

Selected Topics in Law and Justice II

**Free Speech**

Prof.: Dr. Julian Hermida

Course number: JURI4826AE /POLI 4907

Teaching hours: Mondays 7 pm

Term: Fall

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**JOURNEY OF DISCOVERY**

(Formerly known as course description)

The course is an exploration of the world of free speech. It explores the philosophical and political foundations of free speech and the values and principles that are established through free speech. We will also examine the international, American, and Canadian protections to speech. We will also critically analyze the strategies that governments use to control and suppress dissent, as well as the challenges to free speech coming from the corporate world in contemporary society. The course will also examine the limits to free speech.

## **LEARNING OUTCOMES**

(formerly known as learning objectives (goals) of the course)

If you actively engage in this journey, upon its successful completion, you will be able to:

- Recognize the value of free speech for society and the importance of protecting free speech.
- Recognize and critically analyze the strategies and measures that are used to suppress dissent.
- Critically analyze the philosophical and political foundations of free speech and the values and principles that are established through free speech.
- Critically evaluate the limits to free speech.
- Read academic texts on free speech deeply; and communicate arguments on the protection of free speech both orally and in writing; and
- Make connections to theories, readings, class discussions, and class activities when analyzing free speech issues; and theorize, generalize, and hypothesize on these issues.

These will be the learning outcomes –what you will take out of this voyage of high adventure, if you actively engage in it.

## WHAT WE WILL DO IN OUR JOURNEY OF DISCOVERY

We will resort to a myriad of exciting activities, which will include group discussions, Socratic dialogues, cooperative group problem solving, games, analysis of video segments depicting scenes relevant to Comparative Law issues, debates, construction of web sites, interpretation and production of audiovisual materials, group presentations, and analysis of legal and sociolegal texts from all over the world.



## ITINERARY

(formerly known as course outline by week)



Class	Topic	Readings
Class 1	Introduction and orientation	Course outline and course website

Sep 12	Content of the course: Free speech environment for academic inquiry Metacognition	
Class 2 Sep.19	US First amendment	Lyrissa Barnett Lidsky, "Where's the Harm-: Free Speech and the Regulation of Lies" (2008) 65:3 Wash & Lee L Rev 1091. Kent Greenawalt, "Free Speech Justifications " (1989) 89:1 Colum L Rev 119. Emerson, Thomas I. "Toward a General Theory of the First Amendment." <i>The Yale Law Journal</i> 72, no. 5 (1963): 877–956.
Class 3 Sep. 26	International Law and Freedom of Expression Canadian Charter of Rights Freedom of expression	Mill, John Stuart. On Liberty. Dover Publications, 2002.
Class 4 Oct. 3	Limits to freedom of expression. Criminal Law.	Mill, John Stuart. On Liberty. Dover Publications, 2002.
Class 5 <b>Oct. 17</b>	<b>Take-home test</b>	
Class 6 Oct. 24	Social media and limits to freedom of expression.	Three studies about online hate speech and ways to address it By Dr Gavan Titley, Ellie Keen and László Földi, Council of Europe, Youth Department 2014.
Class 7 Oct. 31	Free speech on campus	Mill, John Stuart. On Liberty. Dover Publications, 2002.

Class 8 Nov. 7	Corporations and free speech	Emerson, Thomas I. "Toward a General Theory of the First Amendment." <i>The Yale Law Journal</i> 72, no. 5 (1963): 877–956.
Class 9 Nov. 14	Free Speech in the news	
Class 10 Nov. 21	Legal control of dissent and non-hegemonic discourse	Mill, John Stuart. <i>On Liberty</i> . Dover Publications, 2002.
Class 11 Nov. 28	Distribution of final take-home test	
Class 12 Dec. 5	Submission of final take-home	

This is a tentative calendar of what we will do. If class discussions or class activities take longer than originally estimated, I will not cut them short to follow this schedule. I will simply put them off for the following class or I will reschedule them. Additionally, I may substitute new topics for some of the ones included here, particularly if most of you show an interest for some topics not planned to be covered. Changes will be announced in class. Please note that preparation for these activities also constitutes a fundamental part of the course and is considered an integral part of class instruction. When appropriate, in class time will be used for preparation for activities and assignments.

## A CONVERSATION ABOUT YOUR LEARNING AND DISCOVERIES

(Formerly known as method of evaluation)

Throughout our journey of discovery, we will stop several times so that we can talk about your learning. I will be



providing you with formative feedback along the way. There will be plenty of opportunities to experiment, try, fail, and receive formative feedback in advance of and separate from summative evaluation. I will also help you develop the metacognitive tools and strategies so that you can assess your own learning progress.

By the end of this journey, you will have showed me what you have taken out of it, what you have learned, and how your thinking has changed. I will be particularly interested in seeing how well you have achieved the journey outcomes. I will want to see if you can perform the learning outcomes in a way which shows creativity, originality, and critical thinking skills, ideally beyond information given in the course.

I will assess the evidence you will show me holistically and synoptically. I will make a judgment about whether you have attained the intended journey outcomes, and if so –to what level. I will assess your evidence qualitatively and in its entirety –not by adding marks to its various parts. I will be interested in knowing how well you have learned and not how much. My judgement –like any judgement or assessment- will be subjective, but let me assure you that it will not be arbitrary. It will be based on my expertise as both a legal scholar and a teacher, not unlike a juror at a film festival judges films, or a curator judges pictures for a museum exhibition. For this purpose, I will judge the quality of your learning against criteria based on John Bigg’s Solo Taxonomy, which I have posted on the course website, and which I will explain extensively in class. As you can see from the chart below, the SOLO Taxonomy is consistent with the University grading scheme. To communicate my judgment in a clear way, I will resort to several means, including rubrics.

According to University policy requirements, which prescribe a final global examination and some kind of partition of the summative assessment, I have divided the assessment in five parts. So, I will be assessing how well you have achieved the intended learning outcomes through your active class participation, which is worth 40% of your final grade, an in-class test worth 30% of the final grade, and the global-take home evaluation, which is worth 30%. This syllabus includes a chart that translates the SOLO taxonomy levels

into grades according to University policy. For further clarification, there is no conflict between University policy and the SOLO taxonomy. University policy is a general framework; and the SOLO taxonomy is a specific instrument, which I use to implement the general University framework.

### Summary of the assessment

Evaluation tool	Grade weight	Deadline
Class participation	40%	Every class.
Test	30%	Oct. 24, 2022 (take-home). Distribution: Oct. 17.
Final Global take-home evaluation	30%	Dec. 5, 2022. Distribution: Nov. 28

#### Class participation

Class participation is the single most important aspect of the course. You are expected to actively participate in every class with a positive attitude and to treat your classmates and teacher with respect. You are expected to get actively involved with the class activities, to critically analyze the proposed problems and situations, to actively participate in small group discussions, to contribute your analysis to the whole class, and to complete all reading and written assignments. You will also conduct oral presentations throughout the course. Class participation also entails asking meaningful questions in the lectures, answering questions, and volunteering comments related to the content of the lectures and the class activities. I will also call on you throughout the course to answer questions or to provide your opinion. We will resort to a broad range of class activities. Some will be conducted individually and others in small groups. Each of you is expected to write down your answers to the class activities, even if you work in small groups, and to keep all activities. You also need to keep record of your oral interventions at the small and whole group levels. A reflective journal is an ideal tool to do this. Many class activities will include the writing of essays. Other activities will deal with projects and audiovisual presentations. You are expected to be prepared for every class, i.e., you need to do the required readings for each class, and to complete the reading guides and other homework

assignments, which you must bring to class. You must also bring a printed copy of the class activities or your laptop to class, as well as the textbook, the journal articles, the course outline, record of your oral interventions, and your class notes to work on the class activities. You have to keep all your class activities, together with these materials, in a portfolio. You have to bring the portfolio to every class. You will not be able to participate when you do not bring these materials to class, as you will be unable to work. Even if you have a laptop, you must also bring a notebook and pens and be prepared to hand in written class assignments to me when required. On several occasions throughout the course, I will ask you to hand in the class activities or the entire portfolio for me to give you formative feedback. You are required to take the initiative and come to my office during my office hours to discuss your class performance several times throughout the course. Your class participation must reflect that you have done the required readings and that you have thought about what you read. Simply talking in class is not enough to get a good grade under this evaluation component. But, if you do not talk and participate in class, you will not receive any credit at all. Please note that the written assignments and reading quizzes are conceived to help you prepare to talk in class and fully participate in the class activities. You will not get a passing grade under class participation if you only do the written assignments but do not contribute to class discussions and class activities. I expect that active class participation will foster, among many other skills, your oral communication and presentation skills. Class attendance is a prerequisite to obtain the corresponding percentage of the grade under this category. I will evaluate your participation every class. If you miss class you will not receive any kind of credit for that missed class regardless of the reason for your absence, even if you decide to complete the written class activity.

### **Evaluation criteria for class participation**

I will assess whether and how well you have achieved the learning outcomes of the course for the class participation component of the grade according to the following five levels of John Bigg's Solo taxonomy.



### **Pre-structural**

The student does not participate actively in most classes. The student does not show that he/she has read the assigned texts. The student does not participate in an appropriate manner that contributes to class discussions and does not show a positive attitude toward his or her classmates, the instructor, and the activities. The student does not work in small groups and does not volunteer to lead activities, debates, and debriefs. The student seldom asks questions in class.

The student responses to the class activities contain irrelevant information, and they miss the point. The responses have no logical relationship to the question. The student gives bits of unconnected information, which have no organization and make no sense. The student does not make connections to the theoretical issues, readings, class discussions, and class activities done throughout the course. The response to the class activities does not show an understanding of the issues dealt with in class.

### **Unistructural**

The student participates actively in most classes. In most classes, the student shows that he/she has read the assigned texts. The student generally participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works in small groups, but does not always volunteer to lead activities, debates, and debriefs. The student sometimes asks useful questions that contribute to the development of the class and fosters collective understanding, or usually asks simple questions that do not contribute to the development of the class.

The student responses to the class activities contain one relevant item, but they miss others that might modify or contradict the response. There is a rapid closure that oversimplifies the legal issue or problem. The student makes simple and obvious connections to some of the theoretical issues, readings, class discussions, and class activities done throughout the course, but the significance of the connections is not demonstrated. In most class activities, the student can identify and list the legal issues or questions presented in class. The response to the class activities does not show an understanding of the issues dealt with in class or it demonstrates only a very superficial understanding.

### **Multi-structural**

The student participates actively and meaningfully in most classes. In most classes, the student shows that he/she has read the assigned texts and that he/she has reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs on most classes. The student generally asks useful questions that contribute to the development of the class and fosters collective understanding.

The student responses to the class activities contain several relevant items, but only those that are consistent with the chosen conclusion are stated, and the significance of the relationship between connections is not always demonstrated. Closure in the class activities is generally selective and premature. The student makes a number of connections to theoretical issues, readings, class discussions, and class activities done throughout the course, but the meta-connections between them are missed, as is their significance for the whole. In most class activities, the student can enumerate, describe, combine, and list the legal issues or questions presented in class. The student uses some of the relevant data.

### **Relational**

The student participates actively and meaningfully in every class. The student shows every class that he/she has read the assigned texts quite deeply and that he/she has critically reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs every class or most classes. The student asks useful questions that contribute to the development of the class and fosters collective understanding.

The student makes connections to theoretical issues, readings, class discussions, and class activities done throughout the course. In general, students demonstrate the relationship between connections and the whole. In every class activity, the student can focus on several relevant aspects, but these aspects are generally considered independently. Response to the class activities is a collection of

multiple items that are not always related within the context of the exercise. In all class activities, the student is able to classify, compare, contrast, combine, enumerate, explain causes, and analyze the legal issues or questions presented in class. The student uses most or all of the relevant data, and he/she resolves conflicts by the use of a relating concept that applies to the given context of the question or problem.

### **Extended abstract**

The student participates actively and meaningfully in every class. The student shows every class that he/she has read the assigned texts deeply and that he/she has critically reflected about the required readings. The student participates in an appropriate manner that contributes to class discussions and shows a positive attitude toward his or her classmates, the instructor, and the activities. The student works productively in small groups and volunteers to lead activities, debates, and debriefs every class. The student asks useful questions that contribute to the development of the class and fosters collective understanding.

The student makes connections not only to theoretical issues, readings, class discussions, and class activities done throughout the course but also to issues, theories, and problems beyond information arising from class. In every class activity, the student shows the capacity to theorize, generalize, hypothesize, and reflect beyond the information given. The student even produces new relevant hypotheses or theories. In every class, the student can link and integrate several parts such as class activities, readings, class discussions, and theories into a coherent whole. The student links details to conclusions and shows that he/she deeply understands the meaning of issues and problems under analysis. The student questions basic assumptions, and gives counter examples and new data that did not form part of the original question or problem.

### **CLASS-ROOM TEST**

The class-room test will aim at testing functional knowledge of the problems and issues discussed in class. See the evaluation criteria below.

### **FINAL GLOBAL TAKE-HOME EVALUATION**

The purpose of the global take-home evaluation is to assess whether and how well you have achieved the intended learning outcomes. The global take-home examination will be distributed as determined in the class schedule below. You will have to submit it on **December 5, 2022 by 10 pm.**

#### **Evaluation criteria for the global take-home evaluation and for the in-class test**

I will resort to the Solo taxonomy to judge how well you have achieved the learning outcomes in the final take-home evaluation and the in-class test.

#### **Pre-structural**

The student responses to questions and problems contain irrelevant information and they miss the point. The responses have no logical relationship to the question. The student gives bits of unconnected information, which have no organization and make no sense. The student does not make connections to the theoretical issues, readings, class discussions, and class activities done throughout the course. The response to the questions and problems does not show an understanding of the issues dealt with in class.

#### **Unistructural**

The student responses to the questions and problems contain one relevant item, but they miss others that might modify or contradict the response. There is a rapid closure that oversimplifies the legal issue or problem. The student makes simple and obvious connections to some of the theoretical issues, readings, class discussions, and class activities done throughout the course, but the significance of the connections is not demonstrated. The student can identify and list the legal issues or questions discussed in class. The responses do not show an understanding of the issues dealt with in class or it demonstrates only a very superficial understanding.

### **Multi-structural**

The student responses to questions and problems contain several relevant items, but only those that are consistent with the chosen conclusion are stated, and the significance of the relationship between connections is not always demonstrated. Closure is generally selective and premature. The student makes a number of connections to theoretical issues, readings, class discussions, and class activities done throughout the course, but the meta-connections between them are missed, as is their significance for the whole. The student can enumerate, describe, combine, and list the legal issues or questions presented in class. The student uses some of the relevant data.

### **Relational**

Response to the questions or problems is a collection of multiple items that are not always related within the context of the exercise. The student is able to classify, compare, contrast, combine, enumerate, explain causes, and analyze the legal issues or questions presented. The student uses most or all of the relevant data, and he/she resolves conflicts by the use of a relating concept that applies to the given context of the question or problem. The student makes connections to theoretical issues, readings, class discussions, and class activities done throughout the course. In general, students demonstrate the relationship between connections and the whole. The student can focus on several relevant aspects, but these aspects are generally considered independently.

### **Extended abstract**

The student makes connections not only to theoretical issues, readings, class discussions, and class activities done throughout the course but also to issues, theories, and problems beyond information arising from class. The student shows the capacity to theorize, generalize, hypothesize, and reflect beyond the information given. The student even produces new relevant hypotheses or theories. The student can link and integrate several parts such as class activities, readings, and theories into a coherent whole. The student links details to conclusions and shows that he/she deeply understands the meaning of issues and problems under analysis. The student questions basic assumptions, and gives counter examples and new data that did not form part of the original question or problem.

## **CONVERSION OF GRADING SYSTEM**

In order to comply with University policy, which we will all abide by, and in order to facilitate the reading of the SOLO taxonomy, the following chart translates the SOLO taxonomy's five levels into the University grading scheme. As you can see, the descriptions of the levels of the SOLO taxonomy and the University grading scheme mean the same, even if they are expressed in different terms.

SOLO Taxonomy	Grade	Percentage of Grade Value	Definition	
Extended abstract	A	80-100	Excellent Performance	Comprehensive knowledge in depth of the principles and materials treated in the course, fluency in communicating that knowledge and originality and independence in applying material and principles.
Relational	B	70-79	Good Performance	Thorough understanding of the breadth of materials and principles treated in the course and ability to apply and communicate that understanding effectively.
Multistructural	C	60-69	Satisfactory Performance	Basic understanding of the breadth of principles and material treated in the course and an ability to apply and communicate that understanding competently.
Unistructural	D	50-59	Marginal Performance	Adequate understanding of most principles and material treated in the course, but significant weakness in some areas and in the ability to apply and communicate that understanding.
Pre-structural	F	0-49	Failure	Inadequate or fragmentary knowledge of the principles and material treated in the

				course, or failure to complete the work required in the course.
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Please note that in many cases, you may perform at a level in some aspects of a certain evaluation component of the course and at a different level in other aspects. In those cases, for the purpose of the summative assessment, I will determine which level is most representative of your learning. Strategic answers and interventions will be considered at the surface level, i.e., unistructural or multistructural.

**RESOURCES: PUBLICATIONS AND WEB SITE**

You will need to read all the articles listed above deeply. You are responsible to get them from the Library databases. You must read these texts and any other text which you may find it necessary to understand the topics and to prepare to participate in class. A web site is available at <http://www.julianhermida.com>. You will be able to explore and consult the reading guides, class activities, and other useful information. **You must regularly check both the course website and your Algoma U email account.** I am here to guide you all throughout this journey of discovery. Think of me as your expedition experienced companion, i.e., someone who has travelled this route several times before, but is still amazed at the wonders discovered along the route.

**RULES AND POLICIES**

The journey may only be successful if you engage in it; and if you work honestly and enthusiastically. Since this is a collective journey, you also need to follow certain rules and policies so that the journey will be fair and fruitful for all. Here are the rules and

policies. They may sound strict. They are. But, trust me, they have been conceived so that the journey is as smooth and productive as possible.

### **OFFICE HOURS POLICY**

Please email me if you need to discuss anything with me.

### **EARLY FEEDBACK POLICY**

Due to the nature of the course, traditional written examinations may not necessarily be evaluated prior to the withdrawal date. Feel free to ask me by email to provide you with a written statement of your standing in the course at any time, including prior to the withdrawal date.

### **UNIVERSITY ATTENDANCE POLICY**

The general regulations of the university require punctual and regular attendance at the various academic exercises. If there are extenuating circumstances related to an absence, the instructor should be notified in writing. Absences in excess of 20% may jeopardize receipt of credit for the course. **Given the nature of the course, I will strictly enforce this policy.**

### **ATTENDANCE POLICY FOR THIS COURSE**

Your presence and participation in every class are an essential part of the learning process for you and your classmates, whether class is conducted online or in-person. Therefore, attendance will be taken at all classes and is mandatory. I will take attendance in a variety



of way. You are expected to let me know if you must be absent due to medical or religious reasons, in which case I will do my best to make the necessary accommodations. Students that have an absence in more than 20% of the classes will NOT receive credit for this course regardless of the reason for the absence, including, without limitation, absences due to sports competitions and employment obligations. If you missed classes because you were not registered in the course, those classes that you missed will count as absences in order to calculate this 20% rule. This is because I firmly believe that the class constitutes a unique learning environment and most of what you will learn takes place in class, not in solitude. So missing classes –for whatever reason– will hurt your scholastic performance. Under no circumstances will a student who missed a class receive credit under the class participation evaluation component for that class. Written class activities not done in class on the day originally conducted will not be rescheduled or accepted for marking.

### **PRIVILEGES: EXTENSIONS, WAIVERS, AND OTHER AUTHORIZATIONS**

Extensions, waivers, reschedules, rewrites, make-ups, and extra-credit activities are considered privileges, given on a case by case basis and as a matter of courtesy. For further clarification, I may or may not grant them or I may grant them to some students and not to others, depending on a number of factors. In general, I will only grant privileges in exceptional circumstances. You must request a privilege in writing.

Please note that medical policies duly adopted by the University and applicable legislation may supersede the rules in this course outline, which is not intended to contradict any such University policy or legislation.

### **STUDENTS WITH DISABILITIES**

Students with disabilities who would like to discuss classroom and/or exam accommodations should contact me as soon as possible.

## **NO RECORDING**

No photography, sound-recording, or videorecording will be permitted during class without permission. Reproduction of class presentations, activities, course notes, or other similar materials are not permitted without prior written consent. Similarly, screen recording and screenshots of class materials, including without limitation, notes, class activities, and lectures, not allowed, either without prior written permission. In the case of private use by students with accessibility needs, consent will not be unreasonably withheld.

## **ACADEMIC DISHONESTY**

The University takes a very serious view of such offences as plagiarism, cheating, and impersonation. Penalties for dealing with such offences will be strictly enforced. Please read the Student Code of Conduct (Academic) on plagiarism and other offences against academic honesty. Please note that any self-misrepresentation in order to avoid attendance, meeting of assignment deadlines, writing of tests or examinations and/or completion of assignments, constitutes academic dishonesty. The following web site contains a complete policy statement on academic dishonesty and attendance. You are encouraged to read it for further clarification:  
[http://www.algomau.ca/uploads/file/pdf/chapter\\_3.pdf](http://www.algomau.ca/uploads/file/pdf/chapter_3.pdf).

## **TEACHING EVALUATIONS**

Please remember to complete the electronic teaching evaluations towards the end of the course. The University considers the evaluation instrumental in assessing teaching. The University will announce the period and instructions for completing the evaluations.

## **RESEARCH ETHICS**

None of the class activities include research involving human beings. However, if you decide that you want to do research involving human beings, such as interviewing or observing, you will need to obtain authorization from the Research Ethics Board BEFORE you start dealing with people. In this case, let me know as soon as possible. I can help you with this process.

## **TRIGGER WARNINGS**

Some materials in this course may be sensitive. Course materials, including lectures, class activities, hypotheticals, scenarios, examples, court cases, and films shown in class, may have mature content, including violent, sexual, and strong language content. Except for newspaper articles and court cases, all class activities are hypothetical and fictitious. Any resemblance to actual persons, institutions, or events is purely coincidental. The views and opinions expressed in the articles assigned for reading in this course are those of the authors and do not necessarily reflect the position of the course professor. Questions, follow-up questions, examples, and comments made within the context of class activities do not purport to state or reflect the opinions or views of the course professor. All such articles, comments, questions, examples, and activities are meant solely to facilitate the discussion and study of Law. They are not meant to advocate or promote any crime or unlawful action. Neither are they meant to advance any ideological perspective. Discretion advised before signing up for this course.

## **DISCLAIMERS**

Trademarks and registered trademarks mentioned in connection with class activities, readings, and assignments are the property of their respective owners. References to

trademarks, registered trademarks, commercial products, services by trade name, or real people, living or dead, in the course are for educational purposes only. No claim is made that any such reference constitutes any sponsorship, endorsement, or association of those products, services, or individuals with this course.

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