

POLS 4100: Free Speech
Fall 2023
Online Hybrid
Thursday 5:30-6:30

Professor Richard Price

Office: LH 146

Email: richardprice@weber.edu

Office Hours: Tuesday 10:30-11:30, Thursday 10:30-11:30

Appointments available by request

Course Description

Though its placement in the Bill of Rights is a matter of historical accident—the First Amendment was originally proposed as the third—Americans have long identified the freedom of speech as a paramount right. Justice Benjamin Cardozo once described freedom of speech as “the matrix, the indispensable condition, of nearly every other form of freedom.” Today we see people of all political stripes invoking this freedom in a wide variety of contexts. Yet, the freedom of speech as we understand it only came into existence in the Twentieth Century. We contest its application and meaning across a variety of contexts. This course will look at a number of these contexts to understand how our modern understanding of free speech came about.

Learning Outcomes

Students should be able to demonstrate mastery of the Public and Constitutional Law subfield.

This course emphasizes the ability of students to demonstrate critical thinking skills or formulate and defend a thesis in a written or oral format.

Course Readings

There is one required book with info for the paperback version below (use what version you prefer). Other readings are available on Canvas. **Please note** that some of these readings may have nudity or other explicit content.

Rosenberg, Ian. 2021. *The Fight for Free Speech: Ten Cases that Define Our First Amendment Freedoms*. New York University Press. (Paperback ISBN 9781479825912; list price: \$18.95).

Course Requirements**1. Participation (10%)**

This course is highly participatory in nature. We deal in complicated, contested, and evolving norms of free expression. One of the best ways to work through those ideas is through active class discussion and debate. Attendance alone is a necessary but not sufficient component of participation.

- At the end of the semester I will require you to submit a self-evaluation of your participation with an honest assessment of your participation and a suggested grade if you were judging your performance. I will take this self-evaluation into account when assigning your grade.

2. (Semi-)Weekly Responses (15%)

For most weeks of the course you will have to do one response to a question about the content. These will be due BEFORE we meet on Thursdays. These questions will be posted via Canvas and/or lecture and responses will be in the range of 250-300 words, basically one single spaced page. These will be graded pass (100%)/low (75%)/fail (0%).

3. Midterm Paper 1 (30%) **DUE: Sunday 10/7**

You will write a paper of 8-10 pages exploring a question to be provided.

4. Midterm Paper 2 (30%) **DUE: Sunday 11/11**

You will write a paper of 8-10 pages exploring a question to be provided.

5. Final (15%)

The final will be given to you later in the semester but will require you to engage with a major current issue.

Grade Scale

A = 93% or above	A- = 90 – 92 %	B+ = 87 – 89%	B = 83 – 86%
B- = 80 – 82 %	C+ = 77 – 79%	C = 73 – 76%	C- = 70 – 72 %
D+ = 67-69%	D = 63 – 66%	D- = 60 – 62%	E = 0 – 59%

Course Schedule

The following is an approximate schedule that I reserve the right to alter, with notice, at any time.

Week 1 (Aug. 28 – Sept. 1): A Bit of History. It is important to have some understanding of early development of political speech protection. Consider in particular the degree to which we have two different narratives about free speech. On one side is the legal orthodoxy that allowed repression of free speech and press with few restrictions. On the other side is a tradition of political dissent and resistance to this orthodoxy. Which narrative should be more important to us today?

- “Colonies to Disunion”

Week 2 (Sept. 5 – 8): The Marketplace of Ideas? The most powerful metaphor in American free expression law is the marketplace of ideas. Does this idea make sense? Do regular people act as perfect consumers of information?

- Rosenberg pgs. 5-25 (Ch. 1)
- Cases: Schenk v. US, Abrams v. US, Gitlow v. NY, Whitney v. CA, Brandenburg v. Ohio

Week 3 (Sept. 11 – 15): Taking a Knee and Pledging Allegiance. Patriotism and dissent are sometimes seen as opposing concepts, others might see them as inextricably linked. Should the government have a special interest in enforcing patriotism? How far can dissent go?

- Rosenberg pgs. 26-54 (Ch. 2)
- Cases: *Minersville v. Gobitis*, *W. VA. V. Barnette*, *Texas v. Johnson*

Week 4 (Sept. 18 – 22): Decency in Politics. What are fighting words? Is this an attempt to impose decency rules on political disagreements? Should that be allowed? After all, does “Fuck the Draft” really add anything useful to public debate?

- Rosenberg pgs. 111-123 (Ch. 6)
- Cases: *Chaplinsky v. NH*, *Terminiello v. Chicago*, *Gooding v. Wilson*, *Cohen v. California*

Week 5 (Sept. 25 – 29): What to do with Hate? This is perhaps a more focused continuation of last week: hate after all, is the breakdown of any decency within a segment of the polity. Does the state have a reasonable interest in preventing the expression of hate? If not, is this because hate adds something useful to the marketplace of ideas?

- Rosenberg pgs. 160-181 (Ch. 9)
- Cases: *Beauharnais v. Illinois*, *Collin v. Smith*, *RAV v. St. Paul*, *Wisconsin v. Mitchell*, *Snyder v. Phelps*

Week 6 (Oct. 2 – 6): PAPER 1 No class this week.

Week 7 (Oct. 9 – 13): Publishing Secrets. The press and what it can publish is a central aspect of the free communication of ideas. To what extent should the government be allowed to protect secrets? How does *NYT v. U.S.* balance this question?

- Rosenberg pgs. 93-110 (Ch. 5)
- *New York Times v. U.S.*, *Richmond Newspapers v. Virginia*
- Charlie Savage, “Judge Rejects Trump Request for Order Blocking Bolton’s Memoir.” *New York Times* 6/20/20.

Week 8 (Oct. 16 – 20): Actual Malice, Parody, and Free Press. Justice Hugo Black was famous for arguing that there should be no constitutional limits on what the press can publish. Is he correct? What do we do with lies? Why would we ever protect false statements?

- Rosenberg pgs. 55-73, 138-159 (Ch. 3 and 8)
- Cases: *Chaplinsky v. NH* [reread], *New York Times v. Sullivan*, *Hustler v. Falwell*
- Adam Clark, “Porn and loathing in N.J.?” *NJ.Com* 5/8/23.

Week 9 (Oct. 23 – 27): Obscenity. *Chaplinsky* declares obscenity to be “speech” with no value, and thus not really speech, but it provides no explanation for why. *Roth v. U.S.* tries to fill that gap in. How successful is it? Is there any reasonable line that can be drawn that excludes valueless material (dirt for dirt’s sake) and protects material with some value?

- Kelsy Burke, *The Pornography Wars* (Bloomsbury Publishing, 2023), pgs. 25-49.
- Cases: *Roth v. U.S.*, *Memoirs v. Massachusetts*, *Miller v. California*

Week 10 (Oct. 30 – Nov. 3): Indecency. The bar for obscenity is relatively high (though we might disagree over that). But what do we do with the evolving technology world that brings material into our houses in greater amount than ever before? If material is indecent but not obscene, should government be allowed to regulate it?

- Rosenberg pgs. 124-137 (Ch. 7)
- Cases: FCC v. Pacifica, US v. Playboy Entertainment, Fox v. FCC, Brown v. Entertainment

Week 11 (Nov. 6 – 10): Paper 2 No class this week.

Week 12 (Nov. 13 – 17): Student Speech. Students present a complicated case for speech rights in two ways. First, they are minors so the question of how rights apply is open. Second, they are within a governmental institution that has a duty to perform: education. So how well do the cases balance questions of liberty, order, and an educational environment? Should students have any speech rights?

- Rosenberg pgs. 74-92 (Ch. 4)
- Cases: Tinker, Bethel v. Fraser, Mores v. Frederick, Mahanoy Area School District v. BL

Week 13 (Nov. 27 – Dec. 1): The right to read and learn. Much of our course has been premised on the speaker, writer, publisher; the rights of producers of speech to communicate their ideas. Do consumers of speech also have rights?

- Price, Richard S. 2021. “Navigating a doctrinal grey area: Free speech, the right to read, and schools.” *First Amendment Studies* 55(2): 79-101.
- The Freedom to Read Statement, Board of Ed. v. Pico, Counts v. Cedarville School District
- PEN America, *Banned in the USA: The Growing Movement to Censor Books in Schools* (2022).
- <https://pen.org/report/banned-usa-growing-movement-to-censor-books-in-schools/>

Week 14 (Dec. 4 – 8): The New Frontier of Social Media. Nothing has changed modern media as much as social media. It is hailed as breaking down the barriers between people and spreading knowledge and community in new ways. It is decried as a spreader of misinformation and fake information, heightening divisions between people. How should free speech norms apply to the world of private social media?

- Rosenberg pgs. 182-195 (Ch. 10)

Course Policies

Attendance: Attendance is an important element to any class but especially this one. The readings and lectures will be complementary but not coextensive and you will be held responsible for all of the information from both lectures and assigned readings. While attendance alone is not sufficient for the participation element of your final grade, it is necessary.

Grading Policy: Barring unforeseen crises, I will return graded assignments within two weeks of the due date. If you are unsatisfied with a grade assigned you may appeal that grade to me and I will reevaluate the assignment from scratch. This means that you could receive a higher, lower,

or the same grade as initially given. To appeal you must send me a short statement explaining why you believe the grade is incorrect along with the original graded copy of the assignment.

Late Assignments: Assignments are due at the time and date listed on the syllabus (unless otherwise provided, all assignments are due at the beginning of class). Any late papers will be deducted a letter grade for every 8 hours late (e.g. A to A-, A- to B+, B+ to B, and so on). Requests for extensions must be made to me before the assignment is due and will not be granted retroactively.

Academic Integrity: As specified in PPM 6-22 IV D, cheating and plagiarism violate the Student Code. Plagiarism is “the unacknowledged (uncited) use of any other person’s or group’s ideas or work.” Students found guilty of cheating or plagiarism are subject to failure for the specific assignment, at a minimum, or failure for the whole course at the professor’s discretion.

NOTE: It is also a violation of this policy to submit work previously submitted in another course. You should speak to me if you have any concerns about where the line is for this policy.

Reasonable Accommodation: Any student requiring accommodations or services due to a disability must contact Services for Students with Disabilities (SSD) in Room 181 of the Student Services Center (or Room 221 at the Davis Campus). SSD can also arrange to provide course materials (including this syllabus) in alternative formats upon request. Please refer to SSD’s website for more information: <http://weber.edu/ssd>

Core Beliefs: According to PPM 6--22 IV, students are to “[d]etermine, before the last day to drop courses without penalty, when course requirements conflict with a student's core beliefs. If there is such a conflict, the student should consider dropping the class. A student who finds this solution impracticable may request a resolution from the instructor. This policy does not oblige the instructor to grant the request, except in those cases when a denial would be arbitrary and capricious or illegal. This request must be made to the instructor in writing and the student must deliver a copy of the request to the office of the department head. The student's request must articulate the burden the requirement would place on the student's beliefs.”

Emergency Closure: If the University is forced to close for any reason during the semester, please check the course Canvas page and your Weber email for updates on how this course will proceed. The University announces closures and other emergencies through its Code Purple emergency alert system. Students are encouraged to sign up for Code Purple: <http://www.weber.edu/codepurple/>

Office Hours and Communication: My regular office hours are listed above and I encourage you to avail yourself of them if you have any problems, questions, or simply want to discuss ideas. If you cannot make my office hours, I am available by appointment. If you have a quick question, please feel free to email me. Finally, I may regularly use email to contact you (in particular if I have to cancel a class meeting or change an assignment). This means that you will be responsible for regularly checking your WEBER email account and keeping it open to emails. I will not make any extra attempt to contact you if an email gets rejected because yours is full. Nor will I accept as an excuse that you do not use your Weber email account.

Note on Email: Please put the name and/or number of this class in the subject of any email message so I can easily sort them.

A Note on the Canvas Gradebook

All of your grades will be available online in the Canvas gradebook. Please note a quirk of that system is that it only estimates your final grade based on the scores recorded. If you have not yet done an assignment, thus showing “-“, Canvas treats it as nonexistent. So it may state that you have an 83% when you have only done 3 of 6 required assignments but that estimate will drop rapidly if you fail to do an assignment and a “0” is entered. Also, Canvas is not perfect and you need to remember the terms of the syllabus when it comes to weighting assignments. If Canvas has an error for some reason and improperly weights assignments you need to remember that the syllabus always controls and any Canvas error will be corrected even if your grade estimate is affected. For this reason I encourage you to let me know if anything in Canvas looks odd.