Public Fora and the Problem of Too Much Speech

R. George Wright[1]

"*The world is too much with us . . . .*"[2]

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[1] Lawrence A. Jegen Professor of Law, Indiana University Robert H. McKinney School of Law.

[2] William Wordsworth, *The World Is Too Much with Us*, POETRY FOUND., www.poetryfoundation.org/poems-and-poets/poems/detail/45564 [https://perma.cc/L9VN-D72K] (last visited Jan. 21, 2018).

INTRODUCTION

This Article asks whether there is, overall, simply too much private party speech in public fora, with public fora being defined as government owned and controlled spaces.[3] We can easily imagine a society in which public forum speech in general, public forum speech on a particular subject, or public forum speech from a particular viewpoint is reasonably judged to be undersupplied. But what about the opposite? Is a general oversupply of such speech possible? Should we instead assume that law, culture, voting, and markets all interact to ensure the optimal overall amount of public forum speech? One would have to argue for such a miracle.[4]

The claim of this Article is that given our history, technology, and other contextual matters, our culture currently suffers from too much private party speech, overall, in public fora. Analyzed below is this general oversupply of speech in various public fora, including public streets, public buses, airports, and other contexts. In recognizing this oversupply, we take full account of the value of speakers' ability to seek out an audience, and the disvalue of allowing critics of speech of a particular content to suppress that content.

We do not make the task easier by focusing in particular on what one might call low-value speech,[5] or on kinds of speech that are often considered inherently "objectionable,"[6] and in that sense, excessive. More specifically, our focus is not on categories such as defamatory speech,[7] hate speech,[8] true threats,[9] or fraudulent commercial speech.[10] Instead, the central focus of this Article is speech more

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[3] *See* Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2249–50 (2015).

[4] We would hesitate to make a parallel assumption about, say, the amount of air pollution at the level of a particular nation-state.

[5] *See, e.g.*, Larry Alexander, *Low Value Speech*, 83 NW. U.L. REV. 547 (1989) (discussing the various ways courts have distinguished between the different kinds of speech, and the impacts of such distinctions); Cass R. Sunstein, *Low Value Speech Revisited*, 83 NW. U.L. REV. 555 (1989) (arguing for an alternative approach to help judges distinguish between "low-value" and "high-value" speech); *see also* Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (referring to speech of "slight social value").

[6] *See, e.g.*, United States v. Stevens, 559 U.S. 460, 470–72 (2010) (discussing *Ferber* and subsequent cases limiting the type of speech that is entitled to First Amendment protection); New York v. Ferber, 458 U.S. 747, 763 (1982) ("Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not, [sic] incompatible with our earlier decisions."); Miller v. California, 413 U.S. 15, 24 (1973) (protecting only those otherwise assumedly obscene materials with "serious literary, artistic, political, or scientific value").

[7] *See, e.g.*, Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (deciding libel action brought by private figure plaintiff).

[8] *See, e.g.*, Virginia v. Black, 538 U.S. 343, 358–64 (2003) (explaining that cross-burning, while protected by the First Amendment in some circumstances, is not protected by the First Amendment if used as a method to intimidate or instill fear in others).

[9] *See, e.g.*, Watts v. United States, 394 U.S. 705, 707–08 (1969) (distinguishing "true 'threat[s]'" from constitutionally protected speech in the context of threats to the life of the President).

[10] *See, e.g.*, Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748, 771–72 (1976) (discussing consumer fraud in relation to commercial speech).

generally in public fora,[11] as distinct from speech regarding private property or speech through privately owned channels. In a phrase, the main focus of this Article will be on speech as regulated by contemporary public forum doctrine.[12]

Any non-discriminatory national or local prohibition of speech in one or more kinds of public fora would not result in a complete loss of the now prohibited public forum speech. Instead, the result of such prohibition would be in the form of general, low-cost shifting of public forum speech to privately owned and controlled speech venues. Most of the current public forum speech would thus shift to private media, the internet, and social media in particular. The free speech and other interesting effects of such a shift are considered below.[13]

For purposes of this analysis, the constitutional protection of speech in public fora is treated as having one or more standard, recognized purposes which are then argued as not being optimally fulfilled. After evaluating the purposes of speech in public fora, this Article considers the conflicts between free speech purposes and other important purposes and values, conflicts among the basic free speech purposes themselves, and conflicts within any given single purpose for constitutionally protecting speech. In the end, the Article concludes that the overall quantity of speech in one or more types of public fora, given our history, culture, technology, values, and other contextual factors, is today on balance excessive. Lastly, suggestions are provided as to how to address this current state of affairs.[14]

The major qualification of this thesis is that, for some public fora, where the messages are quite readily avoidable, considerations of free speech, free assembly, or free exercise of religion may suggest sensible content neutral regulations, as opposed to closure of a particular forum. Further content neutral regulation across all public fora, however, would not solve the problem of excessive public forum speech. Much speech in public fora, such as airports or public buses, is inherently distracting, individually and cumulatively, and is associated with other free speech-related disvalues.[15] In many instances, the best balancing of free speech and other important values suggests a non-discriminatory closure of a particular forum or type of forum in question.

To begin the analysis, and for the sake of perspective, the Article first considers some more or less uncontroversial theories as to the basic reasons for protecting speech in general.

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[11] For background, see, for example, Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2250 (2015) (explaining that a "traditional public forum" is one that has historically been held "in trust for the use of the public" to assemble, communicate ideas, and discuss public issues).

[12] *See, e.g.*, *id.* and the cases cited therein.

[13] *See infra* Parts III–IV. One complication is that governments can set up websites or other social or traditional media venues as forms of public fora where most persons' encounters with that particular site may be voluntary. See Lyrissa Lidsky, *Public Forum 2.0*, 91 B.U.L. REV. 1975 (2011), for background material on the government's use of the internet as a form of public forum.

[14] *See infra* Part IV.

[15] *See infra* Part III and cases cited therein.

I. THE BASIC PURPOSES OF FREEDOM OF SPEECH: A STANDARD TYPOLOGY

If we are to show that there is, in any meaningful sense, too much speech in public fora, we should attend to the most important purposes a society seeks to achieve in protecting speech. This approach limits subjectivity by focusing on pragmatic, goal-oriented, means-ends considerations. We are thereby enabled to consider more specifically whether one or more of the basic reasons for protecting speech in public fora and elsewhere might be better served by appropriately reducing the sheer amount of such speech in public fora. We can then consider whether any societal costs of such speech, at current levels, outweigh the benefits of such speech. These calculations should account for the fact that some levels and forms of speech, in some contexts, actually undermine or impair the basic purposes for protecting speech in the first place.

It is again technically possible that historical context, the law, culture, voting, and markets interact in such a way as to ensure something like the optimal level of speech in public forums. On its face, however, this might require what some might consider something of a social miracle. By loose analogy, again, a claim that law, culture, voting, and markets somehow interact to ensure an optimal level of pollution, or of climate change inputs, would seem implausible. Admittedly, there are examples of complex social processes, involving many actors and institutions, that tend to generate favorable results, perhaps quite apart from any actor's conscious intentions.[16] It certainly seems plausible, on the other hand, that speakers in public fora do not internalize all of the social benefits, and certainly not all of the social costs, of their own individual speech, nor all public fora speech, even though such speech is subject to multiple forms of legal regulation on various grounds.[17] Politicians and commercial speakers, in particular, may have incentives to speak in sheer volumes that might sensibly be regulated if anything like a socially optimal level of speech is to be arrived at and sustained.[18]

We will therefore not simply assume without argument that our societal institutions operate in such a way as to optimize the amount of speech in various public fora. Nor will we simply assume an excess of such speech. Instead, we will work through, first, the basic purposes underlying the desire to protect speech generally in the context of the several types of public fora.

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[16] *See, e.g.*, ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 484–85 (Edwin Cannan ed., 1994) (positing a generally benevolent legal, cultural, and marketplace "invisible hand"); F.A. Hayek, *The Use of Knowledge in Society*, 35 AM. ECON. REV. 519 (1945). It is possible to think of the process of natural selection in this way was as well.

[17] *See infra* Parts III–IV. For our purposes, current regulation of speech should be understood to include any public subsidies of speech as well.

[18] It is certainly possible, for example, that particular levels of commercial speech may change not only our appraisals of particular goods and services, but our collective judgment as to the value of commercial, as opposed to non-commercial, solutions to our perceived problems. Aggregate levels of political speech might also affect, in one way or another, our confidence in political solutions to those problems as well. See R. GEORGE WRIGHT, SELLING WORDS: FREE SPEECH IN A COMMERCIAL CULTURE 12–77 (1997), for background information.

Of course, there will inevitably be some disputes at the margins as to the basic purposes of protecting speech, but there is also something of a consensus as to the core theory of why we might sensibly protect speech.[19] For a mainstream approach, one can turn to the classic account of such free speech purposes by Professor Thomas Emerson.[20] With some variations, Professor Emerson's account reflects those of other well-respected mainstream theorists.[21]

Professor Emerson thus lists four basic purposes of legally protecting speech.[22] First, "freedom of expression is essential as a means of assuring individual self-fulfillment. The proper end of man is the realization of his character and potentialities as a human being."[23] This we may refer to as the dimension of autonomy, self-fulfillment, or self-realization. Second, "freedom of expression is an essential process for advancing knowledge and discovering truth."[24] This we may call the pursuit of truth rationale. Third, "freedom of expression is essential to provide for participation in decision making by all members of society."[25] We may call this the universality in decision making justification. And finally, "freedom of expression is a method of achieving a more adaptable and hence a more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus."[26] This purpose thus seeks an appropriate balance between social conflict and social consensus.

The basic reasons for protecting speech thus amount to something like promoting self-fulfillment or self-realization, optimally pursuing truth, promoting universality in decision making, and optimally balancing social conflict and social consensus. The pursuit of these basic purposes for protecting speech plays out in both public and private fora. Our main concern herein is, of course, with the actual operation and varied effects of speech in public fora. For our purposes, it is important to see how these justifications for protecting speech play out, successfully or less successfully, in the various types of public fora. Therefore, this Article proceeds to characterize the nature and constitutional status of the distinct recognized kinds of public fora.

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[19] *See* Thomas I. Emerson, *Toward a General Theory of the First Amendment*, 72 YALE L.J. 877, 878–86 (1963).

[20] *See* THOMAS I. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 6–7 (1970); *see also* Emerson, *supra* note 19, at 878–86.

[21] Consider, for example, the substantial overlap with FREDERICK SCHAUER, FREE SPEECH: A PHILOSOPHICAL ENQUIRY 35–58 (1982) and Kent Greenawalt, *Free Speech Justifications*, 89 COLUM. L. REV. 119, 130–47 (1989).

[22] EMERSON, *supra* note 20, at 6–8.

[23] *Id.* at 6.

[24] *Id.*

[25] *Id.* at 7.

[26] *Id.*

II. AN INTRODUCTION TO THE VARIOUS PUBLIC FORA

Public forum doctrine, as a legal construct aimed at appropriately protecting private speech on public property, is often thought of as a fundamental constitutional category.[27] But it is also true that the clarity, consistency, and even coherence of public forum doctrine have been called into question.[28] The typology we now present must, therefore, be regarded as less than definitive.

To begin with, public forum doctrine does not seek to encompass government speech in which, even from government property, a government entity articulates its own official governmental message.[29] Nor, at the other extreme, does public forum doctrine seek to encompass speech by or among private parties conducted largely on or through private property and privately owned media.[30] We thus set aside speech

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[27] *See, e.g.*, John D. Inazu, *The First Amendment's Public Forum*, 56 WM. & MARY L. REV. 1159, 1159–60 (2015) ("The ideal of the public forum represents one of the most important aspects of a healthy democracy."); Note, *Strict Scrutiny in the Middle Forum*, 122 HARV. L. REV. 2140, 2140 (2009) ("It is perhaps no exaggeration that 'the story of the First Amendment *is* the story of the public forum doctrine.'" (quoting Steven G. Gey, *Reopening the Public Forum — From Sidewalks to Cyberspace*, 58 OHIO ST. L.J. 1535, 1535 (1998))); *id.* at 2141 (arguing for the centrality of public forum doctrine).

[28] *See, e.g.*, Women's Health Link, Inc. v. Fort Wayne Pub. Transp. Corp., 826 F.3d 947, 951 (7th Cir. 2016) ("[I]t is rather difficult to see what work 'forum analysis' in general does."); Lidsky, *supra* note 13, at 1976 (noting that the public forum doctrine is "lacking in coherence—to put it mildly" (citing, inter alia, ROBERT C. POST, CONSTITUTIONAL DOMAINS 199 (1995) (arguing, in turn, that the public forum doctrine is "virtually impermeable to common sense"))).

[29] *See, e.g.*, Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2250 (2015) ("Because the State is speaking on its own behalf, the First Amendment strictures that attend the various types of government-established forums do not apply."); Pleasant Grove City v. Summum, 555 U.S. 460, 468 (2009) ("A government entity may exercise this same freedom to express its views when it receives assistance from private sources for the purpose of delivering a government-controlled message." (citing Johanns v. Livestock Mktg. Ass'n., 544 U.S. 550, 562 (2005))).

[30] For free speech cases involving, at most, only minimal or incidental use of any sort of public forum, see United States v. Alvarez, 567 U.S. 709 (2012) (addressing issue regarding a defendant lying about receiving a military medal at a public board meeting); Brown v. Entm't Merchs. Ass'n, 564 U.S. 786 (2011) (addressing issue of access by minors to violent video games); United States v. Stevens, 559 U.S. 460 (2010) (addressing issues of creation, sale, or possession of animal cruelty videos); Florida Bar v. Went For It, Inc., 515 U.S. 618 (1995) (addressing issue of an attorney's direct-mail solicitation of accident victim clients); City of Ladue v. Gilleo, 512 U.S. 43 (1994) (addressing issue regarding regulation of residential political signs); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991) (addressing issue regarding nude dancing in adult entertainment establishments); Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988) (addressing issue regarding magazine's alleged intentional infliction of emotional distress by publishing parody ad of plaintiff); Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, 425 U.S. 748 (1976) (addressing issues regarding commercial advertising of prescription drug prices); Cox Broad. Corp. v. Cohn, 420 U.S. 469 (1975) (addressing issues regarding broadcasting of name of deceased rape victim); Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974) (addressing issues regarding a magazine that published article naming a lawyer in a civil suit a Communist); Miller v. California, 413 U.S. 15 (1973) (addressing issues regarding mailing unsolicited sexually explicit material); N.Y. Times, Co. v. United States, 403 U.S. 713 (1971); N.Y. Times, Co. v. Sullivan, 376 U.S. 254 (1964) (addressing issues regarding a newspaper that published defamatory ad about public official); Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963) (addressing issues regarding informal censorship of "objectionable" books by a legislatively-created Commission); Terminiello v. Chicago, 337 U.S. 1 (1949) (addressing issues regarding speaking to large audience in a rented auditorium).

with an insufficient[31] or somehow insufficiently important[32] nexus to any public forum. Additonally, a number of what we might call potential public forum doctrine cases are judicially decided, for one reason or another, on some sort of alternative, independent, and, perhaps, more useful analytical grounds.[33]

The most familiar type of public forum is typically referred to as a classic traditional or "quintessential public forum[]."[34] Traditional public fora typically encompass most, if not all, publicly owned sidewalks, streets, and parks of various sorts.[35] The underlying idea is roughly that such fora "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions."[36]

In traditional public fora, speech "restrictions based on viewpoint are [generally] prohibited."[37] Speech restrictions based on the content, but not viewpoint, are subject to classic strict scrutiny.[38] That is, a speech restriction "must be narrowly tailored to serve a compelling government interest."[39] Speech restrictions in such a forum that are content neutral[40] must pass a supposedly[41] less stringent test. More specifically, content neutral speech restrictions in traditional public fora must be reasonable and must be narrowly or at least proportionately tailored to promote a substantial public

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[31] *See, e.g.*, Watchtower Bible & Tract Soc'y v. Village of Stratton, 536 U.S. 150 (2002) (noting that door-to-door advocacy involving the use of public sidewalks and streets thought to amount to classic public fora).

[32] The Supreme Court's public school speech cases clearly involve speech in some sort of public forum, but public forum analysis is typically minimally represented in, if not entirely absent from, such cases. *See, e.g.*, Morse v. Frederick, 551 U.S. 393 (2007) (addressing the issue of a banner displayed on public sidewalk); Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston, Inc., 515 U.S. 557 (1995) (discussing issues involving a march through public streets—a classic public forum); Texas v. Johnson, 491 U.S. 397 (1989) (addressing flag burning involving public streets and sidewalks).

[33] *See, e.g.*, cases cited *supra* notes 31–32. For a recent attempt to largely bypass public forum doctrine categories in a case clearly involving speech in some type of public forum, see *Women's Health Link, Inc.*, 826 F.3d at 950–52.

[34] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983); *see also, e.g.*, *Walker*, 135 S. Ct. at 2250; *Summum*, 555 U.S. at 469.

[35] *See, e.g.*, *Walker*, 135 S. Ct. at 2250 (quoting *Perry*, 460 U.S. at 45–46). *Compare* Cutting v. City of Portland, 802 F.3d 79, 83 (1st Cir. 2015), *and* Satawa v. Macomb Cty. Road Comm'n, 689 F.3d 506, 520–22 (6th Cir. 2012), *with* Warren v. Fairfax Cty., 196 F.3d 186, 196–97 (4th Cir. 1999) (en banc), for an explanation of why quiet residential streets and, perhaps, even more controversially, oddly and formalistically, median strips dividing busy congested streets are held to be traditional public fora.

[36] *Perry*, 460 U.S. at 45 (citing Hague v. CIO, 307 U.S. 496, 515 (1939)).

[37] *See, e.g.*, *Summum*, 555 U.S. at 469 (citing Carey v. Brown, 447 U.S. 455, 463 (1980)).

[38] *See, e.g.*, *id.* (citing Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 800 (1985)); *see also* Christian Legal Soc'y Chapter of Univ. of Cal., Hastings Coll. of Law v. Martinez, 561 U.S. 661, 679 n.11 (2010).

[39] *Summum*, 555 U.S. at 469.

[40] For the Supreme Court's recent controversial attempt to distinguish between content-based and content-neutral regulations of speech, see Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226–27 (2015).

[41] For some doubts as to the assumed comparative stringency of typical content-based and content-neutral speech restriction tests, see R. George Wright, *Content-Neutral and Content-Based Regulations of Speech: A Distinction that Is No Longer Worth the Fuss*, 67 FLA. L. REV. 2081, 2088–90 (2015).

interest, while "leav[ing] open ample alternative channels for communication"[42] for the messages in question.[43]

A second type of public forum is often referred to as a designated public forum.[44] A designated public forum involves, roughly, an intentional decision to open some government property, other than a traditional public forum, to at least some forms of private party speech.[45] Once we have determined that the property should be classified as a designated public forum, however, the tests for content based and content neutral restrictions of speech therein are said to mirror those appropriate for traditional public fora.[46] Designated public fora, however, are thought to be more readily closable, at least for appropriate reasons, than traditional public fora.[47]

A third type of public forum is often referred to as a limited, or limited purpose, public forum.[48] The difference in character between a limited public forum and a designated public forum is, at best, difficult to precisely articulate.[49] One attempt at such a distinction might suggest that the permitted subjects or range of speakers in designated public fora tend to be somewhat less selective than in most limited public fora.[50] The constitutional limits on restriction of speech in limited public fora are said, however, to differ substantially from those applicable in the case of designated public fora.[51] Thus, it has been said that in limited, as opposed to designated, public

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[42] Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (citations omitted) (quoted in Int'l Soc'y for Krishna Consciousness of Cal. v. City of Los Angeles, 764 F.3d 1044, 1049 (9th Cir. 2014)).

[43] *See* cases cited *supra* note 42; *see also* Frisby v. Schultz, 487 U.S. 474, 481–82 (1988); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983); Berger v. City of Seattle, 569 F.3d 1029, 1059 (9th Cir. 2009) (en banc).

[44] Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2250 (2015).

[45] *See, e.g.*, *Walker*, 135 S. Ct. at 2250; Pleasant Grove City v. Summum, 555 U.S. 460, 469 (2009); Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 802 (1985). The requirement of an intention on the part of the government, at least with regard to establishing the designated forum, if not also of delimiting its scope or purpose, raises more difficult questions than it resolves.

[46] *See, e.g.*, *Summum*, 555 U.S. at 469–70; *Perry*, 460 U.S. at 46; Seattle Mideast Awareness Campaign v. King Cty., 781 F.3d 489, 496 (9th Cir. 2015).

[47] *See, e.g.*, *Perry*, 460 U.S. at 45–46; *Seattle Mideast Awareness Campaign*, 781 F.3d at 496 ("[T]he government may close a designated public forum whenever it chooses, but it may not close a traditional public forum to expressive activity altogether." (citing *Perry*, 460 U.S. at 45–46)). For a more complex story, see *infra* notes 109–115 and accompanying text.

[48] *Summum*, 555 U.S. at 470.

[49] For discussion, see the authorities cited *infra* note 50. Professor Lyrissa Lidsky helpfully discusses further complications flowing from the differences between online fora that are largely uni-directional and online fora that involve more interactive give-and-take among discussants. *See* Lidsky, *supra* note 13, at 2028.

[50] The Court's most extended discussion of the purported differences in character between designated and limited public fora may be in Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 678–81(1998). *See also* Christian Legal Soc'y Chapter of Univ. of Cal., Hastings Coll. of Law v. Martinez, 561 U.S. 661, 679 & n.11 (2010); Gerlich v. Leath, 847 F.3d 1005, 1012 (8th Cir. 2017).

[51] *See, e.g.*, *Summum*, 555 U.S. at 469–70; *see also Forbes*, 523 U.S. at 680–81; *Seattle Mideast Awareness Campaign*, 781 F.3d at 496.

fora, "a government may impose restrictions on speech that are reasonable and viewpoint neutral,"[52] even if the restrictions are content-based.[53]

Some courts refer to a possible fourth public forum type, ironically known as a non-public forum. The non-public forum may or may not be distinguishable from the limited public forum.[54] Thus, the Supreme Court in *Walker* apparently sought to contrast limited public forums that are reserved for certain subjects or groups[55] (as may also characterize some designated public fora),[56] with a non-public forum.[57] Walker describes a non-public forum as a forum in which "the government is acting as a proprietor, managing its [own] internal operations."[58]

It is thus unclear whether, for example, a CIA meeting room would constitute a forum at all or would perhaps feature only some form of pure government speech.[59] If the CIA were to occasionally open its meeting room for private speaker access, the room might then still be thought of as a non-public forum,[60] or, alternatively, as a

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[52] *Summum*, 555 U.S. at 470; *Martinez*, 561 U.S. at 679; *Seattle Mideast Awareness Campaign*, 781 F.3d at 496.

[53] *See, e.g.*, Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 808–11 (1985); *Seattle Mideast Awareness Campaign*, 781 F.3d at 502 ("In a limited public forum, the government may impose content-based restrictions on speech as a 'means of "insuring peace"' and 'avoiding controversy that would disrupt' the business of the forum.") (citations quotations omitted). More specifically, subject-matter or speaker-based exclusions from a limited public forum must be reasonable, given the purpose of the particular forum, and must be sufficiently objective and definite. *See, e.g.*, *Cornelius*, 473 U.S. at 806; Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 49 (1983); *Seattle Mideast Awareness Campaign*, 781 F.3d at 499.

[54] *Perry*, 460 U.S. at 49; *see also id.* 64 (Brennan, J., dissenting).

[55] *See* Walker v. Tex. Div., Sons of Confederate Veterans, Inc., 135 S. Ct. 2239, 2250 (2015). *But cf.* Am. Freedom Def. Initiative v. King Cty., 136 S. Ct. 1022, 1022 (2016) (Thomas, J., dissenting from denial of cert.) (equating a limited public forum and a non-public forum).

[56] *See* Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 679 (1998) (seeking to distinguish between a designated public forum's allowing general access "to a certain class of speakers" and a limited public forum's restriction "to a particular class of speakers" who must "obtain permission" to speak in that forum individually). Both sorts of fora, apparently, can thus involve the exclusion of some groups of potential speakers, perhaps, on a subject matter basis. *See* Women's Health Link, Inc. v. Fort Wayne Pub. Transp. Corp., 826 F.3d 947, 951 (7th Cir. 2016) (citing Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 559 (1975)).

[57] *See Walker*, 135 S. Ct. at 2251–52 (creating uncertainty as to the distinction between limited-purpose and non-public fora). For cases increasing uncertainty on this point, see NAACP v. City of Philadelphia, 834 F.3d 435, 441 (3d Cir. 2016); Agema v. City of Allegan, 826 F.3d 326, 335 (6th Cir. 2016) (presenting four types of fora); Powell v. Noble, 798 F.3d 690, 699 (8th Cir. 2015) (equating limited and non-public fora); Am. Freedom Def. Initiative v. King Cty., 796 F.3d 1165, 1169 n.1 (9th Cir. 2015).

[58] *Walker*, 135 S. Ct. at 2251 (quoting Int'l Soc'y for Krishna Consciousness, Inc., v. Lee, 505 U.S. 672, 678–79 (1992)).

[59] Arguably, this example is analogous to the *Walker* case where the majority found that the specialized message license plates in question constituted a forum. *Id.* at 2250–51.

[60] *See, e.g.*, *Women's Health Link, Inc.*, 826 F.3d at 951 (characterizing an occasionally opened Justice Department auditorium as a non-public forum).

limited-public forum, as described above,[61] with the judicial tests for restrictions of speech therein being akin to those appropriate for limited purpose fora.[62]

Non-public fora may take the form of venues such as the exteriors of, or the advertising spaces on: public buses;[63] airports;[64] polling places;[65] the Supreme Court Plaza as distinct from its adjoining sidewalks;[66] and certain post office sidewalks.[67] On the other hand, there is nothing about, say, public bus advertising spaces that dictates non-public or limited purpose public forum status.[68] Depending on the scope of the subjects or speakers permitted access thereto, bus advertising spaces may be held to amount to a designated public forum.[69]

Crucially, though, the treatment of both designated and limited purpose (or non-public) fora relies on trying to somehow distinguish between restrictions on the scope, purpose, or definition of the forum, and more suspect content—or viewpoint—based restrictions on speech within the scope of that forum.[70] In a phrase, government restrictions on the scope of such a forum are far less suspect than are restrictions of speech within the assumed scope of that forum.[71] Defining the scope of the forum is thus supposed to be substantially different from, and more benign than, restricting speech within the scope of the forum.

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[61] *Id.* (noting that the judicial test for non-public for a and specifying that in such a facility, private speech can be limited to "expression that furthers the purpose for which the facility was created") (citing Cornelius v. NAACP Legal Def. & Educ. Fund, Inc., 473 U.S. 788, 800 (1985)). For an example of a limited public forum case, see Christian Legal Soc'y Chapter of Univ. of Cal., Hastings Coll. of Law v. Martinez, 561 U.S. 661, 679 (2010).

[62] *Compare* the limited purpose forum speech restriction test applied in the cases cited *supra* note 52, *with* the similar language applied to non-public forum speech restrictions in, for example, *ISKCON*, 505 U.S. at 682–83; Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 49 (1983); *Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d at 1168–69; Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg'l Transp., 698 F.3d 885, 892 (6th Cir. 2012).

[63] *See, e.g.*, *Am. Freedom Def. Initiative v. King Cty.*, 796 F.3d at 1168–69; *Suburban Mobility Auth.*, 698 F.3d at 888–89, 892; Ridley v. Mass. Bay Transp. Auth., 390 F.3d 65, 72, 81–82 (1st Cir. 2004) (establishing that occasional departures from allowing only narrow access may not signal a government intent to establish a more open forum).

[64] *See, e.g.*, *ISKCON*, 505 U.S. at 683; Mocek v. City of Albuquerque, 813 F.3d 912, 930 (10th Cir. 2015).

[65] *See, e.g.*, Minn. Majority v. Mansky, 849 F.3d 749, 752 (8th Cir. 2017) (citing Minn. Majority v. Mansky, 708 F.3d 1051, 1057 (8th Cir. 2013)).

[66] *See* Hodge v. Talkin, 799 F.3d 1145, 1158 (D.C. Cir. 2015) (distinguishing the Supreme Court adjoining sidewalk case of United States v. Grace, 461 U.S. 171 179, 183 (1983)).

[67] *See, e.g.*, United States v. Kokinda, 497 U.S. 720, 730–32 (1990) (plurality opinion); Del Gallo v. Parent, 557 F.3d 58, 72 (1st Cir. 2009) (stating that "[a]lthough the Pittsfield Post Office is a non-public forum, the regulation must still be both viewpoint neutral and reasonable").

[68] See supra notes 54–58 and accompanying text, for a discussion of the unclear distinction between non-public and limited purpose forums.

[69] Intentionally allowing controversial political advertisements on a regular, or at least recurring, basis in such a venue, may suggest designated public forum status, with its more speech protective rules. *See, e.g.*, United Food & Commercial Workers Union, Local 1099 v. Sw. Ohio Reg'l Transit Auth., 163 F.3d 341, 355 (6th Cir. 1998); N.Y. Magazine v. Metro. Transp. Auth., 136 F.3d 123, 130 (2d Cir. 1998); Planned Parenthood Ass'n v. Chi. Transit Auth., 767 F.2d 1225, 1232–33 (7th Cir. 1985).

[70] For background, see Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 678–80 (1998).

[71] *See id.*

The problem is that the difference between narrowing the subject matter scope of a forum and restricting speech within that scope for content-based reasons is, at best, difficult to draw in practice on any principled basis. Typically, the distinction is elusive even when a government intentionally creates a designated forum, perhaps by gradually expanding a limited purpose or non-public forum.[72] The government may well not specify, exhaustively or at all, which subjects or speakers are within the scope of the forum. A private party's request to raise a subject may then be rejected by the government as supposedly outside the scope of the forum, when the government's real concern is that the particular subject, to which it had given no previous thought in the public forum context, is politically unappealing or risky.

Subject matter exclusions within the assumed scope of the forum, which are now judicially suspect,[73] thus may or may not reflect a preexisting but not articulated, or, perhaps, half-formed intent of the government in defining the scope of the forum.[74] These basic doctrinal problems are not subject to any clear and convincing resolution in the run of the mill cases.

As argued below, however, these problems can, in our approach, be largely bypassed at minimal cost. Many doctrinal problems can be avoided by the legitimate closure of a public forum, or some range thereof.[75] In pursuit of this possibility, we now consider questions of the permissibility of reducing what we may, for the moment, merely assume to be generally excessive levels of speech by closing particular fora.[76] Whether there is indeed a sustained excess of public forum speech, in one forum category or in general, and what to do about this at the level of legal policy, will then be addressed below.[77]

[72] *See* cases cited *supra* note 69.

[73] *See* Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226–27 (2015) ("Government regulation of speech is content based if a law applies . . . because of the topic discussed . . . . Some facial distinctions based on a message are obvious, defining regulated speech . . . by its function or purpose."). Arguably, taken literally, the language in *Reed* would jeopardize the meaningful distinction between regulating the boundaries of a forum and regulating on the basis of content within the scope of the forum.

[74] For a discussion of this general problem, see Matthew D. McGill, *Unleashing the Limited Public Forum: A Modest Revision to a Dysfunctional Doctrine*, 52 Stan. L. Rev. 929 (2000). Ascertaining a less than fully expressed government intent in this context, as also in the context of determining whether a restriction on speech is viewpoint-based or not, is often a largely subjective inquiry. *See, e.g.*, Verlo v. Martinez, 820 F.3d 1113, 1143–44 (10th Cir. 2016) (stating that evidence of governmental intent as to the status of a forum may depend upon policy statements, physical limits of the forum, compatibility of speech with other uses of the venue, and the range and frequency of permitted speech in practice). Similarly, a government's improper motive in restricting speech in a forum may be suggested by official statements, by under inclusiveness of the speech restriction in light of its stated purpose, and more generally by a loose, implausible, or non-existent fit between the speech restrictions and the purported government interest. *See, e.g.*, Ridley v. Mass. Bay Transp. Auth., 390 F.3d 65, 87 (1st Cir. 2004). In particular, a ban on "controversial" speech can easily be applied in viewpoint-based ways. *See* Hopper v. City of Pasco, 241 F.3d 1067, 1079 (9th Cir. 2001).

[75] *See* infra Parts III–IV.

[76] *See* infra Part III.

[77] *See* infra Part IV.

III. THE OPENNESS OF PUBLIC FORUM DOCTRINE TO POLICY-DRIVEN REDUCTIONS IN SHEER LEVELS OF SPEECH

From this point on, it is assumed that the various types of public fora can be thought of in terms suggested by the brief typology articulated above.[78] The main theme of this Part is that at least some of the public forum types clearly admit of legitimate and substantial policy-motivated reductions in the overall level of speech in such fora.

Perhaps, surprisingly, even the highly valued category of pure political speech can, in general, be legitimately prohibited, as a matter of policy, in various public fora.[79] The early public forum doctrine case of *Lehman v. Shaker Heights*,[80] for example, validated the city's prohibition of political, as distinct from commercial, advertising on its public buses.[81] The Court in *Lehman* legitimized local concerns for "the blare of political propaganda,"[82] which directly and clearly implicates our own concerns herein, as well as concerns over the possible appearance of political favoritism,[83] the undesirability of an unwilling "captive audience" for political ads,[84] and even for maximizing the city's long-term overall revenue from bus advertising in general.[85] The revenue accruing to the government, minus administrative costs, from advertising in a given public forum may be minimal, thereby calling into question the real strength of the governmental interest in the advertising revenue stream in question.[86]

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[78] *See supra* Part II.

[79] *See, e.g.*, CASS R. SUNSTEIN, THE PARTIAL CONSTITUTION 232–42 (1993); Douglas Laycock, *High-Value Speech and the Basic Educational Mission of a Public School: Some Preliminary Thoughts*, 12 Lewis & Clark L. Rev. 111, 113 (2008). For some historical complications, see Genevieve Lakier, *The Invention of Low-Value Speech*, 128 Harv. L. Rev. 2166 (2015).

[80] Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974) (plurality opinion). *But see* Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226–27 (2015).

[81] *Lehman*, 418 U.S. at 304; *see also* United States v. Kokinda, 497 U.S. 720, 725–30 (1990) (plurality opinion) (addressing the issue regarding low level scrutiny applied to ban on political advertising on post office sidewalks deemed to be non-public fora); Children of the Rosary v. City of Phoenix, 154 F.3d 972, 978 (9th Cir. 1998).

[82] *Lehman*, 418 U.S. at 304.

[83] *See id.*; *see also* Am. Freedom Def. Initiative v. Mass. Bay Transp. Auth., 989 F. Supp. 2d 182, 189 (D. Mass. 2013) (citing Del Gallo v. Parent, 557 F.3d 58, 74–75 (1st Cir. 2009)).

[84] *See Lehman*, 418 U.S. at 304.

[85] *See* Am. Freedom Def. Initiative v. King Cty., 136 S. Ct. 1022, 1022–23 (2016) (Thomas, J., dissenting from denial of cert.) ("A plurality of this Court has concluded that a public transit authority that categorically prohibits advertising involving political speech does not create a designated public forum."); *see id.* (recognizing the possibility of designated public fora with substantially less freedom to discriminate on the basis of advertising content); *Lehman*, 418 U.S. at 304 (plurality opinion); Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg'l Transp., 698 F.3d 885, 892 (6th Cir. 2012) (plurality opinion) ("An outright ban on political advertisements is permissible if it is a 'managerial decision' focused on increasing revenue to limit advertising 'space to innocuous and less controversial commercial and service oriented advertising.'" (citing *Lehman*, 418 U.S. at 304)); *see also Children of the Rosary*, 154 F.3d at 979 (discussing *Lehman* in relevant respects).

[86] *See, e.g.*, Christ's Bride Ministries, Inc. v. Se. Pa. Transp. Auth., 148 F.3d 242, 249–50 (3d Cir. 1998) ("The main function of the advertising space at issue is to earn a profit for SEPTA. Although

Closer to our main concern herein, though, is that some public fora generate either traditional captive audience concerns,[87] or at least what we might call broader, quasi-captive audience problems. The basic assumption is that, while speakers have a general right to seek out a willing and voluntary audience,[88] there are constitutional and pragmatic limits to such a right.[89] At some point, an implicit or explicit preference not to be (further) spoken rightly takes on constitutional and policy weight.[90]

The involuntary audience problem, both narrowly and somewhat more broadly conceived, is recognized in *Lehman*, the bus advertisement case.[91] One might seek to draw a distinction between a bus passenger's captivity and that of someone who is exposed to exterior ads on the bus. But one could, for whatever value it might offer, avert one's eyes[92] from signs inside the bus at least as effectively as urban pedestrians and drivers can avoid a dense network of signs.

In fact, Justice Douglas, concurring in *Lehman*, crucially emphasizes the largely involuntary character of the exposure in both the classic captive audience cases and in outdoor public street environments that are dense with largely, but not exclusively, commercial messages appearing in rapid succession.[93] Citing Justice Brandeis, Justice Douglas refers generally to advertisements that are "constantly before the eyes of observers on the streets and in street cars to be seen without the exercise of choice or volition on their part."[94] Further, Justice Douglas argues, "Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer. . . . The radio can be turned off, but not so the billboard or street car placard."[95] This phenomenon of general inescapability, if not strict technical captivity, is described more vividly by Judge John Noonan:

[B]uses call attention to themselves. Stuck in traffic beside or behind a bus, the driver and passengers of a car cannot avoid taking in what confronts them. It is in

SEPTA generates approximately 99.5% of its revenues through the [non-advertising] operation of the public transit system.").

[87] Among the most thoughtful "captive audience" discussions is *Children of the Rosary*, 154 F.3d at 977–78. The Court's most recent extended discussion of the captive audience problem is in *Snyder v. Phelps*, 562 U.S. 443 (2011), a funeral picketing case in which the protestors and their message were simply not seen or heard at the time by those conducting the funeral. *Id.* at 459–60.

[88] *See, e.g.*, Cohen v. California, 403 U.S. 15, 21–22 (1971); Cantwell v. Connecticut, 310 U.S. 296, 308–10 (1940).

[89] *See, e.g.*, FCC v. Pacifica Found., 438 U.S. 726, 748–49 (1978) (plurality opinion) ("[T]o say that one may avoid further offense by turning off the [car] radio . . . is like saying that the remedy for an assault is to run away after the first blow.").

[90] *See id.*

[91] Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974) (plurality opinion) (recognizing "the risk of imposing upon a captive audience").

[92] *See Cohen*, 403 U.S. at 21.

[93] *Lehman*, 418 U.S. at 305–08 (Douglas, J., concurring).

[94] *Lehman*, 418 U.S. at 307–08 (quoting Packer Corp. v. Utah, 285 U.S. 105, 110 (1932)).

[95] *Id.* (quoting *Packer Corp.*, 285 U.S. at 110). Of course, listener control over radio messages is imperfect. *See Pacifica Found.*, 438 U.S. at 748–49.

their face. Similarly, pedestrians waiting for a light to turn cannot avert their eyes from what a waiting bus offers to view.[96]

This practical inescapability of a succession of commercial or non-commercial messages may be reasonably judged to contribute to both distraction and sheer visual blight.[97] They may impose a more or less random, or even a government-endorsed, thought agenda on involuntary viewers. Such concerns are not merely confined to mobile, as opposed to stationary, signs and messages.[98] Publicly owned buses,[99] trains, structural walls, telephone poles, and streetlamps have fundamental purposes plainly distinct from the expression of messages by private parties.[100] Yet, each may also contribute to an overall problem of public forum speech overload.

Courts have often recognized the interests of non-consenting viewers or audience members in something like an opportunity to personally reflect, to reasonably control one's agenda, or to be alone with one's own thoughts, undisturbed by message bombardment.[101] The interests at stake take on various emphases, including that of broadly construed privacy,[102] avoiding distraction,[103] avoiding message "blare,"[104] and

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[96] Children of the Rosary v. City of Phoenix, 154 F.3d 972, 984 (9th Cir. 1998) (Noonan, J., dissenting).

[97] *See, e.g.*, Lone Star Sec. & Video, Inc. v. City of Los Angeles, 827 F.3d 1192, 1201 (9th Cir. 2016) (referring to "visual clutter and blight" and distinguishing in turn the person-to-person voluntary handbill exchange and subsequent discarding case of Schneider v. New Jersey, 308 U.S. 147 (1939) (citing Members of City Council v. Taxpayers for Vincent, 466 U.S. 789, 808 (1984))); *see also* Act Now to Stop War & End Racism Coal. v. District of Columbia, 846 F.3d 391, 403 (D.C. Cir. 2017) (stating that regulation of the "use of city lampposts as convenient places to post signs is a content-neutral . . . restriction that is sufficiently tailored to a significant governmental interest in avoiding clutter to comport with the First Amendment[]" and also referring to "[t]he rule's clutter-minimizing rationale").

[98] *See, e.g., Act Now to Stop War & End Racism Coal.*, 846 F.3d at 403 (discussing temporary versus permanent signs attached to city lampposts).

[99] *See, e.g.*, Am. Freedom Def. Initiative v. King Cty., 796 F.3d 1165, 1170 (9th Cir. 2015) (referring to "buses whose primary purpose is to provide safe and efficient public transportation").

[100] A similar prioritization of purposes may apply as well to private homes and other residences. *See* Frisby v. Schultz, 487 U.S. 474, 483–84 (1988) ("One important aspect of residential privacy is protection of the unwilling listener" (as opposed to "focused picketing" on the adjoining sidewalk, a traditional public forum)); *see also* Carey v. Brown, 447 U.S. 455, 471 (1980) ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."); *id.* at 459–60 (finding an impermissible distinction between peaceful labor picketing and other peaceful picketing); Kovacs v. Cooper, 336 U.S. 77, 87–89 (1949) (involving "loud and raucous" sound trucks on any public street, including residential neighborhoods).

[101] *See, e.g.*, the cases cited *supra* notes 93–100. But consider the case of Cohen v. California, 403 U.S. 15, 24–27 (1971) where the Supreme Court differentiated the First Amendment rights of others from the First Amendment rights of the individual, noting that "much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well" and that a state must take these factors into consideration when deciding whether to outlaw certain public displays of language. Here, the issue was a jacket which depicted a four-letter expletive. *Id.* at 16–17, 25.

[102] *See, e.g.*, the cases cited *supra* note 100.

[103] *See* Railway Express Agency, Inc. v. New York, 336 U.S. 106, 109 (1949) (stating that advertising vehicles in New York City streets are "a distraction to vehicle drivers and to pedestrians alike").

[104] *See, e.g.*, United States v. Kokinda, 497 U.S. 720, 726 (1990); Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974) (plurality opinion); Bryant v. Gates, 532 F.3d 888, 897 (D.C. Cir. 2008);

even avoiding unnecessary and occasionally debilitating environmental sources of stress or anxiety.[105]

These interests do not imply that persons who are granted a greater degree of privacy, undistractedness, freedom from overwhelming messaging, or reduced visual environmental stress will always respond by intensifying their own information gathering and reflection on public issues. But accommodating the above interests tends to facilitate one's own more autonomous information gathering, prioritization, and reflection. Autonomous inquiry, reflection, deliberation, and judgment are crucially central to the core purposes of freedom of speech.[106] What is as equally important is recognizing that these interests need not come at the expense of speakers' opportunity to seek out an appropriate audience—or of speakers' rights not to have their message suppressed by opponents of the content of their message.

The interest in the opportunity to undistractedly and largely self-directedly reflect, along with related interests,[107] though directly linked to the basic free speech values,[108] do not by themselves establish that the overall level of speech in some kinds of public fora is above an optimal level. The potential for conflict between values such as privacy, non-distraction, avoiding being visually and otherwise overwhelmed, and avoiding the stresses of non-consensually imposed speech and the current general level of speech in such fora, though, is obvious and undeniable.

These conflicts, which we discuss further below,[109] in the context of our contemporary culture, would be of no real significance if governments could not constitutionally restrict speech in various fora in substantial ways, let alone close many such fora. Crucially, however, is that speech in various public fora can be restricted on content-neutral grounds.[110] And more dramatically, many public fora can, for legitimate reasons,[111] simply be closed to speech by private parties, with no

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Children of the Rosary v. City of Phoenix, 154 F.3d 972, 979 (9th Cir. 1998); Christ's Bride Ministries, Inc. v. Se. Pa. Transp. Auth., 148 F.3d 242, 254 (3d Cir. 1998).

[105] *See* NAACP v. City of Philadelphia, 834 F.3d 435, 447 (3d Cir. 2016) (noting the testimony of a spokesperson for the city who described the Philadelphia International Airport as "a very stressful place" given typical commotion and anxiety levels, which required a managerial decision "to keep everything positive, everything non-controversial, and . . . soothing and pleasing").

[106] *See supra* Part I; *see also* the classic expositions in JOHN STUART MILL, ON LIBERTY 31–99 (1859). *See generally* WILHELM VON HUMBOLDT, THE LIMITS OF STATE ACTION (J.W. Burrow ed.) (1969).

[107] *See supra* notes 102–105 and accompanying text.

[108] *See supra* Part I.

[109] *See infra* Part IV.

[110] *See, e.g.*, Ward v. Rock Against Racism, 491 U.S. 781, 791–92 (1989); Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984); *see also* McCullen v. Coakley, 134 S. Ct. 2518, 2529 (2014) (quoting and approving of this idea but interestingly seeking to distinguish between traditional public fora in particular and sources of information such as books, television, or the internet). The *McCullen* view is that traditional public fora, such as the town square, are distinctively valuable because speakers can address neutral or hostile audiences as well as supporters, whereas book, television, and internet consumers can turn away from, or avoid entirely, speech they find to be distasteful. *See id.* We consider this theory in Part IV below.

[111] For discussion of possible limits on the broad governmental power to close public fora of one kind or another, see Steven R. Elzinga, Note, *Retaliatory Forum Closure*, 54 Ariz. L. Rev. 497, 513–14 (2012);

constitutional violation.[112] This broad power of forum closure is especially clear in the case of limited or non-public fora.[113]

For our purposes herein, it does not matter whether the public forum closing power is plenary and not subject to judicial review, or is instead contestable in cases of allegedly retaliatory (or anticipatory) closures based on hostility toward the viewpoint of messages that might be conveyed.[114] The broad regulation or closure of various fora that we herein endorse are plainly not motivated by anyone's disagreement with the viewpoints of any of the commercial, political, or other sorts of messages communicated in such fora. General public forum speech overload is clearly not a matter of anyone's disliking some particular messages within the forum, or on the perceived merits of any such messages.

Of course, to the extent that increased forum regulation or closure and the resulting reduced level of speech within such fora has any significant beneficial effects, there will be effects on speech in other venues. If nothing else, some talk in other venues will be about just such effects. More importantly, there would be a substantial shift in the locus of the affected speech to various private venues, if not also to other public fora that are not yet subject to additional regulation or closure. But, this would hardly amount to government viewpoint discrimination.[115]

Though, one might imagine that any closure of various public fora, or types of fora, for the sake of the benefits presumed to flow therefrom, would still have some

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Kerry L. Monroe, *Purpose and Effects: Viewpoint-Discriminatory Closure of a Designated Public Forum*, 44 U. Mich. J.L. Reform 985, 991–92 (2011); Jordan E. Pratt, Note, *An Open and Shut Case: Why (and How) the Eleventh Circuit Should Restrain the Government's Forum Closure Power*, 63 Fla. L. Rev. 1487, 1498 (2011).

[112] *See* Int'l Soc'y for Krishna Consciousness, Inc., v. Lee, 505 U.S. 672, 678 (1992); Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 46 (1983) ("[A] state is not required to indefinitely retain the open character of the facility . . . . "); Seattle Mideast Awareness Campaign v. King Cty., 781 F.3d 489, 496 (9th Cir. 2015) ("[T]he government may close a designated public forum whenever it chooses . . . ."); Hawkins v. City & Cty. of Denver, 170 F.3d 1281, 1284, 1287–88 (10th Cir. 1999) (discussing *Perry*, 460 U.S. 37 (1983) in the context of a government converting a traditional public forum property into a non-public forum by de-commissioning a public street); Southwest Airlines Pilots' Ass'n v. City of Chicago, 186 F. Supp. 3d 836, 841 (N.D. Ill. 2016) ("The nature of a forum is fluid . . . ."); Lidsky, *supra* note 13, at 1984 n.46.

[113] *See, e.g.*, Straights & Gays for Equality v. Osseo Area Sch. Dist., 471 F.3d 908, 913 (8th Cir. 2006); Santa Monica Food Not Bombs v. City of Santa Monica, 450 F.3d 1022, 1031–32 (9th Cir. 2006); Currier v. Potter, 379 F.3d 716, 728 (9th Cir. 2004).

[114] For discussion, see the authorities cited *supra* note 111; *see also* Student Gov't Ass'n v. Bd. of Trustees of the Univ. of Mass., 868 F.2d 473, 480 (1st Cir. 1989) ("Once the state has created a forum, it may not . . . close the forum *solely* because it disagrees with the messages being communicated in it.") (emphasis added).

[115] For broad discussion, see, for example, Wisconsin v. Mitchell, 508 U.S. 476 (1993); R.A.V. v. City of St. Paul, 505 U.S. 377 (1992). Content-neutral sound decibel limits on outdoor concerts will predictably have different adverse impacts on different genres of music. For background, see *Ward*, 491 U.S. 781. In a loosely related way, judicially changing the status of a given public forum from that of a limited or non-public forum to the presumably more speech-protective status of a designated public forum might, depending upon the circumstances, lead to a government decision to close the forum entirely. *See* Ark. Educ. Television Comm'n v. Forbes, 523 U.S. 666, 680–81 (1998).

adverse effects on the basic free speech purposes and values.[116] Reducing the overall level of speech in public fora must, one might thus imagine, involve significant costs in free speech terms, however justified such closures might be overall.

This inference, however, is actually much more doubtful than it might appear. Consider, by analogy, the permissibility of content-neutral restrictions of speech within a public forum. In such cases, courts often inquire into whether there remain available adequate alternative channels for affected speakers to convey their messages.[117] This inquiry should be recognized as crucial. If all speakers are barred from certain kinds of public fora, on whatever scale, the analogous question would be whether those speakers still have access to speech channels that count as adequate in light of the speakers' own free speech purposes and priorities.[118]

At a minimum, it is entirely possible that persons denied access to public fora would, in an era of social media, typically still be able to convey their messages, without undue cost or message distortion, to audiences the speakers themselves consider appropriate. Even in terms of what we might call one-time, venue-transition costs, many public forum speakers are presumably willing to experiment with and to re-envision what they imagine to be their optimal speech venues and audiences.

The underlying logic of reducing speech in public fora, with a corresponding increase in the use of private venues, including social media and internet speech in general, is thus partly a matter of the free speech purposes and the affected public interests. These purposes and interests take the forms of privacy,[119] non-distraction,[120] agenda-management, autonomy, avoidance of the sheer overwhelming

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[116] *See supra* Part I.

[117] *See* Christian Legal Soc'y Chapter of Univ. of Cal., Hastings Coll. of Law v. Martinez, 561 U.S. 661, 690 (2010); Frisby v. Schultz, 487 U.S. 474, 481 (1988) (explaining that even in a traditional public forum, content-neutral time, place, and manner restrictions are permissible if appropriately tailored to a significant state interest and if there remain "ample alternative channels of communication"); *id.* at 484 (recognizing residential privacy as such a sufficient interest); *Ward*, 491 U.S. at 791 (providing an ample alternative channels analysis in a public park concert context); Cornelius v. NAACP Legal Def. & Educ. Fund, 473 U.S. 788, 809 (1985) ("Rarely will a non-public forum provide the only means of contact with a particular audience. Here . . . the speakers have access to alternative channels . . . . ") (citation omitted); *Perry*, 460 U.S. at 53 ("[T]he reasonableness of the limitations on . . . access to the [public] school mail system is . . . supported by the substantial alternative channels that remain open."); Kovacs v. Cooper, 336 U.S. 77, 89 (1949) (concerning a sound truck on public streets and noting the remaining options of communication "by the human voice, by newspapers, by pamphlets, by dodgers," where one would today refer as well to various social media); Reza v. Pearce, 806 F.3d 497, 504 (9th Cir. 2015) ("In a limited public forum, . . . the reasonableness of restrictions takes into account whether the restrictions imposed leave open alternative channels of communication."); Int'l Soc'y for Krishna Consciousness of Cal. v. City of Los Angeles, 764 F.3d 1044, 1046 (9th Cir. 2014) (regarding both public and non-public fora); Contributor v. City of Brentwood, 726 F.3d 861, 865 (6th Cir. 2013) ("An alternative channel of communication can be adequate even when the speaker is denied its best or favored means of communication." (citing Phelps–Roper v. Strickland, 539 F.3d 356, 372 (6th Cir. 2008))).

[118] For background, see R. George Wright, *The Unnecessary Complexity of Free Speech Law and the Central Importance of Alternative Speech Channels*, 9 Pace L. Rev. 57 (1989).

[119] *See supra* note 102 and accompanying text.

[120] *See supra* note 103 and accompanying text.

blare of ambient speech,[121] and reducing speech-related stress.[122] The various distractions and invasions are generally less pervasive and less acute in private communications media than in public fora. In particularized terms, signs on buses are more likely to impose their messages on non-consenting drivers and pedestrians than are, say, particular social media or internet sites. Even if social media in general is thought to be widely addictive, particular segments, channels, or sites are clearly not. But a deeper consideration of the value of reducing the sheer amount of speech in public fora requires further and more contextualized consideration of the purposes of protecting speech more generally, which we now undertake below.

IV. THE FREE SPEECH VALUES AND THE WAY WE SPEAK NOW

Ultimately, the question of whether localities should seriously consider more substantially regulating or closing various public fora is only partially a matter of the weight of the relevant privacy-related, agenda-control, and non-distraction interests. We have suggested that even broad closures of public fora would typically not adversely affect the free speech interests of most speakers.[123] But we should at this point further clarify what is at stake in terms of free speech values and other, perhaps conflicting, values for speakers and audiences given the continuing availability of appropriate speech venues other than public fora.

The justifiability of closing public fora, or otherwise reducing the sheer quantity of speech in such fora, is in large measure a reflection of the impact of such closures on the basic purposes of protecting speech.[124] We have seen that these basic purposes are commonly thought to include autonomy, self-fulfillment, or self-realization;[125] pursuing truth;[126] universality in decision-making;[127] and pursuing some appropriate balance between social conflict and social consensus.[128] What, then, would be the likely effects on these basic free speech purposes of shifting speech from relatively obtrusive, privacy-invading, commonly distracting expression in public fora to typically less obtrusive, more privacy-respecting, and more consensually-driven alternative means of communicating?

Consider first the free speech purposes of promoting autonomy, self-fulfillment, or self-realization.[129] At anything like current levels of either commercial or political messaging in public fora, this purpose in particular could be optimally promoted by shifting speech from public fora to appropriate alternative speech channels. To begin with, autonomy for the targets of speech involves a substantial measure of meaningful control over one's exposure to the number or volume of messages in general, as well

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[121] *See supra* note 104 and accompanying text.
[122] *See supra* note 105 and accompanying text.
[123] *See supra* notes 117–118 and accompanying text.
[124] *See* Wright, *supra* note 118, at 58–59.
[125] *See supra* note 23 and accompanying text.
[126] *See supra* note 24 and accompanying text.
[127] *See supra* note 25 and accompanying text.
[128] *See supra* note 26 and accompanying text.
[129] *See supra* note 23 and accompanying text.

as some substantial ability to meaningfully select among messages. Typically, individuals have greater autonomous control over the specifics of their own particularized internet usage, or non-usage, than they do over the obtrusive, unalterable commercial and political messaging environment of, say, public streets, buses, and airports.

More deeply, autonomy, self-fulfillment, and self-realization are clearly not enhanced overall by high, increasing, or uncontrolled exposure to unsolicited messages. Autonomy is plainly not a matter of the passive, largely unfiltered, reception of often unanticipated messages.[130] Autonomy instead requires appropriate opportunity for intelligently selecting, processing, evaluating, and generally undistractedly reflecting upon the otherwise nearly unlimited range of available messages.

Autonomy, self-fulfillment, and self-realization require some sort of balance between the active or passive intake of messages and what might be called, in a broad sense, contemplation. A certain distancing from the vast array of messengers and messages is required. Contemplation is in this broad sense indispensable to self-fulfillment, whether we take contemplation to be our highest priority or not.[131] Shifting the locus of most incoming messages from public fora to less obtrusive, less invasive alternative channels promotes the self-fulfilling practice of contemplation.

The remaining free speech purposes of the pursuit of truth, universality in decision-making, and balancing social conflict and social change[132] are collectively unimpaired, if not furthered, by broadly reducing public forum speech in favor of more privately controlled alternative speech channels. As a matter of perspective, let us consider that our current high levels of speech in the various public fora have plainly not left us with a generally healthy overall level of civic awareness or political knowledge, such as would be sufficient for an optimal pursuit of political and other truths, or for universality in democratic decisionmaking.[133] This is instead more a

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[130] For broad discussion of the value of autonomy, see, for example, PERSONAL AUTONOMY: NEW ESSAYS ON PERSONAL AUTONOMY AND ITS ROLE IN CONTEMPORARY MORAL PHILOSOPHY (James Stacey Taylor ed., 2005); GERALD DWORKIN, THE THEORY AND PRACTICE OF AUTONOMY (1988).

[131] For a prioritization of the practice of contemplation, see ARISTOTLE, THE NICOMACHEAN ETHICS bk. X, §§ 7–8, at 263–68 (J.L. Ackrill & J.O. Urmson rev. trans., Oxford Univ. Press ed. 1998) (~350 BCE); MARCUS AURELIUS, MEDITATIONS bk. 7, § 28, at 110 (Betty Radice & Robert Baldick eds., Maxwell Staniforth trans., 1964) (~167) ("Withdraw into yourself."); ANTHONY KENNY, ARISTOTLE ON THE PERFECT LIFE chs. 7–8 (1992); THOMAS MERTON, AN INVITATION TO THE CONTEMPLATIVE LIFE 33–34 (Wayne Simsic ed., 2006); JOSEF PIEPER, HAPPINESS AND CONTEMPLATION 13 (Richard Winston & Clara Winston trans., 1998) (1979) ("[M]an's ultimate happiness consists in contemplation."); C.D.C. REEVE, ACTION, CONTEMPLATION, AND HAPPINESS: AN ESSAY ON ARISTOTLE 266 (2012) (explaining that, for Aristotle, "[t]he more of the life activity of contemplation our *bios* contains . . . the more like God's it is in its happiness"); SENECA, LETTERS FROM A STOIC letter VII, at 43 (Robin Campbell trans., 1969) (~64) ("Retire into yourself as much as you can."); THE UPANISHADS: BREATH OF THE ETERNAL 44 (Swami Prabhavananda & Frederick Manchester trans., 2002) (1948) ("[W]ise, self-controlled, and tranquil souls . . . who practice austerity and meditation in solitude and silence, are freed from all impurity[.]").

[132] *See* notes 24–26 and accompanying text.

[133] *See, e.g.*, ILYA SOMIN, DEMOCRACY AND POLITICAL IGNORANCE (2d ed. 2016); David T.Z. Mindich, *A Wired Nation Tunes Out the News*, *in* THE STATE OF THE AMERICAN MIND 97, 98–99

matter of the operation of public and private school educational curricula.[134] Nor is it clear that public forum speech has moderated or lessened our current expanding polarization and mutual political hostility, as distinct from the free speech goal of a stable balance between political conflict and consensus.[135]

To a substantial degree, Americans thus derive whatever understanding they may have of government and politics from some combination of their overall education and their voluntary exposure to traditional and emerging privately owned communications media.[136] Civic knowledge and the ability to follow and contribute to policy arguments can be enhanced through more serious civic education in private and public schools.[137] Civic speakers in our various public fora could, as we have seen, presumably redirect their focus from any closed public forum to less obtrusive, more voluntarily encountered private media sites, at minimal cost in terms of their own free speech values.

For political, commercial, and other forms of free speech-related communication, traditional and non-traditional private media are already of substantial importance.[138]

(Mark Bauerlein & Adam Bellow eds., 2015) ("Current evidence . . . se[e]s . . . civic inquisitiveness in grave decline," with "diminished interest in current affairs among younger people" (citation omitted)); Karoli Kuns, *Justice David Souter on Civic Ignorance: 'That Is How Democracy Dies,'* CROOKS & LIARS (Oct. 22, 2016, 4:00AM), http://crooksandliars.com/2016/10/justice-david-souter-civic-ignorance-how [https://perma.cc/8AWF-J5EP]; Reid Wilson, *Only 36 Percent of Americans Can Name the Three Branches of Government*, WASH. POST (Sept. 18, 2014), www.washingtonpost.com/blogs/govbeat/wp/2014/09/18/only-36-percent [https://perma.cc/367C-GBU7]; *Americans' Knowledge of the Branches of Government Is Declining*, CISION: PR NEWSWIRE (Sept. 13, 2016) ("Only a quarter of Americans can name all three branches of government."), https://www.prnewswire.com/news-releases/americans-knowledge-of-the-branches-of-government-is-declining-300325968.html [https://perma.cc/37UE-2B7J]; *see id.* (discussing a survey by the Annenberg Public Policy Center of the University of Pennsylvania); *Our Fading Heritage: Americans Fail a Basic Test on Their History and Institutions*, INTERCOLLEGIATE STUD. INST. (2008), https://www.americancivicliteracy.org/2008/major_findings_finding1.html [https://perma.cc/4HBL-AP68].

[134] *See generally* William A. Galston, *Political Knowledge, Political Engagement, and Civic Education*, 4 ANN. REV. POL. SCI., 2001, at 217 (discussing the impact of school curricula on civic engagement).

[135] For discussions of our increasing, if not accelerating, political polarization, fragmentation, and extremism, see, for example, JAMES E. CAMPBELL, POLARIZED: MAKING SENSE OF A DIVIDED AMERICA (2016); MARC J. HETHERINGTON & THOMAS J. RUDOLPH, WHY WASHINGTON WON'T WORK: POLARIZATION, POLITICAL TRUST, AND THE GOVERNING CRISIS (2015); Andrew Soergel, *Is Social Media to Blame for Political Polarization in America?*, U.S. NEWS & WORLD REP. (Mar. 20, 2017, 3:18 PM), https://www.usnews.com/news/articles/2017-03-20/is-social-media-to-blame-for-political-polarization-in-america.

[136] *See generally* Galston, *supra* note 134 (discussing the effects of education and media consumption on political knowledge).

[137] *See generally id.*

[138] For a sense of current media usage rates and trends, see, for example, NIELSEN, THE NIELSEN TOTAL AUDIENCE REPORT: Q1 2016 (2016), http://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2016-reports/total-audience-report-q1-2016.pdf [https://perma.cc/SJ29-LR4F]; Jacqueline Howard, *Americans Devote More than 10 Hours a Day to Screen Time, and Growing*, CNN (July 29, 2016, 4:22 PM), http://www.cnn.com/2016/06/30/health/americans-screen-time-nielsen/index.html [https://perma.cc/52M2-S28C]; *Cellphone Addiction Is 'an Increasingly Realistic Possibility,' Baylor*

Unlike, say, an advertisement on the public bus immediately ahead, there is a substantial element of genuine consent, voluntariness, and of discretionary initiative-taking in texting, tweeting, emailing, surfing the internet, or visiting particular social media sites.[139] The one-time transition costs for public forum speakers to a greater emphasis on private media may at most be modest. The fully appropriate private media audience may be much greater, with the possible nuance, detail, potential length, vividness, potential persuasiveness, and detail of one's message being greater in private fora as well.

The positive side of the most inescapable and obtrusive public forum messages is, perhaps ironically, that the speaker may reach persons who would not consent to hear the message voluntarily. Whether coercively obtained or not, the audience in such cases may be politically quite diverse. This consideration admittedly takes on some importance if we also choose to assume that private media usage is, by contrast, relatively strongly segregated by ideology, such that most private media users hear only messages that are personally unobjectionable or that largely confirm their own preexisting biases.[140]

If most adults do in fact largely confine their news intake to a politically narrow and homogeneous echo chamber, the sheer obtrusiveness of a wide range of public forum speech might in that respect offer some advantage.[141] And the idea that we receive only personally appealing, validating news and perspectives thereon certainly has some currency.[142]

Crucially, though, the available empirical and survey evidence actually suggest instead that the problem of political isolation or self-segregation is overstated, such that typical public forum speech offers no substantial upgrade in breadth of perspective.[143] Public forum speech as a news source thus typically offers little or no

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Study of College Students Reveals, BAYLOR U. (Aug. 27, 2014), https://www.baylor.edu/mediacommunications/news.php?action=story&story=145864 [https://perma.cc/FJW6-7EV3] [hereinafter *Cellphone Addiction*] ("[R]espondents overall reported spending the most time texting (an average of 94.6 minutes a day), followed by sending emails (48.5 minutes), checking Facebook (38.6 minutes), surfing the internet (34.4 minutes)[,] and listening to their iPods (26.9 minutes)"). The study did not consider time with media such as radio and television. *Id.*

[139] Even if we consider some persons to be "addicted" to social media or the internet, see *Cellphone Addiction, supra* note 138, the addiction in question may allow for a much wider range of discretion and choice as to messages received than is typically the case in one's confronting, or being confronted by, the pre-existing messages on display in public fora.

[140] For the classic article on the important phenomenon of confirmation bias, see Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, 2 REV. GEN. PSYCHOL. 175 (1998).

[141] *See* Seth Flaxman et al., *Filter Bubbles, Echo Chambers, and Online News Consumption*, 80 PUB. OPINION Q. 298 (2016) (discussing research finding online news consumers operate in echo chambers).

[142] *See* R. Kelly Garrett, *Echo Chambers Online?: Politically Motivated Selective Exposure Among Internet Users*, 14 J. COMPUTER-MEDIATED COMM. 265 (2009).

[143] R. Kelly Garrett, *Selective Exposure: New Methods and New Directions*, 7 COMM. METHODS & MEASURES 247, 248 (2013) ("The idea that we live in an era of political echo chambers, in which news consumers seek out likeminded partisans while systematically shielding themselves from other viewpoints, is both prevalent and wrong.").

increased breadth of political perspective beyond that which most persons access via private media.

Let us simply assume, for purposes of the argument, that selectively partisan private media exposure "contributes to political polarization,"[144] and that "greater media fragmentation has contributed to increased political polarization."[145] One important limitation, however, is that such effects seem to be strongest among,[146] if not largely confined to,[147] a limited number of strongly engaged political partisans who seem least likely to be unaware of the basic claims and arguments of their opponents. Strongly engaged political partisans may typically monitor opposing news and opinion sources, if only to dismiss or invalidate such items.[148] Strongly engaged political partisanship realistically involves meaningful awareness of the basic positions and arguments of one's designated opponents.

For typical citizens, crucially, there is no news isolation chamber, or isolating bubble effect, for which public forum speech might conceivably provide a unique solution. As one group of scholars reports, "[I]n America today, it is virtually impossible to live in an ideological bubble. Most Americans rely on an array of outlets — with varying audience profiles — for political news. And many consistent conservatives and liberals hear dissenting political views in their everyday lives."[149] Otherwise put, "Although there is some variation between the media diets of Republicans and Democrats . . . neither group appears to engage in active avoidance of disagreeable information. Individuals across the political spectrum are not creating partisan 'echo chambers' but instead have political media repertoires that are remarkably similar."[150]

As it turns out, visitors to distinctly conservative news websites are thus more likely than are typical online news consumers to have also visited the New York Times website, and visitors to distinctively progressive news websites are more likely

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[144] Natalie Jomini Stroud, *Polarization and Partisan Selective Exposure*, 60 J. COMM. 556, 557 (2010).

[145] John V. Duca & Jason L. Saving, *Income Inequality, Media Fragmentation, and Increased Political Polarization*, 35 CONTEMP. ECON. POL'Y 392, 411 (2017).

[146] *See* Shanto Iyengar & Kyu S. Hahn, *Red Media, Blue Media: Evidence of Ideological Selectivity in Media Use*, 59 J. COMM. 19, 19 (2009).

[147] *See* Markus Prior, *Media and Political Polarization*, 16 ANN. REV. POL. SCI., 2013, at 101, 101 ("[I]deologically one-sided news exposure may be largely confined to a small, but highly involved and influential, segment of the population. There is no firm evidence that partisan media are making ordinary Americans more partisan.").

[148] *See, e.g.*, *About the MRC*, MEDIA RES. CTR., http://www.mrc.org/about [https://perma.cc/GVY6-2HNC] (last visited Jan. 27, 2018) ("MRC's sole mission is to expose and neutralize the propaganda arm of the Left: the national news media. This makes the MRC's work unique within the conservative movement.").

[149] PEW RESEARCH CTR., POLITICAL POLARIZATION & MEDIA HABITS 1 (Oct. 2014), http://assets.pewresearch.org/wp-content/uploads/sites/13/2014/10/Political-Polarization-and-Media-Habits-FINAL-REPORT-7-27-15.pdf [https://perma.cc/7ZDG-2VCN] (noting typical disparities in news venue preferences among distinct liberals and conservatives).

[150] Brian E. Weeks et al., *Partisan Enclaves or Shared Media Experiences? A Network Approach to Understanding Citizens' Political News Environments*, 60 J. BROADCASTING & ELECTRONIC MEDIA 248, 248 (2016).

than more typical news consumers to have visited foxnews.com.[151] Similar results have been obtained with regard to social media use.[152] The belief that to de-emphasize the prominence of speech in public fora would thus itself contribute to further ideological isolation and fragmentation is thus doubtful at best.

CONCLUSION

The image of a soapbox orator in a public park,[153] holding forth before variously hostile, skeptical, indifferent, curious, and supportive listeners, seems central to our understanding of the institution of freedom of speech. This image, however, should not dictate our thinking with regard to speech, of whatever sort, in the various forms of public fora. We have seen that otherwise appropriate reductions in the sheer amount of speech in various public fora, and indeed the closure of many such public fora, would tend to promote not only the broad public interest, but the crucial substantive values and purposes underlying freedom of speech itself. This conclusion holds even as we properly accommodate the value of speakers' ability to seek out an audience, and the disvalue of allowing listeners to suppress unpopular views.

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[151] *See* Matthew Gentzkow & Jesse M. Shapiro, *Ideological Segregation Online and Offline*, 126 Q.J. ECON. 1799, 1823 (2011); *id.* at 1801 (discussing study finding "no evidence that the Internet is becoming more segregated over time").

[152] *See, e.g.*, Chris Wells et al., *When We Stop Talking Politics: The Maintenance and Closing of Conversation in Contentious Times*, 67 J. COMM. 131 (2017). For further relevant discussion, see Nicholas T. Davis & Johanna L. Dunaway, *Party Polarization, Media Choice, and Mass Partisan-Ideological Sorting*, 80 PUB. OPINION Q. 272 (2016); Flaxman et al., *supra* note 141.

[153] *See generally Hyde Park: Speakers' Corner*, ROYAL PARKS, https://www.royalparks.org.uk/parks/hyde-park/things-to-see-and-do/speakers-corner [https://perma.cc/E8QG-HJXZ] (last visited Jan. 27, 2018) (discussing the historical use of Speakers' Corner).