

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 require a permit for any public demonstration in order to avoid violence.
- Identify areas of agreement and disagreement with other students.
- Decide, individually and as a group, whether the government should have the power to require a permit for any public demonstration in order to avoid violence; 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 require a permit for any public demonstration in order to avoid violence?

Materials

- Lesson Procedures
- Handout 1—Deliberation Guide
- Handout 2—Deliberation Worksheet
- Handout 3—Student Reflection on Deliberation
- Public Demonstrations—Reading
- Public Demonstrations—Selected Resources
- Public Demonstrations—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, in
11 Romania in 1991, in the Philippines in 1986—these demonstrations have not been stopped, and
12 they have led directly to a change of government. At other times, such as in Tiananmen Square
13 in 1991 and in Chicago in 1968, governments have determined such demonstrations were a
14 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 demonstration 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 immediate fear of assaults on themselves, their property, or their
39 conscience. Police provide these protections. Without these powers, the “free expression” of
40 public demonstrations can quickly become the rule of the mob. By their nature, the enforcers of

41 the laws—the police and the military—tend to support the existing order of society. Therefore,
42 they often oppose demonstrators whose message challenges the *status quo* and whose actions
43 may result in disorder or even a violation of the law.

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

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

59 U.S. state and local governments continue to try and determine the right balance of political
60 speech and public order. For example, members of a Christian church in Topeka, Kansas, have
61 held numerous public demonstrations at the funerals of U.S. soldiers killed in Iraq; the church
62 teaches that the soldiers died because of divine anger about American tolerance for
63 homosexuality. In response, states have passed laws to prohibit demonstrations near funerals.

64 Other countries also face these questions. In the spring of 1989, thousands of Chinese
65 students gathered at Tianmen Square in the capitol Beijing to demonstrate democratic reform.
66 For several weeks, the world watched as the students were joined by factory workers,
67 government workers, and intellectual leaders, until almost a million people were gathered there.
68 The government of China at first tolerated and then condemned the protests, declaring martial
69 law in late May. The demonstrators called on the government leadership to resign, but during a
70 night in early June, government tanks crushed thousands of demonstrators, disbanded the rest,
71 and arrested the student leaders. The Chinese government had acted to put down what it called a
72 “counterrevolutionary rebellion.”

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

74 What can government legitimately require of a public demonstration? Under what
75 circumstances can the government prohibit or stop a demonstration that officials believe will
76 result in violence?

77 People who support limits on demonstrations say that getting a demonstration permit from
78 the government strikes a reasonable balance between the democratic needs for both order and
79 liberty. Requiring a permit does not mean that the government has an arbitrary power to permit
80 or prohibit a demonstration. Rather, it enables government to fulfill its duty to uphold the law
81 impartially and without favoritism: everyone follows the same rules.

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

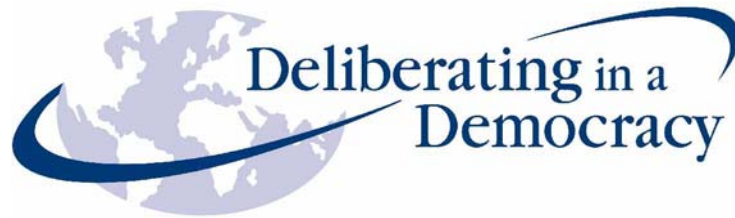
86 Opponents of these requirements argue people gathered peacefully to discuss or protest an
87 issue do not need permission from the very government against which they may have a
88 grievance. Any law that requires a license to demonstrate in public places represents an unfair
89 limit on a fundamental liberty of a democratic society. The decision to grant or deny a permit is
90 inherently political: such a fundamental freedom should not be left in the hands of a clerk.

91 Opponents also argue that, while newspapers and television are the media of the wealthy and
92 the powerful, public demonstrations are the media of the poor, the radical, and the marginal.
93 Such people can hardly expect the same role in discussing public issues as those who support the
94 established order. In order to make their voices heard, they need to be able to picket, parade, and
95 demonstrate in public places. The use of public places for these purposes, as long as peace and
96 order are maintained, cannot be denied.

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

102 Supporters also note that in the age of the Internet and “instant” communication, rarely will
103 events happen so quickly that government cannot respond in time. These days, a permit can be
104 reviewed and approved fast enough to meet the legitimate free expression needs of citizens.

105 Opponents agree that, as in Kiev in 2004, the timing of demonstrations has never been more
106 important. For this reason, they fear that the government’s power to delay a permit—even for a
107 single news cycle—might be enough to suppress dissent. In short, how governments regulate
108 public demonstrations is a question that will remain controversial wherever democracies thrive.



Public Demonstrations—Deliberation Question with Arguments

Deliberation Question

Should our democracy have the power to require a permit for any public demonstration in order to avoid violence?

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 a government permit for public demonstrations strikes a reasonable balance between the needs for both order and liberty in a democratic society.
2. A permit requirement 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 a permit 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 a permit 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 a permit 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 a demonstration permit 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, a permit can be obtained in sufficient time to allow for public meetings and demonstrations.



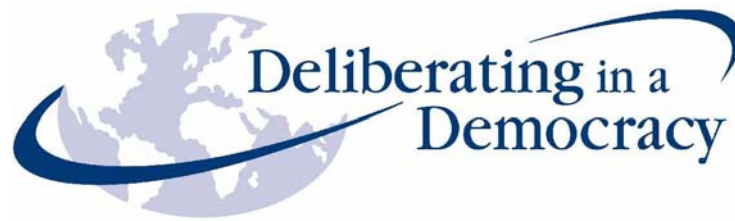
Public Demonstrations—Deliberation Question with Arguments

Deliberation Question

Should our democracy have the power to require a permit for any public demonstration in order to avoid violence?

Arguments to Oppose the Deliberation Question

1. A law that prevents public demonstrations without a license 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 issue or deny a demonstration permit 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 in the hands of 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 often unpopular demonstrators to support each other and to bring their views directly to the larger community.
4. By their nature, marching and picketing are activities that require public places in order to draw attention to their cause. To require a government permit 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 to 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 a piece of paper, 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 a permit be obtained in advance for unanticipated events effectively prevents such demonstrations from happening at the very time they are most needed.



Public Demonstrations—Selected Resources

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>

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>.