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Introduction: Speech and Society in Comparative Perspective

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This book identifies how different states, with different traditions and different political, economic, and social realities, conceptualize and practice the role of speech and information in society. How, the authors ask, have countries drawn upon the ideas of philosophers, religious leaders, and politicians who have ruminated on questions of speech, government, order, and freedom, and how have states applied the lessons learnt to governance? This question provides the book's primary objective: to identify the processes or combination of ideas concerning speech and information that are articulated as governments seek to maintain or extend power, with particular attention paid to applications in the digital age. These essays underscore how difficult and delicate a process it is to establish universal values and distinguish among normative approaches. This focus on the specificities and peculiarities of each state aids a secondary objective: by focusing on political ideologies, the philosophical or religious underpinnings of communal approaches to the regulation of speech, we seek to add context to global debates that are often characterized by polarizing dichotomies.

The essays included in this volume are, by design, eclectic, with authors bringing different ways of thinking, which draw on their varying disciplinary, epistemological, and professional backgrounds. Intended to be a truly polyphonic book, this approach has been taken to enrich the vocabulary of global discussion and to both unpack the prevailing "normative" Internet and free-expression debate and to deepen analyses in very different local or national contexts as well as on a global level. This requires a conversation across disciplines and between scholars of law, philosophy, anthropology, communications, politics, and international relations.

In part, this is also an exercise in archaeology: to understand the present one must also look backwards and ask how various societies evolved in their approaches to the role of speech and of the press. Those who have set

foundational principles for speech and those who have succeeded in realizing them have variously described the importance of creating cohesion, commanding loyalty, and maintaining peace for nation building while, in some cases, acknowledging the role and values of free expression in underwriting creativity or improving governance. This collection of essays roots itself in these historically fraught debates seeing the legacies and continued influence of prominent thinkers, philosophical or religious approaches, and moments in disparate societies from Confucius and Gandhi to the role of Islamic law.

It is often assumed that new technologies bring with them new modalities of interaction and that new technologies alter the outer bounds of justifications for the role of speech in society. New technologies may underwrite heightened dependence on tried and true rhetoric or create opportunities for new ways of framing speech and information. Radical political changes or political crises over information management may lead to revolutions in thinking about the role and management of speech in society; or they can also turn into restorations, with new regimes repackaging old theoretical and practical approaches. This can be seen from a structural perspective (how modes of speech, expression, or control persist with the advent of new technologies) as well as from a contingent perspective (who is in control or designs particular projects and whether they are taking a “legacy” approach from a pre-digital generation). In many cases, older logics and historical experiences of controlling, harnessing, or encouraging certain modes of speech dominate.

In the litigation and advocacy mode – and because of law’s role as a repository of values – there is often the tendency, or need, to depend on legal analyses or international legal norms when discussing free expression. Often these norms are enlisted in an opportunity to highlight the deviations and shortcomings of particular governments or leaders in power. This book respects that tradition but supplements the tendency to rank by focusing on the ideas, philosophies, and values that underlie and inform the speech rules that a government or community institutes. In many cases justifications for restricting speech may simply be excuses for governments to maintain their hold on power, or to weaken adversaries, but too often the debate is polarized and political projects and ideals that underlie policies are misunderstood or ignored.

A common theme running throughout the chapters of this book is the role of ideology in framing speech practices in a society. First published in 1956, the long-time bible of comparative approaches to speech and society, *Four Theories of the Press*, analyzed systems not so much as they functioned, but in terms of their relationship to a set of categories: authoritarian, libertarian, communist, and what the authors referred to as “social responsibility,” which lies between the libertarian and authoritarian theories whereby the media has

freedom but is also subjected to external controls such as a code of conduct (Siebert et al. 1973). Endeavoring to improve on the mostly theoretically based structural analysis of *Four Theories*, Daniel Hallin and Paolo Mancini (2004) wrote their acclaimed *Comparing Media Systems: Three Models of Media and Politics*, in which they sought a far more empirical approach to differentiating one national approach from another, but largely focusing on Western countries.

Following a more empirical approach, we argue that ideologies matter but they are not always determinative. Authoritarian systems can have and strive toward restrictive characteristics, but they can also be authoritarian and have significant, though hardly perfect, characteristics of openness, as Cherian George's chapter on Singapore shows. A system can be influenced by Confucian principles of deliberative culture, but maintaining power can be overarching as a factor, as Baogang He discusses. In Elena Sherstoboeva's chapter on Soviet and Russian history, we see that Lenin's theories of the function of the press in realizing a new society casts an interesting shadow on current media developments in Russia. And, while ideology may have had a central role in shaping a media system under new governments, there can also be the decline of ideology, as Nicole Stremlau's chapter on Uganda demonstrates. The conclusion from these studies is that ideology is useful when studying speech and information in society, but ideologies alone are often misleading and certainly not totalizing. Simply stated, a libertarian approach defends Isaiah Berlin's negative liberty and the core idea of a significantly limited state, but consolidation, corporate power, and the lure of control, even in democratic societies, has often acted as a brake on the libertarian dream in practice. Understanding the conceptual limits of ideology for our purposes thus provokes a further question: are there alternate modes of considering the role of speech in society?

In this volume, this question has been answered in various ways. In Julien Mailland's chapter on France and Iginio Gagliardone's chapter on Ethiopia, we see how two very different state structures, underpinned by two very different intellectual and ideological heritages, both struggle with the implications of statist tendencies. William Gould's chapter on India finds grounding in the history of representation and the construction of monuments as a guide to thinking of emerging patterns of speech and society. Of course, the chapters in this book are only a sample of insights into the question of alternate theories and their implications for political structures. We might as easily have found space to interrogate Nasser's ideas of the role of the press in an Egypt-led United Arab Republic, and analyzed theories on the role of communication in Japan, both in a wartime 1930s "home" and in its Pacific expansion. To

explore these questions in an even greater whole, one might ask how Canada saw the building of a media system that would undergird a nation and differentiate it from the United States. Or one could think of the role of information management in theocratic societies, including in Puritan Massachusetts, where concepts of speech became more closely tied to the demands of governance than bound to the demands of scripture. Plural societies, like modern-day Belgium or much of the twentieth-century Netherlands, forged media systems that reflected and reinforced pillarization as the basis for government organization.

CHALLENGING ASSUMPTIONS OF FREEDOM OF EXPRESSION

Theories of speech and society are invariably constructed on a framework of assumptions about the function of the society's institutions. Inevitably, this framework is subject to historical change, challenging the commonsense assumptions of the day. In the Netherlands, for example, a comprehensive, carefully developed and ingenious approach manifested, whereby each major or minor group in society that could claim proportionate media time began to collapse as technology and the development of a European market and media standards undermined the state's ability to maintain its system. When the Soviet Union dissolved, the media systems left in its wake dangled as new political institutions formed and attempted (or not) to alter the roles for press and speech in society. Frequently, the institutions and the language used to describe them adapt to changing circumstances, often giving a veneer of intellectual continuity. Richard Danbury, in his chapter, discusses this process of adaptation in relation to the Miltonian assumption of divine assistance in finding a "Revealed Truth." The marketplace-of-ideas metaphor is often used to justify the role of more speech in countering divisive or dangerous speech, but some aspect of the core meaning of John Milton's observation has been altered by changes in the context in which similar words are used.

Advocates of freedom of expression must therefore be careful in their arguments, avoiding attaching their strategies to edifices that are crumbling remnants of a previous world or superficial portents of a seeming new age. Epistolary practices once served as an undergirding of discourses, and coffee-house cultures have famously played a role in forging a public sphere, as Jürgen Habermas (1991) has detailed; and now the Internet and other technologies challenge normative assumptions about freedom of expression. Important shifts could be taking place contrasting the self-generated contributions from a newly virulent civil society with the directed, overt, and disciplined imposition of information flows from highly organized strategic communicators.

Each shift will have consequences; each may lead to the reassertion of state power, in some cases, or the weakening of such power in others. In some circumstances, the state may properly be called on to act as a meaningful referee, regulator, or even partial sponsor of the public debate. In a crowded, global, highly competitive context, the state may seek a more public role in which it seeks to assert its own voice. Terror and national security concerns have become increasingly salient and defining.

The point is that the extraordinary phenomenon we call “free expression” is not only a set of principles and practices but is also inextricably bound to a set of institutions. And a similar conclusion could be drawn for other architectures of speech in society. These institutions include the mechanisms that exist in a society for the production and diffusion of information through which people process information as they function as citizens or as members of a community. They incorporate the rules and norms of governments and other actors who affect the interplay between principles and actions. Most importantly, they encompass the enduring and slowly eroding rivulets through which changing bits of information flow quickly over long periods of time. Of course, principles may endure while the phenomena in which those principles live may change. That, after all, is what makes for overarching principles. But even if principles are constant, how they can be achieved – indeed, whether they can even be optimally applied – differs when the mechanisms of daily life are materially altered. Change any one element of an existing equation and all other elements are affected as well.

These institutions or architectures of speech and society have always and are always altering with often complicated and far-reaching repercussions (Lyn and Atkin 2007; Marvin 1988). The institutions changed with the development of institutionalized mail services and again with the telegraph; they changed with the industrialization of society and with the coming of the railroad. Satellites altered patterns of communication profoundly. Can one argue that the current rounds of change – including the Internet and the growth of social media – is of a more dramatic impact on our institutions, bringing unprecedented change that affects assumptions of freedom of expression in ways that are qualitatively different from anything that has occurred before? That seems to be the music of the moment. A more modest claim is that whenever such transformational changes take place, it is important to re-examine the fit between speech principles and their structural and practical underpinnings.

The main point, however, for this book is that the set of assumptions and the way they change are different in different societies. What, then, are some examples of fundamental assumptions or practices that undergird a system

seeking to support a particular role of speech in a society? These assumptions are basic; they are what might be called the “plumbing of information flows” or the “infrastructure of communication.” Some democratic societies, for example, may have an expectation about the reasonable availability of information to create a citizen sufficiently educated to exercise a franchise, and a system to provide opportunities to express views to a receptive government. These societies gain legitimacy (often in their own self-assessment) because of the self-respect and respect of others for the practice of free expression. Ideally such societies engage in critical analysis to determine whether the values they proclaim are being realized. Free expression and its exercise presuppose some value in the aggregated output of information and debate. And that presupposition may turn on a consensus (validly earned or not) that what is produced has the capacity to provide informed contributions to a public sphere.

An example of the “plumbing” of discourse involves the way speech principles are connected with political processes. A description of free speech that includes, at its heart, an electoral process, for example, may be twisted out of shape if the process becomes corrupt or the major contributors to political speech in the public space are entities from outside the polity. Confidence in free speech may depend on some perception, widespread in society, that it is a broad privilege to speak that is being protected (and perhaps exercised) and that the space for speech is not monopolized or controlled by special or exclusionary interests. In this view, the rise of social media should heighten the idea of breadth of privilege and greater equity and equality in shaping the public communicative space, while the growth of focused, powerful groups as speakers moves in the other direction. But even this assumption about the impact of trends must be examined over time.

Debates around the role of speech in particularly fragile or democratically transitioning societies where state power can be very weak are most frequently grounded in conceptions of the rule of law. In the rhetoric of this volume, the authors are fairly united in viewing the existence of a legal system that can fairly recognize and enforce limits as one of the key aspects of an institutional foundation for expression. Free expression, in the “evolved tradition” of international norms and standards, depends on the idea that judges can hold the government accountable if it oversteps its bounds and likewise – perhaps equally important – that judges can sanction individuals or groups who violate constitutional rules that set sanctioned boundaries. To the extent that the rule of law weakens, and to the extent that appropriately bargained-for or legislatively agreed-upon limitations cannot be enforced, the right itself may be at risk.

It is common in the wider literature of rights and rights enforcement to mention the function of the rule of law. Related to this is legality, understood here as the need for the government in a society to act in accordance with law – to have clearly stated and transparent law and to create a culture in which proper legal norms are actually followed. The rule of law, in this sense, is significant for free expression as an encouragement of states not to violate constitutional and international norms, not to have vagueness as a mode of obscuring the boundaries of free speech, and not to have secret ways in which speech is confined and confounded, notwithstanding appropriate public legal norms.

In this connection, what has been often underexplored is the *necessity* of law. Without a legal system that functions, rights, both positive and negative, are themselves in danger. In “Why the State?” and other writings, Owen Fiss (1987) argued against an overemphasis on individual autonomy as the basis for freedom of expression on the ground that such an emphasis leads to the domination of debate by those who control the economic and political power structures of society. For Fiss and his advocacy of a robust model, law and public intervention should be used to further public discourse. This could include positive steps like enactment of a “fairness doctrine” and the sustaining nature of public service broadcasting. Many governments have a different view of what an interventionist state should do to guard free expression against free-market logic, but the point here is not to evaluate these different proposals, but to question whether the principle underlying these proposals can be implemented and sustained. Looking historically, there is reason to suggest that this can be the case. For much of Europe during the twentieth century, a strong public service broadcasting system was a hallmark of a comprehensive approach to the structure of speech in society.

It is often argued that free expression in the United States as protected by the First Amendment is an “absolute,” and the more free expression has achieved this rarefied, absolutist status, the more it has been applauded and canonized. But the ability to “freely express” is bounded by a set of practices, a collection of capabilities and limits, and law is wheeled into place as a way of defining and enforcing these limits. Few as these may be, whether they are limitations of time, place and manner, or content, or whether they are consistent with what international norms consider to be an appropriate balance, they are always present. Recognition of this fact should temper too sanctified a respect of “legal absolutism” and too immediate and conclusive packaging of it as part of international development. Without such nuance, positive and vital specific historical and political contexts tend to be obscured. Advocacy of a disputatious and theoretical “best” may conquer a necessary “good.” Ready-made and sometimes absolutist approaches, inadequately considered and

staged, may force states emerging from complex conflicts or messy transitions to adopt a constitutional system that is neither suitable and functional nor furthering of strong long-term advances to a more equitable and democratic society and here, often, the critique of international civil society becomes a significant factor (Lunn 2005).

Again, this goes to the question of institutional foundations needed for any concept or practice of freedom of expression. If a foundation of a scheme of freedom of expression is that its legitimate boundaries can be observed and enforced, then weakening that foundation may require some form of corresponding adjustment in the conception of the right. When Article 19 of the Universal Declaration of Human Rights was adopted internationally in the 1950s, there appeared to be bargaining on what would be listed as limitations and in what way. The *travaux préparatoires* of Article 19, paragraph 3, indicates the existence of debates particularly over controversial language such as “duties and responsibilities” and “public order.” One of the notable ideas that guided the legislation-making process, as evidenced in the International Covenants on Human Rights, was “striking a balance between the rights of the individual and the requirements of society and the State” (UN General Assembly 1961). The ultimate profile of the right contains both the entitlements and the limitations. One can see limitations as an intrinsic part of the general acceptance of the formulation of the right.

Of course, the essays in this volume demonstrate a wide range of variations on the concept of the “rule of law” and where the entitlements and limitations should rest, or the role that the rule of law plays in media policy, broadly construed. There are vast differences in how to conceptualize law itself, in the enumeration of those who can invoke the law, and in the nature and independence of courts. Further widening the parameters of analysis, the effectiveness of a law often deals with the technology of its enforcement. A duly enacted law might be so clumsy in its administration or enforcement, so oppressive in its bearing on society, and distant from its authors’ intent that, it ought to be nullified. Or it could be assumed that government has the responsibility for engineering its relevant world to make enforcement fairer and more feasible. Mandatory withholding and bank reporting regulations, for example, help ensure that there is greater compliance with income tax law requirements. Modern camera systems are designed to “catch” violators of traffic regulations, although there are, increasingly, constitutional limits in the United States to their use. Companies build “click” software into their programs to gain records of consent by consumers because of various legal requirements (for example, with respect to privacy). Thus, the general acceptance of principles of free

expression in many, if not most, societies is based on a set of assumptions, one of which is that government has the authority *and* the power to police, subject to limits, its boundaries (including obscenity and child pornography – categories that are so solidly in this framework that some courts do not call them “speech”). This hardly means that the state always does police this border but debates on the failings and hypocrisies of government action in this area are different from arguing that it does not have the capacity to do so. Shaking this foundational assumption of free-expression theology would shake support for the principle itself.

This argument applies to language in Article 19 that sweeps in the right to receive and impart information “regardless of frontiers.” That language could mean that a government cannot restrict language and images from outside its boundaries on grounds broader than those it uses to restrict language within. But such a reading is inconsistent with many government practices that seek to prefer domestic producers (often on economic or cultural grounds, such as promoting local artists or languages). And there is another consideration quite relevant to this book: what if, as a condition of modern technology, sources of information from outside a state’s boundaries cannot be subjected to the restrictions applied to those within? The result could be (and perhaps already is) a kind of Gresham’s Law of Information,¹ in which uncensored or unmonitored programming drives monitored, intermediated, and law-complying programming out of circulation. These oft-unexpected consequences alter the way in which a state reconceives the management of its information sphere.

CHANGING SPEECH NORMS IN THE DIGITAL AGE

One would be forgiven for happily thinking that the new social media and their transforming ilk present no or little negative challenge to the institutions of free expression, but rather provide yet another opportunity for realization of individual autonomy and other cherished goals. The rapid-diffusion capacity of social media clearly transforms information ecologies. The rise of social networks leads to a rethinking of the power of the individual in receiving information, deliberating, and mobilizing. Social networks change the balance between open and closed terrains of speech. They threaten existing intermediaries and create new ones. They are a challenge for governments, democratic or not. They alter the status quo. And social networks themselves may yet yield another newly empowered, all-seeing, all-knowing oligopoly of

¹ Gresham’s Law states that bad money drives good money out of circulation.

private entities, with new names and the potentially deceptive appeal of positive change. Should this dystopian projection be realized, it would not be the first time that pioneers of progress in communications technology become the new wielders of old authority, with a transfer of power – not a radical reduction in power – as the consequence. Social networks are indeed seeking to define their relationship to the existing status quo of institutions of free expression. Facebook and YouTube threaten to become the operative gateways for new tribes transcending the borders of nation states, left to determine what controls to impose. Do they enact and replicate, enforcing old standards, or do they produce a new world? Should they act wholly independently of government or increasingly at governmental behest? The Arab Spring, seen as owing much of its early success to social media, offered a significant (though still confusing) tutorial in these questions.

In 2011, Alec Ross, then the guru of social media in the US State Department, reflected on ways in which the Internet and other “connection technologies” affected processes of change and the effectiveness of free expression in Egypt and Tunisia (Ross 2011). He counted four distinct impacts. First, these technologies “accelerated” mobilization, allowing “movements that normally would have taken years to build” to come together “in the course of weeks and months.” Second, these new media processes “enriched the information environment,” bringing more people into it and conveniently giving them a treasure trove of information. Third, these processes “made weak ties strong,” unifying momentarily “the 57-year-old member of the Muslim Brotherhood with the 27-year-old digital hipster who is educated at the Sorbonne.” Fourth, the new technology processes led to different forms of political organization. In prior “revolutions,” a single hero emerged: “Lech Walesa in Poland[,] Vaclav Havel in the Czech Republic[,] or Nelson Mandela in South Africa.” It was Ross’s judgment that social media would lead to more distributed leadership.

Deployment of social media and related changes have already disrupted pre-existing institutional assumptions of freedom of expression through the more sophisticated surveillance that has accompanied it. Notions of privacy are profoundly affected by the information-gathering and user-identification aspects of social media. The relationship between privacy and free expression is both complex and significant. Notions of anonymity – often essential to fundamental aspects of free expression – are marginalized in the operation of the social media-era Internet. It becomes invaluable to investigators to recreate lives and relationships, sifting through thousands of posts and tweets, tracing how individual attitudes, representations, and capacities change over time. Manipulators of “big data” rely on social media-generated data to