Which First Amendment Are You Talking About?

Speech concerning public affairs is more than self-expression, it is the essence of self-government.
– U.S. Supreme Court (Red Lion 1969)

BY JOHN W. HIGGINS

U.S. community video emerged from decades of global experiences with activist participatory projects in electronic media, such as the tin miners' radio network in Bolivia, community radio in the U.S., the Challenge for Change program in Canada, and the traditions of radical documentary film around the world. Within this context, public access television in the U.S. represents a unique achievement for community-based media around the world: the institutionalization of a process that provides people the opportunity to create video programs and air them on local cable channels; an oasis of "free speech" and "free ideas" within a commercialized, corporate global media desert.[1]

A foundation of public access philosophy is the "free speech" provision interpreted from the First Amendment to the U.S. Constitution, which states: " Congress shall make no law . . . abridging the freedom of speech or of the press . . . " It seems straightforward, no? Each of us has a right to speak; through public access we have a personal right to express ourselves—at times, to the extremes of "civil discourse."

Well, yes (following a one-dimensional, unproblematic approach to "free speech"). And no (following long-standing traditional interpretations of the First Amendment and more recent critical interpretations). In this article, I will first explore traditional interpretations of the First Amendment, then look at critical interpretations, and finally how both approaches are reflected in discussions within the public access movement.

Traditional Interpretations of "Free Speech"

While the right of individual expression is guaranteed, traditional interpretations of the free speech provisions indicate that the individual right to speak is not as important as the benefits the collective (society) gains from an open discussion of ideas and viewpoints.[2] So, the opportunity of each person to express an opinion is not as important as the chance for every perspective on an issue to be expressed...and to be heard.

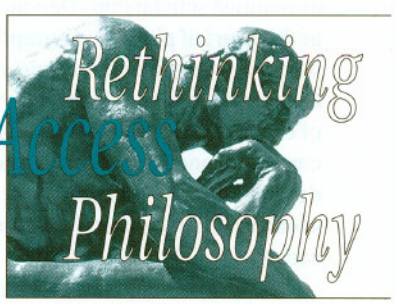
Yes, the right to hear a variety of ideas and viewpoints is also considered a part of free speech guarantees. The assumed benefits to the larger society from the open discourse is the primary basis for the free speech guarantees. To a lesser degree, there is assumed to be a measure of personal growth for the individual involved in personal expression, but in no way is this meant to overshadow the greater social objectives of free speech.

Among traditional interpretations of the First Amendment, Walter Lippmann reflects the majority position on freedom of speech as a social rather than an individual need with his argument:

> So, if this is the best that can be said for liberty of opinion, that a man must tolerate his opponents because everyone has a "right" to say what he pleases, then we shall find that liberty of opinion is a luxury, safe only in pleasant times when men can be tolerant because they are not deeply and vitally concerned. [sic]
>
> Yet actually...there is a much stronger foundation for the great constitutional right of freedom of speech...[W]e must protect the right of our opponents to speak because we must hear what they have to say...[F]reedom of discussion improves our own opinions. (1939, 186)

According to the traditional First Amendment scholars, "quality of speech" is more highly valued than a simple "quantity of speech."

Traditional interpretations of the First Amendment reflect the assumptions of liberal democratic philosophical thought that are found within the U.S. Constitution, the drafters of which were profoundly influenced by the 18th century philosophical movement of the Enlightenment. Ruggles notes that the Enlightenment was rooted in "faith in the corrective of reasoned debate, and the attainability of rational, consensual truth; the scientific perfectibility of human beings and human institutions, especially through democratic rule; [and] the necessity of an informed and tolerant populace to the functioning of a democracy... (Ruggles 1994, 141-142).



Moving forward toward an expanded understanding of "free speech" and social responsibility in the post-September 11 world involves a reassessment of ideological perspectives.

Traditional interpretations of freedom of speech are mirrored in regulations and legislation guiding the U.S. electronic media, including those regarding public access cable television.

Although the basic tenets of public access reflect traditional approaches to the First Amendment, the access canon is being questioned from within the movement by a growing number of critical analyses. These critiques mirror challenges by critical scholars of traditional perspectives on free speech doctrine.

Critical Interpretations of the First Amendment

Many of the pluralist assumptions from the Enlightenment are hotly contested within the realm of contemporary critical discourse. The critiques provide a vibrant challenge to mainstream thought regarding the nature of power and the exercise of individual free speech "rights." Critical scholars have questioned both one-dimensional and traditional interpretations of free speech, and the basic tenets upon which the liberal democratic tradition is founded.[3] Particular attention has been directed to (1) the nature of truth and the structure through which it emerges, (2) the attributes of power, and (3) the characteristics of the individ-

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ual's relationship with the collective.

Critiques often question Enlightenment assumptions that a single, definable, objective "Truth" exists and that this truth can be known by human beings. Beyond this issue of truth is also a questioning of process and the assumption that truth is best revealed through a dialectic clash within the "marketplace of ideas." For example, Frederick Schauer reflects the skepticism of many critically-oriented First Amendment scholars in his discussion of the "naive faith of the Enlightenment" that truth prevails over falsehood when the two compete in the "marketplace of ideas" (1985, 134). He notes that,

> "Put quite starkly, truth does not always win out...The inherent power of truth and reason was one of the faiths of the Enlightenment, but more contemporary psychological and sociological insights have confirmed the judgment of history that truth is often the loser in its battle with falsity." (1985, 142).

Structural arguments related to traditional liberal democratic ideals of free speech argue that a widespread belief in the dialectic emergence of truth privileges conflict models of communication that are challenged by contemporary thought in fields such as feminist scholarship (Dervin, et al 1993, 6). Conflict models are at the heart of pluralist assumptions of the nature of power, where power (when it is acknowledged) is traditionally envisaged as being shared equally by individuals, recognizable in the form of conflict, operating within public view, and working for the common good. In contrast, critiques of such pluralist precepts describe a process where power more often works covertly for specialized interests and is inequitably distributed within society.[4]

In addition to questions of truth and the nature of power, liberal democratic assumptions of individualism—where the individual is conceived as set against society, thus challenging social domination—are also challenged by critical scholars. Critical interpretations argue that this dichotomy is false; individuals and society cannot be divorced from one another, since each depends upon the other for identity and growth.

The critical project, then, questions liberal democratic assumptions of truth, the structure through which truth emerges, the nature of power, and the individual/collective dichotomy. In various analyses, critical scholars have espoused a more authentic democratic society, rooted in a more robust understanding of the nature of human beings and the social formations they construct.

Public Access: From "More Speech" to "Better Speech"

Early critical perspectives addressing the public access vision of empowerment and related community television assumptions in general typically came from outside the U.S. alternative video arena (Higgins 1999). Within the U.S. movement, analyses of public access as a means of promoting democratic communications typically have drawn from unproblematic interpretations of the First Amendment, emphasizing individual "rights" to speak and "more speech." In the late 1970s early 1980s the level of analyses within the public access movement began shifting to reflect long-standing traditional interpretations of the First Amendment, emphasizing a desire for quality of speech over mere quantity and the needs of the society over those of the individual.

HUESCA

Two announcers from Bolivian tin miner's union radio station, Radio Nacional de Huanuni, conduct the morning news program.

For example, the previous discussion of the First Amendment, which visualizes free speech as a means of promoting public discourse rather than as a vehicle for personal expression, is reflected in this statement by Andrew Blau, former chair of the National Federation of Local Cable Programmers (now the Alliance for Community Media):

> Our experience of public access to cable over the past two decades suggests that access may have nothing to do with democracy—nothing, that is, until the people who provide and use access connect the two. We can no longer simply assume that access to media tools and channels is enough...
>
> [I]f we take seriously this link between the right to speak with and hear from others and the daily practice of democracy, then we ought to organize our access tools to foster a kind of participation that enables people to take part in the decisions affecting their community. In this sense, simply talking a lot means little. (Blau 1992, 22)

This challenge to the established public access assumption that many voices equal diversity reflects Lippmann's arguments described previously. Until the 1980s, such a challenge was also nearly heretical within public access circles.

A further evolution in access philosophy in the mid-1980s included critical perspectives in the analyses of public access and access's role in the active practice of public discourse.[5] This included a more fully developed conceptualization of the workings of power that challenged the traditional access notion of "first come, first served" with the need for actively recruiting traditionally disenfranchised groups (Higgins 2001). The critiques from within public access, developed in a laboratory of daily practice, represent positive steps to move beyond simple assumptions of democracy and power, toward a more integrated view of access within a complex societal framework. For example, Aufderheide (1992, 2000) and Devine (1992a, 1992b, 2001) have consistently raised critical themes within their work related to community television, placing public access within discussions of Habermas' framework of the public sphere (1962/1989). Aufderheide identifies access channels as "electronic public spaces" that "strengthen the public sphere" (1992, 59) and should not be considered within traditional media measurements such as audience numbers (2000). Devine (1992b) posits that public access provides a space for public debate within the public sphere and argues that public access is best viewed within a notion of process rather than product. Devine further describes access as a site of cultural activism: where traditional power relationships are challenged and where human agency is cultivated as people are allowed to come to voice (1992b, 22-23), "transforming consumers into public

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speakers/participants, and moving them from passive into active roles of engagement in the civic life of their community" (Devine 2001, 37). The manner in which public access allows persons to speak within the context of the public discussion of issues relates to both traditional interpretations of the necessity of public discourse and to critical interpretations of power.

Raising the Philosophical Bar

The discourse continues within the access movement: witness George Stoney's criticism of vanity-based programmers (Stoney 2001) and Bill Kirkpatrick's arguments in this issue in favor of a recognition of the cultural aspects of media forms and resistance (*CMR* Summer 2002). Stoney is arguing from the traditionalist perspective of the social good of free speech; Kirkpatrick argues from a critical perspective that views culture as a form of political speech that may be more than the individual self-expression it seems at face value. Or note the discussion within these pages of the controversies involved with the long-time access philosophy of "First Come, First Served." Or the spirited, wide-ranging discussion of these issues at White Paper sessions at the Alliance national conferences over the past 20 years.

Such discussions constantly raise the philosophical bar in the real-life social laboratory that is public access, testing commonly-held notions of free speech as experienced by everyday philosopher/practitioners, and moving us on to a greater understanding of the possibilities of democratic society.

The ripple effect of new ideas within access are sometimes slow to spread to a wider audience within the movement. A number of people involved in access—administrators, staff, producers, board members—continue to hold tightly to the one-dimensional "individual right" notion of free speech over the concept of "social good." In these circles, traditional interpretations of free speech have not yet begun to root, let alone critical perspectives on power and free speech. This mainstream approach serves a purpose, when considered as but one among several perspectives on free speech, to be drawn upon as necessary.

The "individual right" concept is easy to grasp and it doesn't need definition or discussion, since it is plugged into our most uncritical notions of American citizenship. In addition, "individual right" helps us negotiate the deep ideological differences between seemingly alien approaches to the world that we find at the access facility.

In a study of volunteer producers I conducted in the mid 1990s,[6] Noreen, a European American community organizer involved in public access for six years, described the varying ideological camps at her access facility:

> *"Well...there's two groups. There's the religious right down there and there's people like me down there and then there's the ministers who don't necessarily like women and you get all these different groups of people....*
>
> *"...[T]hen you get people there who wanted to do the Klan show I think last year or the year before and you get people in there and when I mentioned that when you are a camera person you are like a fly on the wall and I see two ministers talking to each other and they are saying that women shouldn't be ministers. That women shouldn't be here and women shouldn't be here...."*

Noreen provides insights to the potential for conflict that emerge as competing groups interact within the public access facility, particularly within facilities with volunteer programs that encourage people to work as crew on other producers' productions.

I found that producers devised a variety of methods to deal with the ideological tensions they encountered at the facility. Primary among these strategies was evoking the dogma of freedom of expression, related to the individual "right" to speech, that allowed producers to endure ideological differences that otherwise might be personally intolerable. Internal conflict was resolved in part by resorting to someone's "right" of individual expression: "they should be able to do that." Producers often referred to this right of expression, which seemed to be a method of coping with ideals that conflicted with their own. Tom, an African-American bus driver and Baptist minister to a small congregation who had produced 400 programs and volunteered on 300 others over his eight years with access, provided an example:

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> *"...like I said, I don't agree with everything that they do and they probably don't agree with everything I do. Like I said, that's what makes public access to me. We don't agree on everything but we are allowed to put forth our rights to say what we have the privilege of doing through public access. I believe, like I said, this is—the last soapbox that we have is public access...."*

Tom captured a sense of the delicate interlacing of "my rights" and "your rights" at play within the public access facility, and the subtle dance between seemingly conflicting rights.

In addition to drawing on basic notions of individual rights, producers in the study negotiated differences by refusing to work as crew members with producers with whom they had serious ideological differences. But ideological differences were handled differently than personal differences. Tom's framing of free speech "rights" also allowed him to separate ideological differences from the human being with a problem he encountered at the facility:

> *"... And when they [volunteers] come on I just try to share with them, and now there are certain shows or programs that I won't work on. Anything that's contrary to Christ, I'm not gonna work on it. I mean it's just that everybody knows that and I've helped a man put his starter up. He was a program—his program was not with Christ but I helped him put his starter on. I ain't gonna help him with his program though [laughing]. But his choke broke down and I helped him with his starter [laughing]. Crawled right up under it and helped him with it, but I'm not gonna help him with his program."*

As indicated by the study, an uncritical notion of free speech framed simply within a context of "individual rights" does provide a measure of tolerance for people as they encounter unfamiliar people and ideas. While recognizing the significance of these basic notions, access should actively cultivate an understanding of and appreciation for the wider aspects of First Amendment ideology—such as the traditionalist notion of "social responsibility"—among producers, staff, board members, and the community.

Reassessing the Access Mission

An overemphasis on individual rights eclipses the more important goals of free speech for the good of the society. Within this goal of social responsibility, producers of "vanity," "narcissistic," or "self-absorbed" programming might turn their attention

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Additionally, we feel the best way to avoid accusations of discrimination or favoritism can be achieved by applying FCFS policies.

OTHER MODELS

If our main goal is to divvy up scarce resources (channel time and equipment) in a non-discriminatory fashion, what other models might we follow?

Benevolent Dictator: Some one or some group with the alleged interest of the "common good" at heart will attempt to distribute access to insure fairness on all levels. Yikes!

Lucky Lottery: Instead of rewarding those who arrive first with access, wait until all those wanting access arrive and then draw names from a fish bowl to see who gets access to what, when. Logistical nightmare?

Build It and Take It To Them: A twist to the build it and they will come idea, load up a van full of voice, video and data equipment and drive into needy neighborhoods on a schedule like a bookmobile and provide training and production access where 'they' are. Could be expensive.

U of M Admissions Policy: Based on an agreed upon history of unfair access, scarce resources (admission to law school) are mostly allocated on merit with special consideration afforded those who may be from a race or class that has been discriminated against in the past. Awaiting Supreme Court Decision.

Techno-Fix: Provide many places for people to "first come" for services and stick with the same policy. Web based registration for channel time, equipment and classes with Internet access computers broadly distributed.

Channel–Facility Dichotomy: Maybe we honor the FCFS approach regarding channel access and we decide to serve the "neediest" folks regarding equipment and facilities. We have people apply for classes and equipment and we totally discriminate toward those who are most deserving of access based on lack of income and power. You be the judge, how many Mercedes do you see parked in front of the Food Bank.

Join the Discussion

These suggested solutions are by no means exhaustive. This article is intended to spur the discussion of this dicey question. Those of you attending the Alliance for Community Media conference in Houston, Texas in July of 2002 may want to attend the "White Paper" discussion to pick up where these comments leave off.

Under all circumstances keep one motive pure, Power to the People!

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to helping other, yet-unheard voices express their views.

Within some access communities, there has been an increased recognition of the need for greater discipline and more responsibility on the part of access participants. This latter perspective seems to be a consideration of some access managers who have encountered difficulties with producers pushing the limits of the individual right to speech as applied to public access—including "hate speech" and graphic pornographic and/or exceedingly violent programming.[6] These leaders have attempted to cultivate an atmosphere where the emphasis is on assisting others, including previously silenced voices, to "speak" and be heard, rather than exercising one's own "rights" to expression.

While the U.S. community television movement as a whole has begun to reflect more complex positions regarding notions of "free speech," there is no reason to believe that such perspectives will be considered or embraced by access staff and community participants any more rapidly than by the U.S. general population.[8] Community television leaders might move the discourse forward with high profile discussions of the access mission and the nature of democracy; such a progressive development would be in keeping with the framework of "access as process" espoused by Devine (1992b), Higgins (1999), and Johnson (1994), emphasizing access's ability to encourage participants to an expanding involvement in the social sphere.

Moving forward toward an expanded understanding of "free speech" and social responsibility in the post-September 11 world involves a reassessment of ideological perspectives—by talking at every opportunity about the basic ideas of the access mission; the many meanings of the term "free speech"; the need for self-discipline and the sharing of resources, knowledge, and skills to create a true public discourse on our community television channels.

Such an endeavor would allow public access, as an institutionalized form of community media in the U.S., to remain as a vibrant living laboratory to the world, contributing an enhanced understanding of the nature of "free speech," the manner in which the concept works in everyday practice, and its importance to the lifeblood of a democratic society.

Notes

[1] This article is drawn from the chapter, "Living Tolerance: U.S. Public Access Producers and the Practices of 'Free Speech,' in *Community Media: International Perspectives.* Ed. Linda Fuller. In press. 2002.

[2] Traditional approaches to the First Amendment are represented by Lippmann (1939), Meiklejohn (1948), Mill (1859/1993), and Ruggles (1994).

[3] Critical interpretations of the First Amendment and free speech are represented by Dervin and Clark (1993); Downing (1999); Ruggles (1994); Schauer (1985); and Streeter (1990).

[4] Drawn from Lukes (1974) Good (1989), and Gramsci (1946/1989)

[5] See Higgins (2001).

[6] For details see Higgins (1999, 2002).

[7] On the San Francisco public access channel, a few community producers exhibit the extremes to which the notion of free speech as an

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"individual right," rather than a social good, might be applied. Some producers include hard core violence and pornography within their shows, in part simply because "it's my right," and despite possible repercussions to the channel's existence.

In 1999, the Community Television Corporation, a non-profit community-based organization, took over management and operation of the public access channel and facilities. Prior to 1999, the corporate cable system operators who ran public access cultivated individual fiefdoms based on seniority, dominated by "first comers" who have insisted their rights include a lock on prized prime-time positions in the program schedule. This has been the legacy in San Francisco of the "individual rights" interpretation related to "first come, first served."

The CTC has begun to nurture values more in line with the basic concepts of access as understood by access facilities and access participants across the country: share resources, take your turn, move aside to help others take their turn, help others voice their ideas through this medium, enable viewers to see and hear a wide variety of shows and perspectives, build a grassroots community of "all of us" through the medium of television.

[8] Similar perspectives on "more speech" seem to be held by some participants in the burgeoning Independent Media Center (IMC) movement, which includes a significant involvement of digital technologies to distribute alternative programming via the Internet and satellite television. The IMC movement started in Seattle in Fall 1999, giving a voice to global anti-corporate protests against the World Trade Organization. Since then, dozens of centers have been established across the world in concert with a renewed activist movement against globalization. See *http://www.indymedia.org.*

Bibliography

Aufderheide, Patricia. 1992. "Cable Television and the Public Interest." *Journal of Communication* 42.1 (Winter): 52-65.

—-. 2000. *The Daily Planet: A Critic on the Capitalist Culture Beat.* Minneapolis: U Minnesota P.

Blau, Andrew. 1992. "The Promise of Public Access." *The Independent* 15.3 (April): 22-26.

Dervin, Brenda, and Kathleen Clark. 1993. "Communication and Democracy: A Mandate for Procedural Invention." *Communication and Democracy.* Ed. Slavko Splichal and Janet Wasko. Norwood, NJ: Ablex. 103-140.

Dervin, Brenda, Tony Osborne, Priya Jaikumar-Mahey, Robert Huesca, and John Higgins. 1993. "Dialogue as Communication: The In-Between of Modernity/ Postmodernity." Paper presented at the annual meeting of the International Communication Association. Washington, D.C.: May 27-31.

Devine, Robert H. 1992a. "The Future of a Public." *Community Television Review* 15.6 (November/December): 8-9.

—-. 1992b. "Video, Access and Agency." Paper Presented at the Annual Conference of the National Federation of Local Cable Programmers. St. Paul, Minnesota. July 17.

—-. 2001. "33 Years Later: Why Access?" *Community Media Review* 24.2: 37-39.

Downing, John D.H. 1999. "`Hate Speech' and `First Amendment Absolutism' Discourses in the U.S." *Discourse and Society* 10.2: 175-189.

Good, Leslie. "Power, Hegemony, and Communication Theory." *Cultural Politics in Contemporary America.* Ed. Ian Angus and Sut Jhally. New York: Routledge, 1989. 51-64.

Gramsci, Antonio. 1946. *Letters from Prison.* Ed. and trans. Lynne Lawner. New York: Noonday, 1989.

Habermas, Jürgen. 1962. *The Structural Transformation of the Public Sphere.* Trans. Thomas Buerger with Frederick Lawrence. Cambridge, MA: MIT P. 1989.

Higgins, John W. 1999. "Community Television and the Vision of Media Literacy, Social Action, and Empowerment." *Journal of Broadcasting and Electronic Media* 43.4: 1-21.

—-. 2001. "The Praxis of Access: Access and Global Activism." *Community Media Review* 24.2: 19-21.

—-. "Living Tolerance: U.S. Public Access Producers and the Practices of "Free Speech." Chapter in *Community Media: International Perspectives,* Ed. Linda Fuller. In press 2002.

Johnson, Fred. 1994. "The Real Work is Media Education." *Community Media Review* 17.1 (January/February): 4+.

Kirkpatrick, Bill. 2002. "Re-thinking `Access': Cultural Barriers to Public Access Television." *Community Media Review* 25.3 (Summer).

Lippmann, Walter. 1939. "The Indispensable Opposition." *Atlantic Monthly* 164.2 (August): 186-190.

Lukes, Steven. 1974. *Power: A Radical View.* New York: MacMillan.

Meiklejohn, Alexander. 1948. *Political Freedom: The Constitutional Powers of the People.* New York: Harper.

Mill, John Stuart. 1859. *On Liberty.* New York: Bantam, 1993.

Ruggles, Myles Alexander. 1994. *The Audience Reflected in the Medium of Law: A Critique of the Political Economy of Speech Rights in the United States.* Norwood, NJ: Ablex.

Schauer, Frederick. 1985. "Free Speech and Its Philosophical Roots." *The First Amendment: The Legacy of George Mason.* Ed. T. Daniel Shumate. Fairfax, VA: George Mason UP. 132-155.

—-. 2001. "The Essential George Stoney." *Community Media Review* 24:2 (Summer): 29-31.

Streeter, Thomas. 1990. "Beyond Freedom of Speech and the Public Interest: The Relevance of Critical Legal Studies to Communications Policy." *Journal of Communication* 40.2 (Spring): 43-63.

Red Lion Broadcasting Co., Inc., et al. v. Federal Communications Commission et al. 395 U.S. 367 (1969).

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Additional Resources

Alternative Media (Culture, Representation, and Identity), by Chris Atton. Thouand Oaks, California: Sage, 2002.

The Place of Media Power: Pilgrims and Witnesses of the Media Age, by Nick Couldry. London: Routledge, 2000.

Public Access Television: America's Electronic Soapbox, by Laura R. Linder. Westport, Conn: Praeger, 1999.

Rising Up: Class Warfare in America from the Streets to the Airwaves, by Richard Edmondson. San Francisco: Librad Press, 2000.

Subject to Change: Guerrilla Television Revisited. New York: Oxford UP, 1997.