers and free expression during public demonstrations.
- Analyze the reasons supporting and opposing the government having the power to prohibit unauthorized public demonstrations.
- Identify areas of agreement and disagreement with other students.
- Decide, individually and as a group, whether the government should have the power to prohibit unauthorized public demonstrations; 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 have the power to prohibit unauthorized public demonstrations?

Materials

- Lesson Procedures
- Handout 1—Deliberation Guide
- Handout 2—Deliberation Worksheet
- 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)



Public Demonstrations—Reading

1 In November 2004, the sitting Prime Minister of Ukraine was declared the victor in elections
2 widely considered in the country and by international observers as fraudulent. In protest,
3 thousands of demonstrators assembled without government permission in Independence Square
4 in the frozen, snow-covered capital city of Kiev. They refused to go home until new elections
5 were called. They stayed, sang songs, and nonviolently assembled to protest the electoral
6 process. After days of protest, the Supreme Court annulled the November results and ordered
7 another election. The “Orange Revolution,” named after the color adopted by the protesters, led
8 to a fairer election in December 2004; this time, the opposition candidate won.

9 When citizens disagree with their government, one of the most powerful ways to express that
10 dissent is to demonstrate publicly with other citizens. Sometimes—in Ukraine in 2004, Romania
11 in 1991, Azerbaijan in 1988, and the Philippines in 1986—these demonstrations have not been
12 stopped, and they have led directly to a change of government. At other times, such as in
13 Tiananmen Square in 1991 and Chicago in 1968, governments have determined such
14 demonstrations were a threat to public safety and suppressed them by police and military forces.

15 Distinguishing between the rights of citizens to assemble and the responsibility of
16 government to maintain safety is one of the most troublesome questions of free expression in any
17 society. It is a particularly difficult question in a democracy, where government must listen and
18 respond to the voices of its citizens.

19 **An Ancient and Fundamental Freedom**

20 The gathering of people to discuss problems and voice their disapproval of the authorities is
21 perhaps as old as government itself. Using such assemblies to protest government actions also
22 has a long legal history, and these gatherings are crucial to other freedoms, such as speech and
23 belief. For example, the American labor movement, the modern Civil Rights movement, and the
24 Pro-Life movement have all used public assembly to promote their cause.

25 Public demonstrations are a uniquely dynamic form of expression. They enable face-to-face
26 contact between speaker and audience, promote solidarity and mutual support among
27 demonstrators, and let demonstrators show their dedication and support to outsiders. Because
28 demonstrations do not require the money necessary for television shows, media campaigns, or
29 newspaper advertising, they are favored by those with little or no economic or political power.

30 Article 20 of the Universal Declaration of Human Rights, adopted in 1948 by the General
31 Assembly of the United Nations, includes the protection that “everyone has the right to freedom
32 of peaceful assembly and association.” In the United States, the First Amendment to the
33 Constitution states that “Congress shall make no law...prohibiting... the right of the people
34 peaceably to assemble, and to petition the Government for a redress of grievances.” To varying
35 degrees, this right has been exercised by citizens and honored by governments around the world.

36 **An Inherently Difficult Balance**

37 Of course, every society needs order to function. People need and expect the basic right to
38 live and work without fear of assaults on themselves, their property, or their conscience. Police
39 provide these protections. Without these powers, the “free expression” of public demonstrations
40 can quickly become the rule of the mob. By their nature, the enforcers of the laws—the police

41 and the military—tend to support the existing order. Therefore, they often oppose demonstrators
42 who challenge the *status quo* and whose actions may result in disorder.

43 To maintain order—and often to restrict unwanted expressions of dissent—governments have
44 used different methods to control public demonstrations. These include requiring permits;
45 determining the time, place, and manner of assemblies; and assigning a specific role to the police
46 in maintaining order. Where to draw the line between free expression and reasonable limits has
47 been argued in the United States for almost a century, with no firm conclusions. As U.S.
48 Supreme Court Justice Felix Frankfurter once wrote, the conflict between “free speech and other
49 interests is a problem as persistent as it is perplexing” [*Niemotko v. Maryland* (1951)].

50 Nevertheless, the U.S. Supreme Court has developed several working principles. For
51 example, the Court has recognized the government’s right to regulate public spaces and to
52 maintain public order; demonstrators cannot simply take over a busy street. On the other hand,
53 the government cannot prohibit speech simply because it does not like what is being said. If, for
54 example, the government permits pro-government groups to rally in a public park, then it cannot
55 deny the same rights to groups that protest the government’s actions.

56 Other countries also face these questions. In the spring of 1989, thousands of Chinese
57 students gathered at Tiananmen Square in the capitol Beijing to demonstrate for democratic
58 reform. The students were joined by factory workers, government workers, and intellectual
59 leaders, until almost a million people were gathered there. The government of China at first
60 tolerated and then condemned the protests, declaring martial law in late May. The demonstrators
61 called on the government leadership to resign, but during a night in early June, government tanks
62 crushed thousands of demonstrators, disbanded the rest, and arrested the student leaders. The
63 Chinese government had acted to put down what it called a “counterrevolutionary rebellion.”

64 Governments can also restrict the use of a right through administrative rules and
65 procedures. Article 49 of the Constitution of the Azerbaijan Republic says that “every person has
66 the right to assemble, conduct meetings, assemblies, demonstrations, street procession, pickets in
67 amicable way and without weapons, by notifying the relevant state authorities in advance.”
68 However, in 1998 the National Assembly (Parliament of the Azerbaijan Republic) adopted a law
69 on freedom of assembly that says anyone who is organizing any assembly must notify the
70 relevant body of executive authority in writing at least five days prior to the planned assembly.
71 The law also restricts freedom of assembly in cases of *coup d'etat* or threats against national
72 security of the state. According to many experts, this law contradicts the freedom in the
73 Azerbaijani Constitution.

74 In Russia, leaders hope structures that give citizens an opportunity for input will make
75 demonstrations unnecessary. In 2005, Dmitri Medvedev, Chief of Staff for President Vladimir
76 Putin, reflected on recent demonstrations: “The demonstrations on the streets were the normal
77 reaction of angry people . . . Of course, it is better for discussions on necessary measures to take
78 place through socially effective procedures rather than on the streets, and for this to happen we
79 need to have working mechanisms for communication between the public and the authorities.”

80 **Limits on Public Demonstrations: Supporters and Opponents**

81 Should democratic governments have the power to prohibit unauthorized public
82 demonstrations?

83 People who support prohibitions on unauthorized demonstrations say that getting a permit
84 from the government strikes a reasonable balance between order and liberty. Requiring a permit
85 does not mean that the government has arbitrary power to allow or prohibit a demonstration.

86 Rather, it enables government to fulfill its duty to uphold the law impartially: everyone follows
87 the same rules.

88 Supporters also argue that a law, in order to be effective, must be able to work. If the police
89 cannot move or regulate people from a public place, then society is at risk. Because crowds are
90 unstable, a peaceful demonstration can turn quickly into a violent mob. Requiring authorization
91 creates a workable framework in which both government and demonstrators can make decisions.

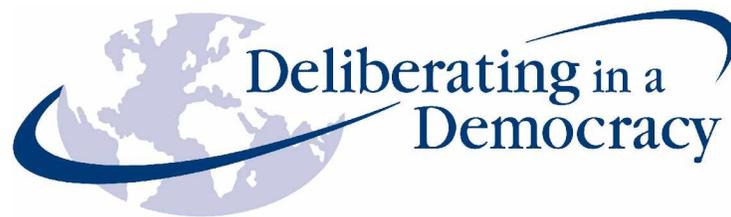
92 Opponents of requiring pre-authorization argue that people gathered peacefully to discuss or
93 protest an issue do not need permission from the very government against which they may have a
94 grievance. Any law that requires a license to demonstrate in public places represents an unfair
95 limit on a fundamental liberty of a democratic society. The decision to grant or deny a permit is
96 inherently political: such a fundamental freedom should not be left in the hands of a clerk.

97 Opponents also argue that, while newspapers and television are the media of the wealthy and
98 the powerful, public demonstrations are the media of the poor, the radical, and the marginal.
99 Such people can hardly expect to receive the same authorizations as those who support the
100 established order. In order to make their voices heard, they need to be able to picket, parade, and
101 demonstrate in public places when and where necessary. The use of public places for these
102 purposes, as long as peace and order are maintained, cannot be denied.

103 Supporters of government power to stop unauthorized public demonstrations counter by
104 saying that public space does not mean lawless space. Just as every city rightfully exercises
105 control over traffic, so too a demonstration permit is a reasonable way for the government to
106 maintain order. The privilege of some citizens to assemble publicly to share their views must be
107 regulated in the interest of all citizens because this is a relative, not absolute, privilege.

108 Supporters also note that in the age of the “instant” communication, rarely will events happen
109 so quickly that government cannot respond in time. A permit can be reviewed and approved fast
110 enough to meet the legitimate free expression needs of citizens. Opponents agree that, as in Kiev
111 in 2004, the timing of demonstrations has never been more important. They fear that government
112 authorization procedures, like those in Azerbaijan, create delays that effectively become
113 government denials for popular assemblies.

114 In short, how governments regulate public demonstrations will remain controversial
115 wherever democracies thrive.



Public Demonstrations—Selected Resources

“Azerbaijan Constitution,” International Constitutional Law Project,
http://www.oefre.unibe.ch/law/icl/aj00000_.html.

Charter of Fundamental Rights of the European Union: Article 12, Freedom of Assembly and of Association,” *Official Journal of the European Communities* (2000),
http://europa.eu.int/comm/external_relations/human_rights/doc/charter_364_01en.pdf.

Chicago v. Morales et al., 527 U.S. 41 (1999), <http://laws.findlaw.com/us/000/97-1121.htm>

Congressional Research Service, “First Amendment: Annotations,” in *The Constitution of the United States of America: Analysis and Interpretation* (Washington, DC: Library of Congress, 1992; updated 2000 by FindLaw.com), available at
<http://caselaw.lp.findlaw.com/data/constitution/amendment01/06.html#1> (see pp. 6, 7, 10, 12, 18, 20, and 21).

Emerson, Thomas I., “Internal Order: Meetings, Demonstrations, Canvassing,” in *The System of Freedom of Expression* (New York: Vintage Books, a Division of Random House, 1970), pp. 285-388 (especially 285-292 and 386-388).

“European Convention on Human Rights: Article 11, Freedom of Assembly and Association” (Strasbourg: Council of Europe, 1950),
<http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>.

“European Social Charter: Part II, Article 5, The Right to Organize” (Strasbourg, France: Council of Europe, 1961), <http://conventions.coe.int/treaty/en/Treaties/Html/035.htm>.

“Freedom of Peaceful Assembly and Association,” (Strasbourg, France: Council of Europe),
http://www.coe.int/T/e/human_rights/awareness/6._Human_Rights_Issues/6_peaceful_assembly.asp.

Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939),
<http://laws.findlaw.com/us/307/496.html>

Medvedev, Dmitri, “We Really Do Need to Preserve This Vast State,” *Expert Magazine* vol. 13, no. 13 (April 4, 2005), <http://www.kremlin.ru/eng/text/publications/2005/04/86313.shtml>.

Niemotko v. Maryland, 340 U.S. 268 (1951), <http://laws.findlaw.com/us/340/268.html>

Redish, Martin H. “Unlawful Advocacy and Free Speech,” in *The Logic of Persecution: Free Expression and the McCarthy Era*. Stanford, CA: Stanford University Press (2005), pp. 63-131 (especially 78-106).

Shuttlesworth v. Birmingham, 394 U.S. 147 (1969), <http://laws.findlaw.com/us/394/147.html>.

“Universal Declaration of Human Rights: Article 20” (right to freedom of peaceful assembly and association; freedom from compelled association) (New York: United Nations, 1948),
<http://www.un.org/Overview/rights.html>.



Public Demonstrations—Deliberation Question with Arguments

Deliberation Question

Should our democracy have the power to prohibit unauthorized public demonstrations?

Arguments to Support the Deliberation Question

1. People cannot exercise their rights without an ordered society in which to express them. Without government, the public square is ruled not by law but by the loudest or the strongest. Requiring government authorization for public demonstrations strikes a reasonable balance between the needs for both order and liberty in a democratic society.
2. Prior authorization does not give the government arbitrary power over who can or cannot hold a demonstration. Instead, it enables government to uphold the law impartially and without favoritism. With an authorization process, everyone has to follow the same rules.
3. Laws must be workable in order to be effective. By their nature, crowds are unstable, and a peaceful demonstration can turn quickly into a violent mob. Requiring authorization provides police with a useful tool for regulating a public place. It also creates a reasonable framework within which both the government and the demonstrators can make decisions.
4. No person's free expression rights are absolute. The privilege of some citizens to use public places to assemble or to communicate their views must be regulated in the interest of all citizens. Requiring authorization for public demonstrations enables government to maintain the general comfort and convenience of the citizenry.
5. Public space does not mean lawless space. The streets belong to the people, but every city is expected to control traffic in the interests of public safety: those who fail to stop at stoplights or insist on walking in busy city streets should be stopped. Requiring authorization for public demonstrations is a similar exercise of the government's power to protect public safety.
6. Although events happen quickly in today's world, government also can respond quickly to meet the legitimate free expression needs of citizens. Under extraordinary circumstances, the government can function extraordinarily: courts and offices stay open, and the police are always available. In the age of the Internet and 24-hour news, government authorization can be obtained in sufficient time to allow for public meetings and demonstrations.



Public Demonstrations—Deliberation Question with Arguments

Deliberation Question

Should our democracy have the power to prohibit unauthorized public demonstrations?

Arguments to Oppose the Deliberation Question

1. A law that prohibits unauthorized public demonstrations denies a fundamental liberty of a democratic society. People who gather peacefully to discuss or protest an issue do not need permission from the very government against which they may have a grievance.
2. The decision of whether to authorize or prohibit a public demonstration is inherently political. People who hold unconventional views or live outside the mainstream of society can hardly expect the same access to public space as those who support the established order. The decision to grant or deny a fundamental freedom should not be left to a clerk.
3. Free expression is everyone's right in a democratic society, but not every forum is free. While the wealthy and the comfortable use and can afford newspapers and television, public demonstrations are the news and advertising "media" of the poor, the radical, and the marginal. Public demonstrations permit unpopular demonstrators to support each other and to bring their views directly to the larger community.
4. By their nature, marching and picketing require public places in order to draw attention to their cause. To require government authorization for these activities in public places, even when peace and order are maintained, is an unreasonable restriction of a fundamental right.
5. Parks and public places have always been used by citizens to assemble, communicate and share ideas, and discuss public questions of the day. This use has been and must be considered part of the rights and privileges of citizens. This right should not, for want of official authorization, be abridged or denied.
6. Timing is everything in political life, and citizens cannot predict the future. When something happens, people often need to be seen and heard promptly if they are to be considered at all. Requiring advance authorization for unanticipated events effectively prevents such demonstrations from happening at the very time they are most needed.