

THE PRESS AS A LISTENING INSTITUTION:

Theorizing press autonomy in terms of a public right to hear

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ABSTRACT

In this paper I argue that press freedom can be defined and defended to the extent that the press protects both positive and negative liberty, ensures a public right to hear, and creates conditions under which publics can listen in ways that healthy democratic cultures require. I ground idea of democratic autonomy in both an ‘argument from truth’ and an ‘argument from democracy’ and review recent literature on the democratic value of listening to argue that the press might best defend its claims of uniqueness and institutional freedom to the extent that it shows its features as a listening institution.

INTRODUCTION

If press freedom is to mean anything, it needs a democratic rationale. That is, for the press to claim that it needs cultural and constitutional protections, that *its* decisions and contributions are somehow distinct from others, it must show why its vision of democratic life is realizable by no

other institution. Especially in the context of today's networked technologies and practices that ostensibly let any individual speak to a potentially large audience, what *might* make the press different? More specifically and normatively, how might its unique set of professional standards, ethical values, publishing technologies, and public narratives produce a kind of self-government that cannot come from the kind of marketplace logics of free speech that seem to drive internet-based communication?

In unpacking the *why* of press freedom, I want to suggest that one way to think about the press's freedom is how well it ensures a public right to hear. That is, although the press might configure itself in a number of different ways (as a traditional enterprise that indexes elite discourses, an counter-publication designed to oppose dominant narratives, or a news start-up experimenting with online publishing), the press might most legitimately defend its unique identity and freedoms to the extent that it helps people hear in ways that markets, states, social networks, algorithms, and self-interest alone cannot provide.

But, as Baker (1998) puts it, assessing "the media's service to democracy requires a theory of democracy." (p. 318) We cannot understand how well the press is living up to its democratic ideal unless we define and defend how the press relates to particular visions of democracy. In Baker's (1998, 2002) language, the press's democratic value—and therefore the legitimacy of its claims for freedom—depend not only upon how well it endures government oversight or survives in market-driven economics as it fulfills the personal information desires of media consumers influenced by friends, search engines, and curiosities. The press must *also* create the conditions under which publics can hear – conditions that require the press to have a model of the public, and an understanding of how that public hears.

I want to develop this claim—that the press’s freedom depends upon how well it ensures a public right to hear—in three ways. First, I argue that the very idea of democratic autonomy requires seeing individual freedom as a product of social relationships. Second, I review demands that this view of autonomy makes on free speech, arguing that autonomy requires more than individual expression in marketplaces of speech. And, finally, I use recent literature on the democratic value of listening to argue that the thoughtful *absence* of speech can be part of a rich system of public communication. Taken together, I aim to provide a theoretical basis for empirical investigations of contemporary press freedom by developing a claim that legitimate ideals of press freedom must demonstrate how the press ensures not only its own right to gather and publish news – but how it also ensures a public right for audiences to hear what they need to hear in order to thrive as publics.

My aim in tying together these threads is to construct a *normative* case for press freedom grounded in the idea of a public right to hear, a little examined cornerstone of democratic life. That is, the press earns its own freedom by ensuring the democratic autonomy of its constituents – an autonomy requiring institutions support public speaking and listening. The *press’s* freedom is a matter of institutional design, professional practice, and audience relations that needs to connect with the communication conditions that help to create constituents’ “democratic autonomy” in networked environments. This requires a theory of press freedom grounded in a rigorous examination of the idea of democratic autonomy.

THE IDEA OF DEMOCRATIC AUTONOMY

Although the very concept of autonomy is “at the center of the modern democratic project,” (Held, 2006, p. 260) and is frequently invoked by theorists and activists of all stripes, there is little agreement on what exactly the term means. Sometimes it is seen as unfettered *action*—individual, physical motions unimpeded by others—while other times it is simply seen as an ability to change *preferences* in the face of changing circumstances (Meyer, 1987). Some scholars argue that autonomy requires *knowledge* and *anticipation* – autonomous action can only be taken if someone is aware of their circumstances and available options *and* can reasonably foresee consequences of that action (Benn, 1988; Dworkin, 1988). Still others add that autonomy means truly making a decision *independently*, since all forms of influence have the possibility of being implicitly coercive (Arneson, 1985; Neely, 1974). Finally, other scholars distinguish between autonomy bracketed by *global* factors that are beyond your immediate control (*e.g.*, not being free to act because of legal or military force, cultural norms, or social traditions) versus *local* influences that are within your immediate, observable context and subject to individual interpretation (*e.g.*, personal relationships with friends or coworkers (Dworkin, 1981). Collins (1992) goes so far to suggest that that individual agency is a “fantasy...which we find pleasant to believe in” (p. 77) – an unfortunate result of naively misapplying the findings of micro-sociologists like Goffman and Garfinkel to the powerful restrictions on individual freedom that are better explained by macrosociological accounts of sociopolitical forces. He claims that Giddens’s (1984) theory of structuration—in which social structures and human agency continually reflect and recreate each other (Sewell, 1992)—presents a romantic and empirically unsupported vision of human-structure because, although people craft numerous folk theories about why society behaves as it does (Beer & Burrows, 2010; Mills, 1959/2000), “[r]eal-life

individuals do not know very much of the social structure which surrounds them.” (Collins, 1992)

Nevertheless, especially among Western political ideals and traditions, autonomy is usually about the *individual's* power to self-govern (Christman, 1988, 1991). It is rooted in a Kantian desire for “freedom of the will from causal determinism” (Fallon, 1994, p. 878) and driven by a desire to use reason—as opposed to religious faith, naïve spiritualism, or monarchical allegiance—to make decisions (Kant, 1785/2002). Autonomy is a *future*-oriented concept – a way to talk about what people can imagine and realize, and a way to critique the extent to which their current circumstances let them create the world they wished they lived in.

But this focus on an individual—on how her preferences, knowledge, anticipations, and actions can be achieved unencumbered by others’—is a poor one. It presumes that such individual freedom is even possible in the absence of a social system, gives us few clues about it might be achieved, and pits the individual against the very forces of social and cultural enlightenment she might use to decide what it is that she wants to know or be or do for herself. Let me address each of these shortcomings.

First, the focus on the individual is a particularly Western one that presumes “everyone...to be the best judge of his or her own good or interests.” (Dahl, 1989, p. 100) In this idealized form, freedom comes from the *absence* of social relations. This presumption is consistent with a liberal political tradition (Mill, 1859/1974, p. 81) in which equality is considered to be a private and individual matter focused on removing obstacles to personal realization:

The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, *or* mental and

spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

Mill acknowledges that people live within associations, but his model of freedom requires that these relationships do not interfere with an individual's opportunity to make for themselves the life they see as desirable. Not only is a test for democratic autonomy passed at an individual level, but any role played by the collective is presumed to be, at best, an irrelevant distraction and, at worst, a serious impediment to personal liberty.

Indeed, the liberal, pluralist tradition is principally concerned with ensuring that people have equal opportunities – it sees community and social associations as either instrumental tools for helping individuals advance or as sentimental tangents to the core project of individual, democratic liberty (Christians, Glasser, McQuail, Nordenstreng, & White, 2009, pp. 96-99). Whereas Mill and Dahl see autonomy as an ideal that individuals try to realize in the absence of interference, Held (2006) agrees that people should be free from the “*arbitrary* use of political authority,” but otherwise sees the idea of *a priori* personal independence as both theoretically unrealizable and empirically unfounded. Rather than being constrained by outside influences, he argues, personal autonomy always *emerges from* and *depends upon* social, political, economic and cultural circumstances. That is, people can sometimes achieve freedom *through* persuasive relationships (Strauss, 1991), not only despite them. Democratic freedom comes from both resisting others and being empowered by them (Rose, 1999, p. 65). The real challenge, Held argues, is for democratic institutions to create the right mix of influence, persuasion, resistance, and empowerment that best enables individual autonomy.

Democratic freedom is a question of institutional design. For Held, the capacity “to deliberate, judge, choose and act upon different possible courses of action in private as well as

public life” (Held, 2006, p. 263) depends upon a set of *resources*: material and symbolic goods that citizens must have access to and be able to use if they are to realize their potentials.

Essentially, this model says that individual autonomy comes not only from having the power to realize pre-existing preferences free of undue influence (such preferences rarely pre-exist and such freedom is practically impossible), but from being exposed to influences that you neither created nor chose for yourself. Autonomy comes from living within a set of circumstances that make it likely for you to encounter new perspectives that will, ideally, in turn, make future your preferences richer and more complex.

It is only by acknowledging and engaging with these external factors—essentially, being secure enough in yourself to learn things that might challenge but ultimately strengthen that security—that people might realize *self-reflective* autonomy (Benn, 1988). Such self-reflexivity means acknowledging that we are

unique individuals, with our own identities created from the way we have taken up the histories, cultural constructs, language, and social relations of hierarchy and subordination, that condition our lives. (Young, 1997, p. 392)

Ignoring the power of these unavoidable influences means running the risk of becoming someone who is *heteronomously autonomous*: “dominated by his own prejudices, blinkered by unexamined ideology, or a slave to convention...One looks for the causes of his decisions in the opinions and beliefs of other people which his own merely reflect.” (Benn, 1988, pp. 124-125) Someone may seem independent and free of external influences, but he is actually simply receiving and uncritically recreating a system of values and influences he cannot see¹. (For

¹ This idea of unseen influences and hegemonic force has a long and complex history; a complete review of which is beyond the scope of this discussion. This idea of autonomy as a negotiation between individual agency and structures of influence and domination is more fully explored in such works as: Arendt’s “The Human Condition” (1958/1998) in which she argues that an “active life” requires seeing oneself as never fully in control of one’s personality because it is always subject to constructs beyond one’s control (the best we can do is promise ethical behavior and forgive lapses thereof); Foucault’s “Discipline and Punish” (1979) and “Governmentality” (1991) in

example, this type of illusory autonomy may appear in a person's supposedly rational choice of a product or service, without understanding that their choice has likely been influenced by a system of media advertising, a company's strategic positioning in relation to competitors, pre-existing brand loyalties, or assumptions about what people like them usually buy.)

The underlying ideal here is that autonomy means having both "negative" and "positive" freedoms. That is, people have both the right to be "left to do or be what he is able to do or be, without interference by other persons" but such a right is inseparable from "source[s] of control or interference that can determine someone to do, or be, this rather than that." (Berlin, 1969, pp. 121-122) Although this distinction is a helpful starting point for understanding the dualistic nature of autonomy—as something that involves both the individual and her surrounding environment—it is too simplistic.

Notably, MacCallum (1967, p. 314) argues that democratic freedom actually emerges from a triad of relations: "freedom is always *of* something (an agent or agents), *from* something, *to* do, not do, become or not become something." That is, individual autonomy never exists as an abstract push-pull between constraints and action – rather, there is a *particular* person in the middle, someone with myriad identities and relationships to others. He reminds us to ask not just "can people be free?" but when do *particular* people have autonomy, and what does their balance of freedom-from and freedom-to look like?² Fallon (1994) similarly distinguishes

which he traces a series of social control techniques that reconfigure citizens' behaviors and identities in ways that best suit the aims of the state and coercive power; or Gramsci's "Prison Letters" (1988) in which he argues that an individual's freedom (particularly for workers who have historically had little access to many different forms of power) depends not only upon securing economic or political capital for one's own personal use, but on critically understanding and mastering often unseen cultural influences and social systems that control the very ideas that an individual might be able to imagine.

² Simhony (1993) argues autonomy is better described as struggle between *internal*-facing and *external*-facing capacities. That is, autonomy depends upon abilities that reside within the single individual (things she is able or not able to do at any moment) and abilities that exist within the social environment surrounding the individual (both

between ascriptive and descriptive autonomy. *Ascriptive* autonomy is an ideal for which we may strive, but know that we will never realize; this is the “the autonomy we ascribe to ourselves and others as the foundation of a right to make self-regarding decisions... a moral entailment of personhood.” *Descriptive* autonomy, though, refers to people’s “actual condition and signifies the extent to which they are meaningfully ‘self-governed’ in a universe shaped by causal forces.” That is, autonomy is not dualistic concept—a binary ideal of positive and negative freedom—but, rather, a “matter of degree” that depends in part upon how well someone understands their relationships to others, the influences on him, and what action might look like in a particular circumstance. In this descriptive, pragmatic model, even “paternalism can sometimes be defended as a means of preserving or promoting autonomy.” (Fallon, 1994, p. 877) Limits on fast food advertising may be needed to curb the addictions of people who do not understand that—although they may *feel* like they are making independent eating decisions—their behavior is influenced by advertising messages more powerful than individual willpower. Essentially, autonomy comes from making tradeoffs that limit some personal freedoms in order to secure others.

Understanding why such tradeoffs are necessary means accepting that social influences are crucial for realizing freedom, a strange notion in Western contexts that prize individuals’ freedoms *from* others. This more complex vision of autonomy as a social construct means subjecting yourself and your thinking to others, appreciating that

to be autonomous one must have reasons for acting and be capable of second thoughts in the light of new reasons ... And for reasons one must have a system of beliefs from which action commitments derive and into which new evidence can be assimilated, yielding new commitments. How could anyone come by these bits of basic equipment except by learning them in the first instance from parents, teachers, friends, and

things that collectives are able to do and things that collectives allow individuals to do, allowances made through coercive force or cultural signaling).

colleagues? Someone who had escaped such a socialization process would not be free, unconstrained, able to make *anything* of himself that he chose; he would be able to make nothing of himself, being hardly a person at all. (Benn, 1988, p. 179)

Benn encourages us not to concentrate on whether people *feel* like they are free in their decision-making (relying on self-reported satisfaction) but instead to more closely examine the social conditions under which they make decisions and ask how *meaningfully* different their choices are. Testing whether someone can simply choose one option over another is a poor test of their autonomy if the options offered are too few or practically identical. Autonomy based on choice is better seen as a probabilistic and pragmatic phenomenon in which someone's *potential* to think or act differently depends upon their likelihood of encountering a meaningfully diverse set of choices. As Beck (2002, p. 4) puts it:

Opportunities, dangers, biographical uncertainties that were earlier predefined within the family association, the village community, or by recourse to the rules of social estates or classes, must now be perceived, interpreted, decided and processed by individuals themselves. The consequences - opportunities and burdens alike - are shifted onto individuals who, naturally, in face of the complexity of social interconnections, are often unable to take the necessary decisions in a properly founded way, by considering interests, morality and consequences.

That is, amidst forces that privilege and force individualization, if people are to make choices with democratic value, they need supportive social structures that equip them with "full information and under suitable conditions of reflection." (Fiss, 1996, p. 23) My autonomy depends upon how well *other people* articulate ideas, and how diverse the resulting "space of possibles" (Bourdieu, 1993, p. 30) is within which I might think and act. These power of this space to "surpass the given toward an open future" (de Bourvoir, 1948, p. 91) depends not only upon from the rational exchange of truth claims in a marketplace of commodified propositions. Rather, it comes from the messier but no less structured "power of redescribing,"

the power of language to make new and different things possible and important – an appreciation which becomes possible only when one’s aim becomes an expanding repertoire of alternative descriptions rather than The One Right Description. (Rorty, 1989, pp. 39-40)

The very idea of democratic autonomy is thus a communication problem, one that sits at an intersection of the individual and the collective, the private and the social. At first glance, we might judge personal autonomy simply in terms of what individuals *do* but, when more fully considered, we can see how such actions (and thus autonomy) emerges from “conditions of enactment” (Held, 2006, p. 260) – pragmatic institutional and organizational circumstances that make it likely for people to communicate about, experiment with, and realize versions of themselves that they could not achieve alone. Thus, communication creates the conditions under which individual autonomy can exist; personal freedom is a problem of free speech. But what *kind* of “free speech” does such autonomy require, how does this speech differ from unfettered personal expression, and what kinds of institutions might support such speech?

FREE SPEECH AND DEMOCRATIC AUTONOMY

If autonomy requires both freedom from unreasonable influence and a duty to engage with others, then we need to ask what kind of institutions help us become autonomous, “socialized individuals.” (Benn, 1988, p. 179)

The press is one such public-facing institution, but others also sit at this intersection between individual empowerment and socialization: public schools “provide every child with an opportunity to choose freely and rationally among the widest range of lives” (Gutmann, 1987, p. 34); museums critically display cultural objects in order to teach visitors about the broader cultural histories that color their ostensibly private lives (DiMaggio, 1991); and public libraries

are both civic-minded environments that offer group learning experiences to individuals, and opportunities for borrowers to bring bits of curated collections into their private homes (Kerslake & Kinnell, 1998). Each institution helps individuals follow personal interests—*e.g.*, people choose courses, select exhibits, borrow books—but they do so within a larger, traditions of curation that enable individual autonomy, selecting materials and experiences that ultimately help people to imagine and choose ways of thinking and acting. That is, *institutions* are not impediments to individual autonomy but, in many circumstances, are vehicles through which people might realize different versions of themselves, a core feature of democratic freedom.

But what, exactly, does it mean for institutional circumstances to give rise to the kind of socialized autonomy outlined earlier – the mix of “freedom from” and “freedom to” considered essential for creating the space of possibles? Specific to the press, what demands might we make of how *it* understands of free speech to ensure the kind of public communication required for individuals’ democratic autonomy? Recalling the claim made earlier that the press earns its own freedom by helping to ensure the autonomy of its constituents, this question becomes doubly important. Not only are these institutional views of free speech conditions under which individuals might better achieve freedom, but they are also a kind of litmus test for the press – a test it must pass if it wishes to enjoy the kind of cultural and constitutional protections that allow it the security it needs to continually reinvent itself. But what kind of role should the press play in free speech in order to engender democratic autonomy?

The relationship between speech and freedom is a complex one, but it is fundamentally based on the idea that speech is an other-regarding act. (Schauer, 1982) Since speech affects others it must be regulated on what Scanlon (Scanlon, 1972, pp. 204-205) calls “consequentialist” grounds: speech acts are weighed for their ability to produce good and bad

outcomes. These effects can be short-term and personal—“saying or printing something untrue (or true) about another person may damage his reputation, humiliate him, invade his privacy, offend him, or cause emotional distress”—or long-term and public—“the disclosure of military secrets, or the spread of lies (or truth) about government may impair the efficiency of the machinery of the state” (Schauer, 1982, p. 10).

In a democratic system, this speech “machinery” is critical for realizing a type of self-government in which individuals knowingly and freely submit to constraints on their freedom. The democratic legitimacy of this submission depends upon how consequences have been discussed and debated and, therefore, on how speech is produced and circulates. As Haiman (1981, p. 6) describes it, “[s]ocial order is a means to maximizing individual liberty and security” but, for this order to function properly, it requires people to engage in “symbolic behavior” in which they express themselves, debate ideas, agree to resolutions, or maintain dissent.

Knowing that speech has both local and global effects—it matters both to individuals and the autonomy they derive from their relationships to collectives—there are two main ways to think about the relationship between free speech and personal autonomy: an argument from *truth*, and an argument from *democracy*.

The Argument from Truth

Mill asserted that determining the truth requires the expression of others. He argued that the “peculiar evil of silencing the expression of an opinion” (Mill, 1859/1974, p. 76) harms not only those who hold that view but also those who disagree with it. “If the opinion is right, [individuals] are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced

by its collision with error.” (Mill, 1859/1974, p. 76) Furthermore, the *truly* autonomous individual must be free even to experience harm that might result from encountering false statements; otherwise, he would “have to concede to the state the right to decide that certain views were false and, once it had so decided, to prevent him from hearing them.” (Scanlon, 1972, p. 217)

Essentially, if truths are to be discovered and agreed upon they need environments for unrestricted conversation, debate and claim-making. This idea underpins the marketplace model of speech, a laissez-faire approach to speech regulation often embraced by the U.S. Supreme Court. Justice Holmes asserted that “the best test of truth is the power of the thought to get itself accepted in the competition of the market” and Justice Frankfurter claimed that “the history of civilization is in considerable measure the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other truths.” (Schauer, 1982, p. 15) And the U.S. Supreme Court’s ruling in *Citizens United v Federal Election Commission* (2009: 5) stated that “[a]ll speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech.” By finding that “First Amendment protections do not depend on the speaker’s ‘financial ability to engage in public discussion,’” (5) the Court simultaneously accepts a marketplace model of speech *and* makes no provisions for the fact that those with considerable resources to make themselves heard (e.g., corporations that have amassed large amounts of money from an economic marketplace) may drown out the speech of those with fewer resources.

This market-based theory of speech is powerful and ubiquitous but, as Baker (1989, pp. 6-15) shows, it suffers from three principal weaknesses. First, adopting the theoretical perspectives of symbolic interactionism and social constructionism (*e.g.*, see Blumer (1969);

Goffman (1959); Mead (1934/1967)), Baker argues that the marketplace model assumes that all truths are objective and discoverable. It presumes that truths are unique (there is only one), binary (a claim is either true or false) and “out there” (pre-existing and waiting to be discovered). The model also fails to explain why some claims may be considered more truthful than others, by certain people, at certain times. It has little to say about the value of sustained dissents by challengers who contest the truths presented as consensus by those with the power to do so. The marketplace provides no timeline for arriving at truth; no ethical accounting for the harms that people might have to endure as the market discovers truth; and no comment on how claims can be plausible and function as if they were true, not because they have been verified by a disinterested marketplace but because they “help us to get into satisfactory relation with other parts of our experience.” (James, 1907, p. 30) Furthermore, a marketplace model erroneously equates freedom of speech with

liberty of the individual, where individual expression is treated like a *property*, to be defended and protected insofar as and as long as the rights of others are not violated in the process. (Lacey, 2013, p. 169)

Not only is does this speech-as-property model focus only on the *negative* aspects of liberty (equating it with freedom from constraint), it ignores what Baker says is the “special nature of media products,” what makes them “not toasters.” (Baker, 2002, p. 7) They are, for example, usually non-rivalrous, non-excludable public goods that can provide significant positive externalities, distributing benefits to multiple people with little or no extra expense, regardless of whether everyone consumes the product (consider

the benefits of living in a society where others consume media and gain knowledge, even if you do not)³.

Second, he claims that the classic theory assumes that “people’s rational faculties...enable them to sort through the form and frequency of message presentation to evaluate the core truth in the messages.” The marketplace model assumes that people are already equipped with critical skills, somehow *already* capable of stepping outside themselves and their own understanding to evaluate claims independent of their own identities and social positions. Such an assumption begs the question because it does not explain where such skills or capabilities come from. It suggests the pre-existence of trusted agents who determine truth on our behalf (Coase, 1974), or some other space separate from a market that provides people with the facilities necessary to participate in markets.

Third, Baker claims that such a marketplace—even if it could exist—is of questionable value because people may not always *want* to discover a particular truth. A marketplace model does not allow for a kind of freedom not to be, for whatever reason, uninformed. Such ignorance may seem asocial or unethical (indeed it may be under different moral standards), but it may also be a strategic avoidance of information for some reasons that is simply differently efficient. (Consider Downs’ (1957) theory of “rational ignorance” in which voters strategically decide that further enlightenment is not worth the effort.) People may also be guided by “irrational” desires to reach solutions that they do not consider “true” in any strict sense, but that satisfy as good enough (Kahneman, 2003; Simon, 1978, 1983) for their particular circumstances.

³ For more on the differences between media products and other commodities, on the role of markets in creating social order, and on the moral limits of markets, see Baker (2002, pp. 7-40); Coase (1974); Fourcade (2007); O’Neill (2009); Satz (2010); Sullivan (1994).

Essentially, Baker's critiques undercut the assumption that a marketplace of speech—a lightly regulated space in which the state is mostly silent and takes little or no action to structure the conditions under which individuals encounter new ideas—is the desired ideal for ensuring democratic autonomy. There is a difference between seeing the marketplace as *metaphor* (an idealized space in which claims are thoughtfully contributed and considered by a wide variety of people equitably searching for plausible, workable, ethical understandings) and the marketplace as a *gatekeeper* (a structured environment in which speech is commodified and circulated according to dynamics that privilege rationality and speakers who possess the power to foreclose debate and thus *make* claims function as truths). If you see truth as a social construct reflecting the dynamics of institutions like the press, then a purely marketplace account of speech is inadequate. The failures of the marketplace model suggest a need for some other way of designing free speech, some other set of values that speak to role free speech plays in democracies, not markets.

The Argument from Democracy

The “argument from democracy” (Schauer, 1982, pp. 35-45) is less concerned with the role free speech plays in discovering truths and more focused on its ability to sustain democracy. There are indeed different types of democracy that require different types of speech but, as this argument goes, free speech is a fundamental requirement if citizens are to engage in self-government. In the U.S., for instance, the constitution's main function is to delimit the state's power over self-organizing individuals, stating how and when the state may constrain individuals' personal freedoms. For constitutions to *legitimately* govern citizens, they must “derive their just powers from the consent of the governed” (Meiklejohn, 1948, p. 3) – and

citizens must have the autonomy and communication required to give such consent. As Meiklejohn argues, the

First Amendment is not, primarily, a device for the winning of new truth...It is a device for the sharing of whatever truth has been won...The primary purpose of the First Amendment is, then, that all the citizens shall, so far as possible, understand the issues which bear upon common life. That is why no idea, no opinion, no doubt, no belief, no counterbelief, no relevant information, may be kept from them. (1948, pp. 88-89)

The argument from democracy is related to the argument from truth, but with a major difference.

It says that the value of free speech is its capacity to achieve *public* ends, to help structure

“common life.” That is, free speech is not only concerned with people having the right to speak,

or individuals discover truths relevant to their private interests; the *democratic* function of free

speech must also be concerned with how speech enables shared conditions and collective self-

government – that is, *public* issues that may not attract private interests or survive marketplace

dynamics. That is, as Meiklejohn (1948, p. 25) famously wrote, the First Amendment’s “point of

ultimate interest is not the words of the speakers, but the minds of the hearers...[W]hat is

essential is not that everyone shall speak, but that everything worth saying shall be said.

Although people certainly make individual communication decisions that make informed

citizenship possible—*e.g.*, reading newspapers, voting in elections, writing letters to

representatives, arguing ideas with neighbors—Meiklejohn’s concern is more structural, focused

on the conditions that might give rise to legitimate self-government. Put slightly differently by

another free speech scholar concerned with structural aspects of free speech, Owen Fiss claims

that the

purpose of free speech is not individual self-actualization, but rather the preservation of democracy, and the right of a people, *as a people*, to decide what kind of life it wishes to live. Autonomy is protected not because of its intrinsic value, as a Kantian might insist, but rather as a means or instrument of collective self-determination...The critical assumption in this theory is that the protection of autonomy will produce a public debate

that will be ‘uninhibited, robust, and wide-open.’” (Fiss, 1986, pp. 1409-1410, emphasis added)

Such a relationship between self-government and free speech is certainly open to critique. In an article titled “Meiklejohn’s Mistake,” Post (1993) argues that Meiklejohn’s “collectivist” vision of free speech is fundamentally misguided because it assumes an end without specifying the means. Meiklejohn’s ideal, Post argues, is a “‘traditional American town meeting’ [that is] ‘not a Hyde Park’ [or a] scene of ‘unregulated talkativeness.’” (p. 1112) This town meeting model presumes the existence of a common agenda, set of goals, and subservience to the meeting leaders. It fails to say exactly how such an agenda might arise, who would be responsible for deciding whether everything worth being said had been said, and what might become of citizens who either cannot or do not participate in what Post calls the “managerial” structure of a town hall’s authority. Post is right to call out some circularity in Meiklejohn’s reasoning: Meiklejohn’s ideal of self-government relies on the existence of a system of free expression in which there is some kind of shared communication, but it fails to articulate exactly how this communication arises in the first place. Instead, Post argues that we should reject overt attempts by the state to manage public discourse on our behalf because, by doing so, we relieve ourselves of the *individual* power to influence the conditions of public discourse and, Post argues, the chance to realize the very ideal of self-government Meiklejohn envisions⁴. This individual

⁴ In an important response to Post’s critique of Meiklejohn, (Fiss, 1995) cautions against Post’s uncritical embrace of civil society’s ability to self-regulate speech and his general rejection of state participation in the public sphere. Agendas, Fiss argues, can come not only from town hall managers but, more insidiously, from largely unseen cultural and economic forces that can set and control topics of discussion free of any requirements to be transparent or inclusive. For example, through advertising, campaign sponsorship or direct control of media companies, private corporations can have significant power to set public discourse agendas. Fiss instead envisions the state serving a parliamentarian-like role that lightly administers “time, place and manner” restrictions on speech, and creates a set of incentives and disincentives to encourage equitable participation by a diverse range of speakers (guarding against the “heckler’s veto”) (Fiss, 1995, p. 86). Fiss’s position here is consistent with his earlier argument (1986, p. 1412) that the most powerful regulator of free speech, pragmatically, is not necessarily the courts or the state, but the

power, (Balkin, 2008) claims, in a further critique of Meiklejohn, is now with us, as Meiklejohn's broadcast media world is being transformed by

technological changes [that make] it possible for large numbers of people to broadcast and publish to audiences around the world, to be speakers as well as audiences, to be active producers of information content, not just recipients or consumers. (p. 114)

Meiklejohn's ideal, Post and Balkin claim, comes from outdated media worlds (the town hall and broadcast media) that no longer exist.

Lichtenberg (1987) also critiques Meiklejohn's ideal, but does so from a slightly different perspective. She emphasizes the need for equality among individual speakers, rather than their independence from state control, giving three reasons why democratic free speech requires equality of opportunity to speak: "there is no way of telling in advance where a good idea will come from" (systematically and structurally excluding some speakers will prevent quality perspectives from entering into public discourse); "valuable contributions to arriving at the truth come in many forms, speaking the truth being only one of them" (democracies develop through more than the simple exchange of factually truthful or false statements); and "much of the value of a person's contribution to the 'marketplace of ideas' is its role in stimulating others to defend or reformulate or refute" (someone's mere presence, less than the rational value of their utterances, may surface differences critical for realizing autonomy) (Lichtenberg, 1987, p. 338).

Lichtenberg asks the designers and regulators of speech systems to see themselves not only as facilitators of free speech and self-government but as gatekeepers for particular *kinds* of self-government. She argues that the press, the state and corporations—as public-facing

"forces that dominate the social structure." Indeed, Fiss points to the need to critically engage with different understandings of participation, not simply assume its inherent merit to democracy. For more complex views of civic participation in and through media systems, see Bennett (2012); Carpentier (2011); Hay and Couldry (2011); Jenkins (2013); Jenkins and Carpentier (2013).

collectives—only enjoy free speech rights and privileges insofar as their actions serve to increase not only individual opportunities to speak, but also the overall diversity and equitability of speech within the public sphere⁵. That is, institutional actors like the state and press not only have expressive responsibilities (to say some things but not others at certain times) but also *structural* responsibilities to “establish essential preconditions for collective self-governance by making certain that all sides are presented to the public.” (Fiss, 1996, p. 18)

Post’s, Balkin’s, Lichtenberg’s, and Fiss’s critiques help to distinguish between normative ideals and empirical conditions. That is, we can still accept Meiklejohn’s primary theoretical aim—a system in which the consent to be governed emerges from citizens knowingly and freely debating the constraints they place on themselves—while accepting Post’s plea to keep dynamic and debatable the conditions of self-expression. Free speech is not an end in itself (a static state of affairs in which expression is managed by any central authority), nor is it an adherence to any particular ideology (*e.g.*, one in which the individual’s freedom to speak is privileged over a collective right to enlightened self-determination). Rather, as Emerson (1970) puts it, free speech can best be thought of as a *system* of freedom of expression that includes

the right to form and hold beliefs and opinions on any subject, and to communicate ideas, opinions, and information through any medium...the right to remain silent...the right to hear the views of others and to listen to their version of the facts [and] the right to assemble and to form associations, that is, to combine with others in joint expression. (p. 3)

In his later work, Emerson (1981) elaborates on this system by arguing for two types of government activity⁶. The first involves the *promotion* of the system of freedom of expression:

⁵ On this tension between individual liberty and equality in speech environments, also see Fiss (1996).

⁶ See Bezanson and Buss (2001) for an extensive review of scenarios in which the state speaks and legal judgments thereof. They go further than Emerson’s focus on constraining government speech to argue that, in democratic societies that value two-way communication between the state and the citizenry, the government has an *obligation* to participate in speech systems.

e.g., granting subsidies to electoral candidates without preference, building cultural centers for use by anyone; regulating airwaves to ensure the sustained delivery of all messages; protecting individuals' rights to speech on streets, parks, open spaces and privately owned land that looks and acts like public spaces. The second entails government *participation* in the system of freedom of expression: *e.g.*, a government official issuing information; a state agency making a report; or a representative delivering a public speech. The only circumstance in which the state might legitimately exercise what Post would call its "managerial" powers occurs when the state is promoting the *overall* system of freedom of expression, making possible "greater opportunity for expression, increased diversity, or similar improvements in the system." (Emerson, 1981, p. 799) The government, Emerson argues, should always be expressly prohibited from: holding an audience captive for communication; communicating covertly or without disclosing itself as the state; mobilizing citizens through grassroots efforts that pit one branch of government against another; and promoting in even an implicitly partisan manner one religion or political candidate over another, especially within institutions like schools and museums designed to educate citizens (pp. 835-848).

Essentially, Emerson changes the focus of free speech from how individuals can speak or pursue private interests to how the systems of free speech enable the achievement of public aims. For instance, in his ideal system of freedom of expression, the U.S. Constitution's First Amendment speech and press clauses ("Congress shall make no law...abridging the freedom of speech, or of the press") work together to support both individual and collective aspects of democratic autonomy. Taken together, the clauses ensure people's (mostly) unfettered freedom to express themselves and pursue individual interests, *and* they expect the press to earn its unique

constitutional privileges (it is the only industry explicitly mentioned in the constitution) by both contributing speech to the system and investing in the circulation of speech with public value.

Part of moving toward this ideal speech circulation—produced by individuals with negative liberty and received by audiences with positive liberty—is creating the conditions under which people *listen*, a different but equally important perspective on press freedom. That is, press freedom in the United States is usually thought of as a news organization’s right to gather and publish news. Reporters should not be prevented from accessing people, locations, and documents; editorial decisions should be made by editors without interference from censorship of any kind; and publishers should be free from state control or influence as they direct their staffs and invest in their organizations. Watergate, the Pentagon Papers, and the Snowden-Greenwald NSA reporting are all considered hallmarks of adversarial, investigative journalism – the kind of watchdog reporting important to democracy that requires press freedom. But for this negative liberty to have impact on the world, it needs not only to be produced but consumed and acted upon. This requires social, economic, cultural, and technological conditions of news production ensure that audiences encountering people different from themselves and ideas different from their own. It assumes that the press helps to engender contestation, dissent, and cultures of thoughtful listening. It is to this last aspect of press freedom—the press as a listening institution—that I turn now.

THE DEMOCRATIC VALUE OF LISTENING

I’ve argued that democratic autonomy requires not only an individual freedom *to speak*, but collective a freedom *of speech* – a public right to hear that the press might help to guarantee, if it is to legitimately claim its protected constitutional status. But what, exactly, is the democratic

value of *listening*? That is, what value is this activity the press is guaranteeing, what role might it play in civic life, and why is it a concern appropriate to contemporary, networked news production?

The simplest, but most fundamental, point to make about listening is that it is both a necessary and sufficient form of democratic participation. Democracies need people who listen, and “just listening” is a fully legitimate way of belonging to a public sphere. Although listening “tends to be taken for granted [as] a natural mode of reception that is more passive than active,” (Lacey, 2013, p. 163) listening can be seen as a *political* act. When you listen, you acknowledge the existence of others, literally giving them your attention – “ceding the possibility of control” and the “quest for certainty.” (Bickford, 1996, p. 5) Ideally, listening means temporarily suspending the pursuit of your preferences and allowing for the possibility of outcomes coming from others (Bickford, 1996, pp. 1-6) as you empathize with people and imagine what it might be like to adopt or help realize *their* preferences (Belman, 1977; Husband, 2009; Lipari, 2010). This kind of generous and thoughtful listening can help people engage with the very sources of difference that Young (1997) says create us: the influences that we ignore at the risk of failing to achieve the kind of *self-reflexive* autonomy that makes us freer than simply being allowed to speak.

Listening is thus both a “private experience and a public activity.” (Lacey, 2013, p. 17) While individuals certainly interpret speech through the lenses of their personal identities and experiences, they often do as part of a collective. “They become an aggregate entity—an audience—and whether or not they all agree with or like what they hear, they are unified around

that common experience.” (Douglas, 2004, p. 29)⁷. A common listening experience creates the possibility for shared consequences: when individuals listen to the same perspectives on a common topic, through the same medium and perhaps even at the same time, they are *brought into existence* as of public (Evans, 2001). They are a public convened by their active attention to speech and “their awareness of absent others.” (Lacey, 2006, p. 74) What *kind* of public they become depends upon *how* they listen – how they adopt or reject the speaker’s views, sharing her interpretation of the world and creating consensus or splintering into dissenting subgroups with alternate interpretations). These public dynamics are only visible if we see listening to be just as critical as speaking.

Rather than seeing listening as a “preparatory stage” (Lacey, 2013, p. 16) for creating a public—a step in converting listeners into speakers—we might instead see listening as participation in its own right, part of a “difficult and disciplined civic duty” to meaningfully engage with “opinions that contradict, challenge, test one’s own opinion.” (Lacey, 2013, p. 167) Indeed, the phrase “listening in” is used by educational researchers to describe “intent participation” – what can happen in learning environments that value “observation as an aspect of participation.” (Rogoff, Paradise, Arauz, Correa-Chavez, & Angelillo, 2003)

Listening reminds us that democratic autonomy cannot come only from speech marketplaces that prohibit illegitimate restrictions on individual expression. Listening and autonomy are *collective* phenomena that require rejecting the idea that freedom of speech equals

⁷ This is not to suggest that audiences are, by any means, homogeneous wholes that understand speech in the same way, to mean a single thing. In addition to foundational critical writing on audiences as constructions and the sociocultural processes of audience-making by Ettema and Whitney (1994) and (Williams, 1983), see Loosen and Schmidt (2012), Livingstone and Das (2013), Macnamara (2013), McQuail (2013) and Napoli (2011) for more contemporary critiques.

There is thus a “second-order value of voice” that listening helps us realize: a way to see how “our stories [are] endlessly entangled in each others’ stories,” beyond a neo-liberal model that “reduces politics to market functioning.” (Couldry, 2009, p. 580) Understanding the democratic value of this kind of listening means not just studying how individuals encounter individuals through speech markets—a problematic reification of face-to-face dialogue as the ultimate form of democratic engagement (Peters, 2006; Schudson, 1997)—but from understanding the “conventions, institutions and privileges which shape who and what can be heard in the media” (Dreher, 2009, p. 445) – from tracing which stories institutions like the press tell, and which entanglements they articulate.

There are at least two ways in which institutions can function as listening structures. The first, sketched above, highlights institutions’ capacity to bring us information and interpretations we might not have encountered on our own – to listening *for* us and then orient our attention to experiences and ideas we would not probably have chosen for ourselves⁸. The second focuses on how institutions can give us freedom *from* certain kinds of speech, creating pauses for meaningful silences. Rather than being evidence of consensus, disinterest, antisocial lurking, failed participation, the non-use of media technologies⁹, or dysfunctional speech markets, silence might be heard as a thoughtful absence of speech. Because it creates pauses to reflect and integrate what has been heard, silence could be “what allows speech to take place. It endows

⁸ There is good evidence that people’s information choices tend not to align with the media would choose for them to read (Boczkowski & Mitchelstein, 2013; Boczkowski, Mitchelstein, & Walter, 2010; Boczkowski & Peer, 2011); that choice makes it possible for people to create “echo chambers” for themselves (Pariser, 2011; Sunstein, 2001, 2004) and likely that some people will have more political knowledge than others (Prior, 2007), especially about current affairs (Trilling & Schoenbach, 2013). Choice-driven environments also tend to reinforce partisan political divides (Stroud, 2011) – or simply ignore information altogether (Aalberg, Blekesaune, & Elvestad, 2013).

⁹ There is an emerging literature on the importance of understanding non-users of technologies (Oudshoorn & Pinch, 2005; Wyatt, 2003); how listening happens through social media and by news organizations (Crawford, 2009); the misunderstanding of listening as “lurking” (Crawford, 2011), and the power of unseen technologies to surveil and model social media users, regardless of whether they contribute content (Stutzman, Grossy, & Acquisti, 2012).

speech with the capacity to bear meaning” (Pinchevski, 2001, p. 74) and helps to create an “inner life” – somewhere between complete isolation and constant noise where one might “explore unpublic feelings in something other than solitude.” (Nagel, 1998, p. 20) For silences to serve public functions, they must be *publicly motivated* absences of speech. They cannot result from people being barred from speaking or from people being compelled to join forums against their will or under illegitimate terms. Such silences come from censorship and coercion and must be distinguished from participating by listening.

The press might, for example, not simply listen to audiences (Crawford, 2009; O'Donnell, 2009; Willey, 1998), give them more information, provide forums for their debates, or disseminate diverse and vetted information to them as quickly as possible¹⁰. It might also create *rhythms* that give publics time to listen to what they hear. The press could provide a temporal dimension to the “proper distances” Silverstone says are essential for ethical, modern, mediated life – giving people pauses and intermissions to consider “differences between neighbors and strangers.” (Silverstone, 2003, p. 477)

CONCLUSION

My aim here was to give a normative and institutional shape to the idea of democratic autonomy. Specifically, I attempted to show how democratic autonomy depends upon both separation from others (negative, freedom-from liberties) and reliance upon them (positive, freedom-to liberties), and how such dynamics relate to the free production and circulation of free speech. Part of

¹⁰ See (Schudson, 1978, pp. 88-120) for a discussion of the “information ideal” of citizenship and journalism’s role in supporting it.

ensuring these dynamics involves creating and creating public institutions that assume *structural* responsibilities for free speech. The press is one such institution. Regardless of how we might define “the press” (the courts offer hints but no clarity), one way to defend the legitimacy of its constitutional protections is to ask how it ensures a public right to hear – how it helps to create what (Lacey, 2013) calls “listening publics” who can imagine and work to realize possible futures that exist outside themselves. This paper has sought to explain the normative conditions under which the press might earn its freedom, and to suggest a rationale for why publics might hold the press accountable for its freedom. Put simply: a press might make the most legitimate claims for freedom if it can show that it enables both positive and negative individual liberty; if it works to ensure a public right to hear; and if it acts as a kind of “listening institution” that values not only the constant production of speech, but moments of meaningful pause as well.

An autonomous press is an interstitial, institutional glue that binds multiple levels. It enables an individual’s autonomy by accounting for both her negative and positive liberty. It ensures that individuals encounter truly diverse options beyond simply what a marketplace of ideas might produce. And it creates moments of pause in addition to contexts for expression: times and places in which people might consider and synthesize what they’ve encountered as they create new versions of themselves and their societies.

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