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Understanding Free Speech as a Two-Way Right

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This article argues that free speech is a 'two-way right'. The right to marriage is a typical two-way right: it is not a guarantee that every single person can get married. Instead, it only ensures that if two consenting adults wish to marry each other, they can do so freely. Similarly, the right to free speech does not protect a speaker's unilateral right to speak, nor an audience's unilateral right to hear. Free speech protects the parties' right to *communicate with each other*. Many agree that communication is a collaborative activity. Yet, this collaborative essence is sometimes overlooked. Particularly, when analyzing speech rights, there is a tendency to zoom in on either the speaker interests or the audience interests, focusing on the distinctions between the two. The two-way approach reorients our understanding of free speech, to one that is more integrally shaped by a concept of communication as a joint collaborative endeavor.

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Understanding Free Speech as a Two-Way Right

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What exactly is covered under the right to free speech? The simple answer is, as its name suggests, it covers the act of 'speaking'.[1] But most of the time, when we speak, we do not intend to just utter some words, we intend to be heard. This suggests that the value of our speech depends on the successful *communication* of thoughts from one to another. Communication involves two sides. If communication is key to understanding free speech, a direct implication is that the right to free speech should cover both the speaker *and* the audience interests. Recent literature on free speech has highlighted the importance of communication in our understanding of the right.[2] Most authors working on free speech agree that communication requires some kind of collaboration between the speaker and the audience, and our right to free speech is underpinned by the interests of both sides.

In principle, this joint nature of communication is widely accepted. Yet, in practice, there is a tendency among free speech theorists to emphasize the distinction between the interests of the speaker and those of the audience. On the one hand, many analyses focus on the speaker's interests in freely expressing herself and to be heard; on the other hand, some analyses pay special attention to the listener who wants to freely hear, and to have access to uncensored information. This routine, emphatic focus on either (usually the speaker's) interests and the differentiation between the two gives the impression that speakers and listeners are relatively unrelated kinds of actors. Little attention has been paid to how the two sets of interests are intertwined and how the unique relationship between the speaker and her audience bears on the nature of

[1] In this article, I will be using the term 'speech' / 'speaking' as synonymous with 'expression' / 'expressing' such that it includes both spoken and written words and other forms of word-less expressions like music, dance, photographs, artworks and performances etc. Similarly, the term 'hearing' will include all the corresponding actions at the recipient side of all such expressions.

[2] Most notably, see: Shiffrin 2011, 2014; Post 2011; and Weinstein 2004. Also relevant is the rich and extensive debate on illocutionary silencing, in particular (Caponetto 2016; Hornsby and Langton 1998; Maitra 2009; McGowan 2014; and West 2003).

their communication. This tendency to analyze the two sides of the communicative relationship separately paints a misleading picture: it suggests that 'speaking' and 'hearing' are more akin to a coordinated sequence of actions, rather than a truly joint and collaborative endeavor.[3]

In this article, I will propose an alternative approach, one that understands free speech rights in a way that is integrally shaped by a conception of communication as a two-sided, collaborative activity. A right that pertains to a two-sided collaborative activity is fundamentally different from a right that pertains to a one-sided unilateral activity. I will borrow certain insights from the right to marriage to highlight the difference, and to reconceptualize our understanding of the right to free speech. The gist of the comparison is that both speech and marriage require mutual voluntary collaboration from at least two parties. That is, the activity's value is realized only when both parties enter into it willingly with each other, and the essence of the right will be distorted if the activity can be unilaterally demanded by just one side of the relationship. Consider the case of marriage: I alone have no one-sided right to get married, I cannot unilaterally demand someone to marry me. Likewise in speech, a speaker alone should not have a one-sided right of self-expression and unilaterally demand an unwilling audience to listen; similarly, an audience should not be able to claim a one-sided right to access information and unilaterally demand an unwilling speaker to say something. When it comes to collaborative relationships such as these, the parties are not just standalone actors that work together for some personal benefit; instead, their interests are intricately intertwined, at least vis-à-vis the collaboration. I refer to rights that pertain to such collaborative relationships as 'two-way rights'. This article will argue that free speech should be properly understood as a two-way right.

Before getting into the main discussion, I will begin by providing further details on the classic and contemporary literature in Section I. My key argument is set out in Sections II and III. Section II explains what two-way rights are, then Section III shows how two-way rights can inform our understanding of the right to free speech. Section IV addresses some common objections and Section V concludes.

I. THE CONVENTIONAL APPROACH

When we think about typical violations of our right to free speech, we think about government censorship, book banning, persecution of journalists, and so on. Popular discourse on free speech focuses on what words we are prohibited from *saying*, what

[3] I thank the anonymous reviewer for helpful suggestions on how to clarify the position of this article among the current literature.

thoughts we are not allowed to express. The most high-profile judicial cases involving free speech all have to do with how *speakers* are restricted in what they can and cannot say. But the popular discourse's overemphasis on 'speech' itself can actually be quite misleading. While scholarship remains divided on what fundamental values ground our right to free speech,[4] most agree that free speech has no value without a right to *communicate*. In this sense, the right to free 'speech' (or the equivalent 'freedom of expression') is a misnomer. It should more properly be described as a right to free 'communication'.[5] So, how does shifting our attention from 'speech' to 'communication' change our understanding of the right?

Communication involves a relationship between at least two parties: a speaker and an audience. A simple way to reframe our understanding of 'free speech' into 'free communication' is just to add the corresponding audience interests onto the existing set of speaker interests. That is, the right to free speech is justified by both sets of interests that individuals have *qua* speakers and *qua* audiences. As speakers, we have an interest in expressing ourselves, sharing our ideas and viewpoints with others. This includes the corresponding negative interest against compelled speech, that individuals cannot be forced to say things against their own wishes.[6] As audience members, we have an interest in hearing and accessing uncensored information, and not be subject to compelled listening.[7] It seems that if free 'speech' is, in fact, free 'communication', it is only natural to incorporate the audience's perspective into the discussion. This way of understanding the right to free speech is prominent in the classic literature on the topic, and is still gaining a lot of traction in courts. Traditionally, free speech jurisprudence is split into two camps: listener theories and speaker theories.[8] The two camps are divided over the question of whose interests should be given priority and which set of interests truly ground our right to free speech. Given the vast amount of literature on this topic, I will not be able to give a comprehensive overview of all the complexities and nuances in the overall debate. I will however strive to illustrate the major points with some examples of how the speaker and/or the audience interests are featured in each of the three classic arguments for free speech – (i) truth in the

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[4] See below for the three most common values cited to support the freedom of speech in liberal society. Note that these are not without challenges and criticisms. See Bonotti and Seglow 2021 for a helpful and comprehensive overview.

[5] See Hodge (1982, p.152) and Kenyon (2021, p.4) noting a similar point. Surveying the philosophical literature, Howard (2024) notes that 'freedom of speech', 'freedom of expression' and 'freedom of communication' are mostly used equivalently.

[6] Corbin 2009, p. 977.

[7] Corbin 2009, p. 980.

[8] Bonotti and Seglow 2021; Howard 2024.

marketplace of ideas; (ii) democratic self-governance; and (iii) individual autonomy and self-expression.

A. The Marketplace of Ideas

Mill is often credited for the famous argument that truth is more likely to emerge in an environment in which a myriad of ideas is allowed to flourish, even if many of those ideas are false, unpopular and absurd.[9] Freedom of speech is thus valuable because it helps foster a healthy 'marketplace of ideas', in which the community can benefit from the knowledge it produces. This is necessarily a listener-centered type of theory, focusing on the value the audience can reap from the knowledge born out of the free environment.

Audience interests in the marketplace of ideas have received quite a bit of attention in judicial proceedings. For example, in *Red Lion Broadcasting Co., Inc. v. FCC*,[10] the US Supreme Court had to determine whether the fairness doctrine imposed on broadcasters was a violation of the First Amendment. In the judgment, the Court noted: "*It is the right of the viewers and listeners*, not the right of the broadcasters, *which is paramount*... It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market..."[11] (*my emphasis*) Taking into account how the fairness doctrine promoted the interests of the audiences, the Court held that the regulation was not a violation of the broadcaster's free speech rights.

In listener theories, the role of the speaker is merely instrumental.[12] Speakers are just sources of information, generic parts that constitute the 'market', the public discourse. Audiences seem to have little concern over *who* the speaker is, their main interests lie in the output – truth, knowledge and a vibrant market of ideas. The quality of the information is what matters, not the identity of the speakers. The communicative relationship between the speaker and her audience plays only a tangential role in these analyses.

B. Democratic Self-governance

Others justify the right of free speech by appealing to the role it plays in promoting democratic self-governance. Alexander Meiklejohn is a seminal advocate of one such theory, and was said to be defending a listener-centered view when he famously

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[9] Mill 1859.

[10] 395 U.S. 367 (1969).

[11] *Ibid.*, p. 395.

[12] See Kendrick (2017) for more case laws and a detail discussion on the instrumental role played by speakers.

stated: "What is essential is not that everyone shall speak, but that everything worth saying shall be said."[13] The emphasis here is on the availability of information and ideas necessary for healthy democratic discourse. What matters is the amount of information that is out there, and not what each individual is or is not allowed to say.

Meiklejohn's approach was adopted by the US Supreme Court in *Columbia Broadcasting System v. Democratic National Committee*.[14] In this case, Justice Burger ruled that it is constitutional for broadcasters to refuse paid editorial advertisements from certain entities, because to deny broadcasters such discretion means that airwaves would just be filled with the political views favored by the wealthy. The court's focus in this case was on how to maintain a 'balanced coverage of public issues'.[15] A similar sentiment can also be detected north of the border. The Canadian courts have frequently put special emphasis on the value derived from the widespread dissemination of information and ideas. For example, in *Edmonton Journal v. Alberta (Attorney General)*,[16] the Canadian Supreme Court noted: "Members of the public – as viewers, listeners and readers – have a right to information on public governance, absent which they cannot cast an informed vote."[17] And in *Irwin Toy Ltd. v. Quebec (Attorney General)*,[18] the same court noted that freedom of expression is fundamental to a democracy because of "a diversity of ideas and opinions for their inherent value both to the community and to the individual."[19]

Again, all such judicial comments point to something impersonal: it does not matter to *whom* the speaker is expressing a view; or from *whom* the audience is receiving a piece of information. Attention is given to the quality of the information, its accuracy and diversity. One would be hard-pressed to find a judicial comment on how different communicative *relationships* might have a bearing on the democratic process.

C. Autonomy and Self-expression

Authors who champion individual autonomy as the fundamental value that justifies free speech usually fall on the speaker-side of the debate. For example, Edwin Baker argues that the speaker's self-realization is the ultimate reason why we have free

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[13] Meiklejohn 1948, p. 26.

[14] 412 U.S. 94 (1973).

[15] *Ibid.*, para 78.

[16] [1989] 2 S.C.R. 1326.

[17] *Ibid.*, at pp. 1339-40.

[18] [1989] 1 S.C.R. 927.

[19] *Ibid.*, at p. 968.

speech rights. According to his view, speech is valuable to a speaker because it allows her to express herself and this is what makes it worth protecting. He notes that the values of free speech "emphasize the speech's source in *the self*, and make the choice of *the speech by the self* the crucial factor in justifying protection"[20] (*my emphasis*). In such speaker theories, the roles seem to have been reversed. Now, the audience becomes just a generic supporting character, a mere channel for the spread of the speaker's thoughts and opinions. The speaker is the true star of the show, her interests alone seem to be what truly matters when understanding the right to free speech.

The above examples illustrate how the courts and classic free speech theorists typically treat the speaker and audience interests as discrete entities, often preferring the perspective of one over the other when justifying the freedom. More recently, some legal scholars have even gone so far as to dub the audience interests as a distinct right on its own, to treat the 'right to listen' as a constitutional right that is separate from the speaker's 'right to speak'. Andrei Marmor argues for this view explicitly. He says: "Freedom of speech is not one complex right, but spans two separate rights that I will label the right to speak and the right to hear."[21] A separate 'right to hear' has also been referenced by the courts in several landmark decisions. In *Kleindienst v. Mandel*,[22] the US Supreme Court explicitly noted that the Constitution protects 'the right to receive information and ideas' and that there is both 'the freedom to hear as well as the freedom to speak'.[23] Elevating the audience interests to a status of a standalone 'right' means the audience has an independent claim against the state for access to information, a claim that is on par with the speaker's right 'to speak'. This implies that in cases of conflict, the two rights will be pitted against each other, vying to outweigh the other in the judicial balancing exercise.[24]

A common feature found in all of the above views is that very little has been said about the communicative relationship between the parties, and how it bears on the respective justifications for our right to free speech. For example, is free speech conducive to truth and democratic decision-making as long as the ideas are spoken and heard; or does the unique relationship between the speakers and their audiences play a role in

[20] Baker 1989, p. 52.

[21] Marmor 2018, p. 140.

[22] 408 U. S. 753, 408 U. S. 762-763 (1972).

[23] The Court does note that the two are 'inseparable' and are 'two sides of the same coin' (p. 775). But it remains unclear how this understanding reconciles with these being two distinct freedoms.

[24] See Corbin (2009) for more examples and detailed analysis on court decisions referencing or establishing a right to hear.

realizing these values? Does it matter to the speaker's self-expression, whether her audiences are listening willingly or are forced to hear her talk? These are not questions that have been addressed by analyses that focus on just one side of the communicative relationship. For the sake of convenience, I will refer to all approaches that treat the speaker and the audience as having two separate and distinct sets of interests or rights as the 'Conventional Approach'.

More recently, authors on free speech have started to deviate from the Conventional Approach. Most notably, Seana Shiffrin advocates a thinker-based theory that highlights the importance of communication. As an attempt to unify the three classic theories, she argues that what truly grounds our right to free speech are the interests of the 'thinker' – human agents that possess rational, emotional and moral capacities. According to Shiffrin, *authentic communication* with others is essential to the development and operation of us as thinkers.[25] Also bringing communication to the forefront are Robert Post and James Weinstein. Focusing on the democratic theory, they suggest an alternative to the Meiklejohnian approach. Dubbed 'participatory democracy', their theory highlights the importance of public discourse as a whole, and how the communicative process and *equal participation in dialogue* is valuable.[26] According to these contemporary approaches, communication is no longer an impersonal process, nor a mere tool for self-expression and the extraction of information. The nature of the communicative relationship itself plays a more crucial role in the process, and the interests of the speaker and her audience are more intertwined. This is in fact in line with a tradition found more commonly in the philosophy of language – a tradition that sees communication as inherently a collaborative venture.[27] That something is collaborative means that what matters are not just the individual interests, but also how each person's interest is interdependent and contingent on that of the other. That is, the unique *relationship* between the parties makes a substantive difference to the nature of the activity.

In what follows, I will explore in detail how looking at communication as a two-sided, collaborative activity can help reconceptualize our understanding of free speech. What does it mean to treat the speaker and her audience as truly joint collaborative partners, and not just standalone agents that work together for their own separate benefit. To

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[25] Shiffrin 2011, pp. 291, 295.

[26] Post 2011, p. 486; Weinstein 2004, p. 1104.

[27] The most obvious proponent of this view is Grice (1989), who goes so far as to outline a set of 'Cooperative Principles' that governs conversation. Another paradigmatic example is Lewis (1969), who sees the fundamental nature of conversations and language as solutions to coordination problems. For more examples, see Camp 2018. I thank the editor, Robert Goodin, for bringing this point to my attention.

be clear, it is not the purpose of this article to comment on the respective merits of the various classical theories, or the more contemporary ones. I am *not* suggesting an alternative to the three classical justifications to free speech, or proposing that there are some other values not captured by the current theories. My purpose here is just to explicate an alternate perspective in our understanding of how these values may arise from speech and communication. Maybe freedom of speech is still valuable as an aid or precondition of truth, democracy, or autonomy. What I will show is just that these values do not arise simply because a speaker can say what she wants and an audience can hear useful information. Instead, I will argue that whatever value grounds our right to free speech comes from the joint communicative relationship between the parties.

II. ONE-WAY RIGHTS VS TWO-WAY RIGHTS

Communication does not consist simply of two standalone parties, in proximity to each other, remaining detached and independent. Communication, in essence, is a joint and interdependent process; it puts the parties in a *collaborative* relationship. The parties may disagree with each other on everything being said, they could be archenemies in every single aspect of their lives. But for *communication* to occur, their interests must align, in at least a minimal way, in terms of their desire to be participants in the activity. More importantly, *how* they relate to each other bears substantively on the nature and value of their communicative endeavor. The Conventional Approach's tendency to focus on either the speaker or the audience interests has the unfortunate effect of hiding the true relational and interactional feature that is the essence of communication. My proposal in the following two sections will be my attempt to bring the collaborative spirit of communication back into the spotlight. And the upshot of this is that we should adjust our understanding of free speech from (what I will refer to as) a 'one-way right' to a 'two-way right'.

Before we look at what I mean by a 'two-way right', let us first look at what is a 'two-sided activity'. As is clear from our discussion thus far, communication is a two-sided activity. The activity itself requires participation in at least two capacities (e.g. speaker and listener) for it to even *count* as communication. This is fundamentally different from one-sided activities, where participation in a single capacity is sufficient for the activity to obtain. Consider the act of cooking. Cooking can of course involve several different roles – chef, sous chef, line cook, etc. But having multiple roles is not a necessary condition for 'cooking' to happen. Cooking, by its very nature, is not a two-sided activity.[28] In contrast, I can never 'communicate' if there is just the role of the

[28] I thank Sergio Tenenbaum for suggesting this example.

'speaker' or the role of the 'listener' (or 'writer' and 'reader'). Both capacities must be present for communication to happen.[29]

Complications arise whenever a right aims at covering a two-sided activity, or so I shall argue. For rights that relate to one-sided activities, it is often the case that the state's role is simply to ensure that we have reasonable access to the actions or states of affairs or resources the right pertains to. This is the case with the right to clean water, sufficient food, and adequate housing. These are straightforward to understand: the state's obligation is to make available to everyone the relevant resources. Rights that relate to two-sided activities are more complicated. There are two possibilities in such cases. The rights could operate just like in the case of one-sided activities where the state's role is to ensure reasonable access. Take for example the right to healthcare. Healthcare by nature is a two-sided activity – there is the side of giving care and the side of receiving care. But in most cases, healthcare is treated just like water, food and housing. The state's role is to provide us with reasonable access to health services if and when we need them. It has the responsibility to devote resources and procure enough hospitals, doctors, and medicines, etc. such that I can obtain the health services that I may require. It is my own problem if I hate visiting the doctor and procrastinate on all matters related to my health. But when I choose and decide to seek medical help for my illness, my right to healthcare is threatened if I am then unable to receive the necessary services because of, say, long wait times and unaffordable consultation fees. Even though caregiving is a two-sided activity, the state took on the responsibility of the 'giving' side of the equation. I will refer to the rights to water, food, housing, healthcare, and other rights where the state has the responsibility to provide us with reasonable access to the relevant actions, states of affairs or resources as 'one-way rights'.

Compare the one-way rights with the right to marriage. To say that people should have the right to get married regardless of their sexual orientation is *not* to say that the state has the responsibility to provide anyone with a marriage, like a medical service, if they so choose. While the state has a duty to hire enough doctors to provide us with adequate healthcare, it is not the state's duty to procure potential mates who would love me and want to spend the rest of their lives with me. Even if I really want to get married and try very hard to find a mate but fail to do so because of my terrible personality, I cannot say that my right to marriage is violated. What the right covers is merely that, *if* I can find someone willing to marry me, the marital institutions and rules would allow us to do so regardless of our sexual orientation, race, religious background, etc.

[29] For now, I am setting aside mildly deviant cases, such as singing in the shower, or writing in a private diary. I will briefly address these cases in Section IV below.

Even though 'healthcare' and 'marriage' are both two-sided activities, and are both fundamental human rights, the nature of the two rights is different. The state cannot provide us with marriage like it does healthcare. The state's job is to ensure that everyone can obtain the healthcare they need. But it is not the state's job to ensure that everyone can get married if they want to. Marriage involves an extra unknown variable – the mutual desire of two consenting adults to enter into a marriage with one another. And the state plays no role in this; it has no power over whether two people wish to marry each other. Marriage is what I will refer to as a 'two-way right': the state is not there to ensure that every *single person* can get married, instead, what the state ensures is that every *consenting couple* who wishes to enter into the relevant relationship has access to marriage. It is not a violation of the right if the reason I am unable to get married is simply because no one wants to marry me. To summarize: the protection of one-sided activities always involves one-way rights, whereas the protection of a two-sided activity could involve one-way rights or two-way rights.

Before we turn our attention back to the right to free speech, let us first take a brief look at negative rights. Rights to healthcare and marriage are usually referred to as 'positive' rights, where the state has a positive duty to provide the relevant services or set up the relevant institutions to enable us to pursue what the right pertains to. Negative rights, on the other hand, do not impose a positive duty on the state or others, but simply require that the agent be left to act unobstructed and not be interfered with.[30] Applying the concept of two-way rights to negative rights is a bit less intuitive. Let us first consider the one-way negative right of religious freedom. Religion can of course be complicated involving churches, congregations and the clergy. But for the sake of simplicity, let us focus on the bare minimum. At its core, religious practices can be a one-sided activity, say for example if I practice worshipping some unknown spirits at the riverbank every day at sunrise. My right remains intact as long as no one obstructs or interferes with my morning worship. The state's duty is to prevent any such undue interference. Of course, a lack of interference is no guarantee that I can attend the worship, if, for example, I forgot to set the alarm clock correctly. But my right remains intact as long as my failure to worship is not a result of any interference coming from the state or other social actors.

The role of other social actors works a bit differently in two-way negative rights. Consider the freedom of association. Suppose I started a volcano surfing club. The success or failure of the club is *necessarily constituted* by the actions of other social actors. If everyone refused to join me in such an unpopular and dangerous activity, my club would fail. So what is the state's duty here? It seems that the state still has a duty to prevent

[30] Berlin 1969 [2016].

any undue interference that would obstruct or prevent me from forming an association. It seems that the right should guarantee that no one interferes with my registering for the club, no law prohibits or even discourages me from setting it up and advertising for members to join. But it is certainly not the state's duty to convince people to join my club, even though a lack of members is a clear obstacle to my club's success. To impose such a duty on the state would be toeing the line of turning freedom of association into a (one-way) positive right. But in most cases, it remains firmly a negative one, because the state's duty does not extend to member procurement. Instead, its duty is to ensure that there is no undue interference that prevents free members of society from associating with one another, *if and when* they wish to do so. In this sense, the value of free association arises for the members (or potential members) *jointly but not severally*; the state's duty is to prevent any undue interference that would obstruct *us* from associating with each other. I, alone, have no right to unilaterally demand that others come share my interests. This also implies that the freedom has no jurisdiction over matters that arise between willing members of an association. That is, the freedom of association does not give people a right to force others to join an association, nor does it govern the rights and interests between the parties themselves. Disputes within the club, such as disagreement on which volcano to surf, are not within the purview of the right. The two-way right protects the relationship of the parties as a whole, not the individual interests of the members against each other within the collaborative relationship itself.

Why are there two-way rights? Why can't the state provide each of us with marriage like it does healthcare? If the state can hire doctors, teachers and firemen to provide us with healthcare, education and emergency services, why can't the state hire life partners to provide us with marriage, and volcano-surfers to join my club? Two-way rights are distinct from one-way rights not only because such rights always pertain to two-sided activities, but also because *the nature of certain collaboration precludes such unilateral participation*. Let me explain this preclusion in more detail using the right to marriage as our guide.

A. The Mutual Voluntary Choice

The one-way approach to a right is inappropriate when the *mutual voluntary choice* of the parties has a bearing on the constitution of the activity the right pertains to. Compare healthcare and marriage. Hospitals and doctors have a professional duty to not reject any patients due to personal preferences. The doctor did not choose and pick me out from a thousand other patients to receive treatment. I was just the next in line. But this lack of apparent preference on the part of the caregiver has no bearing on the

healthcare that I receive. As long as treatment is up to professional standards, it matters little to me how much the doctor wants or does not want me as a patient. Marriage is different. It matters that the partners of a marriage are not getting married out of duty or a professional code, but out of their own volitions. It matters that it was a free and voluntary choice for *both* of them. A lack of consent on either side of the relationship severely distorts the fundamental essence of marriage. A union made under threat, or deception, or for a monetary exchange may sometimes still be called 'marriage', but such unions are constitutively different from a marriage that is formed as a truly mutual and voluntary union out of the parties' own free will. The same mutuality applies to many other collaborations, from business partnerships, to friendships, to sex and intimate relations.[31] In all such cases, the one-way approach would be inappropriate, since its very nature is inconsistent with the requirement that there be a genuinely mutual voluntary choice between the parties.

B. Significance of Personal Relationships

The one-way approach to the right is also inappropriate when the *personal relationship* between the parties plays a substantive role in the activity the right pertains to. Even though collaboration always involves multiple parties, the relationship between the parties is not always crucial in shaping the activity. Take for example crowdsourcing on the internet, where the personal dynamics between the collaborators matters little (if anything) to the activity. Whether the other contributors are friends, or enemies, or just strangers across the world has no bearing on the outcome of the project. Contrast this with my decision to get married. It is not the case that me and my spouse, each individually, have an interest in getting married *in general*. The choice we made was to *marry each other*. This personal element is what makes the mutual support and commitment worthwhile. I only wish to love and support *this person* who also wishes to love and support me. If it is someone else, if it is just some other random person, it would no longer be a marriage that I want. The relationship specific to us makes a substantive difference to the nature of our marriage. Personal relationships are built on the parties' unique personalities, their compatibility, shared experiences and histories. These are not something that can be artificially manufactured and procured by the state in a one-way right.

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[31] In her seminal article, Srinivasan (2018) notes that there is no right to sex, that a person's right is not being violated simply because someone refuses to have sex with them, and that no one is under an obligation to have sex with anyone else. According to what I am suggesting here, Srinivasan is only saying that there is no *one-way* right to sex. But this does not preclude the possibility that there is a *two-way* right to sex.

The need for a two-way approach to rights therefore stems from the importance of a mutual voluntary choice between the collaborating parties, and the significant impact their personal relationship has on the activity the right pertains to. Taking these two features into account, a two-way right is therefore a right that is *premised on the individual freedom to mutually choose the relationship in which they enter*. Without respect for this freedom, the fundamental essence of the collaboration will be distorted, and none of the other interests that otherwise justify the right stand.

III. FREE SPEECH IS A TWO-WAY RIGHT

If, as many acknowledge, we are truly to understand 'free speech' as 'free communication', then free speech, properly understood, is a two-way right. Communication is not just the one-sided activity 'speaking' plus the one-sided activity 'hearing' appearing in a coordinated sequence. Communication involves *a transfer of thought*, the nature of which is fundamentally dependent on the connection between the parties. The most important upshot of this is that, like marriage, communication as a joint collaborative activity precludes unilateral participation, or so I shall argue.

A. The Mutual Voluntary Choice

Like the case of marriage, it makes a difference that the parties to a communication do so voluntarily. Without the mutual voluntary choices, the essence of communication is lost. Take for example, when school children in the US are obliged to recite the pledge of allegiance, it can hardly count as communication in the general sense. The children, as speakers, are not really transferring any of their thoughts to the audience. The forced nature of the pledge makes it more like a recital than a proper communication. On the listener side, when speakers force their speech onto an involuntary audience, it may still technically count as 'communication', thoughts may have been transferred despite the reluctance on the part of the recipient. But the unwillingness of the audience distorts the essence of communication, turning the words into a 'nuisance' or 'harassment' or even 'brainwashing' instead. This is similar to the case of marriage under threat, or marriage for a monetary exchange. It may still technically be a 'marriage', but the collaborative essence is lost. A proper communication, a genuine transfer of thoughts happens when the speaker and audience both voluntarily join the conversation of their own volition. And only treating free speech as a two-way right can properly protect the essence of the activity.

An important point must be noted here: The 'mutual voluntary choice to enter into a communicative relationship' is not a stringent requirement at all. In fact, it has a much lower threshold than most other collaborative relationships (like marriage). It merely

requires a willingness to ‘communicate’, broadly construed. Communication does not only include amicable, rational philosophical discussions among like-minded peers. It can also be an infuriating shouting match with bigots and racists. Communication can happen as long as we are generally open to hearing what others might say. Others might be friendly and express kindness, but they may also be mean and scream insults. Both count as communication. While people often prefer nice, fruitful conversations, we in fact often willingly enter into communications that are hostile, frustrating, boring, meaningless or otherwise unpleasant. It might be because we were curious, or craved conversation, or we wanted someone to scream at, or we just wanted to give it a chance and ‘hear them out’. Sometimes it is because we do not know how bad an episode of communication will be until it happens. But a bad communication is not an involuntary one. The reason we are able to realize that the communication is ‘bad’ is because it is successful. A connection was made, some thoughts were transferred from one to another, which made us mad or disappointed or even regret having started the conversation. But this is not the same as being forced into a communication that we do not want *ante facto*, such as being forced to say words that I do not mean, or to hear thoughts I already know I want to keep out of my mind. In such cases, it is not the infuriating content or the meaningless exchange, but the coerciveness of the communicative act itself that distorts the essence of what communication is supposed to be.

B. Significance of the Personal Relationship

Like marriage, the personal relationship between the speaker and the audience has a significant impact on shaping the communication. We communicate for all sorts of reasons. We may discuss philosophy, or argue about politics. We may gossip, vent, or joke. But whatever form it takes, communication always involves the passing of thoughts from one party to another. And the nature of this transfer does not only depend on the content of the thought that is being passed, it also depends on the *relationship* between the parties. Suppose I hear the statement ‘That presidential candidate is a fascist!’. *Who* said this to me makes a big difference to the nature of the communication. Was it from a trusted friend who I frequently discuss politics with? Or was it from a conversation struck up between strangers waiting in line at the grocery store? What if I read this from some trending post shared by some distant relatives on social media? Even though the exact same content was expressed, it means something different to me because of the different relationships I have with the speakers. This is not only because the credibility of the information differs, but the relationship alters the nature of the communication itself. Hearing the statement from my friend may trigger a more emotional response, knowing the personal struggle she has with social oppression. The same statement

made in the grocery store may just be a tool used as a conversation opener, something like talking about the weather, to help strike up a conversation. I would probably just treat the statement on social media as propaganda, something to be ignored. All of these involve the same propositional content. But the nature of the communication differs significantly because of the identities, personal history, relationships and dynamics between the speaker and the audience. Communication is not some kind of impersonal endeavor where unrelated agents work together for their own separate benefits. It is not just a large-scale social project to pass around information and opinions. It is how people participate in each other's lives; it allows us to connect, interact, argue and resonate with each other. Relationships can shape the fundamental nature of each instance of communication; and only by treating free speech as a two-way right can we properly respect the impact that relationships have on communication.

Similar to the earlier discussion on the willingness to communicate, what counts as a 'relationship' here should also be given a broad construal. The examples I have used focus on in-person one-on-one communicative relations. But communicative relationships in the modern world can take many different forms. Two friends can communicate. But so can thousands of strangers on social media platforms. The relationships can be open and unilateral – authors can publish their stories with no preconceptions about who the readers might be and have no expectations of any feedback. The relationship can also be extremely imbalanced – the candidate running for office can be extremely eager to share her views on various political issues, but voters may just be indifferent or skeptical of what she has to say. Communicative relationships can span across generations, with no limits on space and time – Socrates' words from more than 2000 years ago can be communicated to philosophy students today. Whatever the unique relationship between the speaker and her audience, it plays a substantive role in shaping the nature of their communication. The diverse range of communicative relationships means that we should broaden our understanding of the parties 'mutual voluntary choice' further. For a proper communication to happen, the parties need not choose precisely *who* they wish to communicate with; what is needed is just for them to freely choose the *communicative relationship* they enter into, be it closed or open, synchronic or diachronic, in the form of a monologue or dialogue, etc.

C. The Scope of Two-Way Rights

The significance of mutual voluntary choice of the communicative relationship between the parties is what makes the right to free speech, properly understood, a two-way right. Thus, what the right to free speech covers is, *pace* the Conventional Approach, not just

the aggregate rights of 'speaking' and 'accessing information'. What the right aims to protect is our freedom to mutually and voluntarily choose who we communicate with (and the format and content of the communication). What exactly is needed to safeguard such a freedom is a complex matter that will require another thorough investigation. But I envisage that at least the following three conditions must obtain in order for us to have a real voluntary choice in our communicative relationships:

(i) The law must protect the right of willing parties to enter into communication with each other. This would include the typical safeguards against arbitrary bans on publications, broadcasts, editorial columns, etc. But because communication involves more than just someone 'speaking', there will also need to be measures in place to protect different *types* of communication. For example, protecting the privacy of messages will be crucial for more intimate communications. Parties may find it hard to tell each other their true thoughts and feelings if they fear that their private conversation might get publicized. On the other side of the spectrum, more public forms of communication may also need protection. This is especially so in the case of communicating on social media, where genuine authentic exchange of thoughts and information is often drowned out by unwelcomed noises (such as ads, spam, or propaganda). The appropriate measures will differ depending on what is needed to protect the kind of communicative relationship in question.[32] What safeguarding communication does *not* include is an assurance that a speaker has an audience, or that the audience has access to certain information. The value of free speech comes from parties willingly entering into communication. This means that the law has no business in the procurement of a reluctant audience or speaker, as it would be antithetical to creating a *voluntary* relationship (as noted in the next point below).

(ii) The law must protect us against compelled speech and compelled listening. If we are forced to speak or listen to others, we cannot say that we have the freedom to choose our communicative relationships. This is similar to how we do not have

[32] Recent debate on illocutionary silencing took a deeper look at what 'communication' entails. Building on J.L. Austin's Speech Act Theory, some feminist scholars argue that proper uptake is a necessary condition to successful communication. If such is the case, safeguards to voluntary communicative relationships would include reasonable protection against systematic interference that undermines the understanding between the parties. For more detailed discussion see: Caponetto 2016 and McGowan 2014 on sincerity silencing; Fricker 2007 on epistemic injustice; Hesni 2018 on illocutionary standing; Hornsby and Langton 1998 on uptake failure; and West 2003 on due comprehension and consideration. The two-way understanding of free speech will have substantive implications to the ongoing debate on this topic.

the freedom to marry if we are forced into an arranged marriage; or how we do not have the freedom to contract if the agreement was made under duress. The Conventional Approach treats cases of compelled speech and compelled listening as a conflict where the courts must balance a speaker's *prima facie* right to speak against a listener's *prima facie* right to hear. For example, the Conventional Approach asks: does the candidate's right to play loud political messages outweigh the resident's right to not be disturbed? Does the audience's right to access diverse viewpoints outweigh the broadcaster's right to screen editorial content? In these cases, courts may sometimes order a party be compelled to speak or listen in order to safeguard the free speech right of another.[33] In my view, such an approach misunderstands the essence of the right. If free speech is a two-way right as I argue here, there is *never* a *prima facie* right to speak (or to hear) to begin with. It is not a matter of balancing interests. No one has any standalone right that entitles them to force anyone else into communication. Genuine freedom must include a right to reject and *not* participate.

(iii) To ensure true freedom in terms of our communicative relationship, the law must also safeguard our right to initiate relationships, to invite and reach out to potential partners. Because we are dealing with collaborative relationships, in order to get a genuine choice in the matter, a crucial step in the process is for parties to explore and gauge interests. This is similar to how our freedom to marriage is contingent on our ability to meet potential mates; and how our freedom to contract is contingent on our ability to initiate negotiations. Consider certain cultures in history, where girls were not allowed to interact with anyone outside their immediate family. Even if they had a say in choosing their spouse, with no (or very limited) knowledge of the social circle, we can hardly say that they had genuine freedom in the matter. For the same reason, to ensure that we have genuine freedom to choose our communicative relationships, the law must include a right to explore, choose and invite those whom we wish to engage with in communication.

There is of course much left to be said on the exact scope of each of the above conditions. The scope would also be very different depending on whether we are treating free speech as a negative right or a positive one. If free speech is just a negative right, the state's duty would focus on protecting the communications from outside interference. For example, if I am to give a controversial lecture to a willing audience, protestors should not be allowed to play loud music outside the lecture hall to make it hard for the

[33] For more examples on compelled speech and listening see: Corbin 2009; Kendrick 2017; and Norton 2019.

(willing) audience to hear what I say. Notices and posters inviting people to the lecture should also be protected against vandalism, to ensure I can properly invite and reach out to potential audiences. What happens if free speech is a positive right? A positive right means the state has the obligation to provide "... just that which the right guarantees."[34] In this respect, whether free speech is a one-way or a two-way right will make a substantial difference to the scope of the state's duty. If free speech is a one-way right, the state would have to guarantee that everyone can 'speak' and 'receive information' as they wish. This may involve having to directly procure informative speakers for me when I require information, and attentive audiences when I am in the mood to express my views. The scope changes if free speech is a two-way right. The positive obligations of the state will be to ensure that willing parties can find one another and are able to communicate. So for example, in the controversial lecture example, if willing audiences speak another language, the state may have a duty to subsidize translation services to enable communication.[35] Or if putting up posters is too outdated, the state may have to secure a better platform to help match willing speakers with willing audiences.[36]

To sum up, the right to free speech is a two-way right. The right does not only pertain to a freedom to 'speak', to say whatever we want. Nor does the right only pertain to a freedom to 'hear', to have uninhibited access to information. Nor is the right a simple aggregation of the two. Instead, what truly underlies our right to free speech is our freedom to mutually choose our own communicative relationship (broadly construed). This includes: a right to choose who we communicate with, together with the format and content of the communication; a right to refuse to enter into particular communications; and a right to explore and invite willing partners to enter into communicative relationships. I will refer to this understanding of free speech as the 'Two-Way Approach'.

IV. OBJECTIONS AND REPLIES

There is an obvious objection: if I can only get married if someone is willing to marry me, does the Two-Way Approach mean that I can only speak if there is a willing audience? Clearly, this cannot be correct. Imagine a lone protestor shouting some slogans in

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[34] Schauer 2008, p. 916.

[35] This may be especially relevant in multicultural societies where certain minority groups do not speak the majority's language.

[36] This is becoming a more prominent issue in modern society. In a recent article, Wu (2018) notes how technology has changed the nature of communication; with the number of trolls and propaganda on the internet, we often find ourselves flooded with unwanted information. If this is the case, a willing speaker and a willing audience may not even be able to locate each other in the vast sea of internet nonsense.

the Speaker's Corner of the park on a quiet Wednesday morning. Very few people are passing through, and those who are, pay no attention to the protestor. In fact, passersby would rather be left alone and just carry on with their day. The protestor seems to have no willing audience. But isn't this the paradigmatic case that the right to free speech should protect?[37] The purpose of this section is to clarify why reconceptualizing free speech from a one-way right to a two-way right does not automatically mean that we are justified to ban the lone protestor from speaking without an audience. In fact, it bears noting that understanding free speech as a two-way right requires more caution in application than most other two-way rights, such as marriage or entering into contracts. This extra complication comes from the unique nature of communication and the ubiquitous role it plays in our daily lives, or so I shall argue.

Looking at the case of the lone protestor from the Two-Way Approach, the question we need to ask is what are the communicative relationships in play? One possible answer is that there are, at present, no *established* voluntary communicative relationship. Instead, the protestor is just reaching out and trying to *invite* others into communication by shouting slogans in the Speaker's Corner. As noted above, to ensure true freedom in terms of our communicative relationship, the law must safeguard our right to initiate communication. A complication arises here because in order to 'initiate' communication, we often have to use some kind of communication *ex ante*. Whereas we do not have to first get married in order to look for a potential spouse, nor do we have to first enter into a contract in order to initiate contractual negotiations; we must often first communicate in order to invite others into communication. This makes it difficult to ensure that *all* communications are completely voluntary all the time. One way to address this is to presume that those who knowingly walk past a Speaker's Corner have given implied consent to at least be invited into communication. Further considerations will be necessary to determine what preconditions are required for such a presumption to be reasonable. These will depend on the context, together with the relevant norms and conventions that may apply in different situations. For the case of our lone protestor, I envisage that it will be reasonable to presume passersby have given such implied consent only if there is clear and sufficient signage around the area to notify people of a protest happening, and that alternative routes are available so that people can reasonably avoid the protest if they do not wish to be invited into communication.

What happens when someone rejects the protestor's invitation to communicate? Even under the Two-Way Approach, a single rejection by itself does not justify restricting the protestor from speaking further. This is because the protestor still retains a right to communicate with *other* willing audiences, and to initiate communication with *other*

[37] I thank the anonymous reviewers for pushing me to clarify on this and similar cases.

people who are still open to being invited. The legal issue that arises from someone unwilling to hear what the protestor has to say is related to the conflict of rights. As noted, under the Conventional Approach, when dealing with cases of compelled listening (or speaking), the courts, as arbiters, would weigh the speaker's interests in speaking, against the audience's interests in (not) hearing, and the conflict is typically resolved by balancing one against the other.[38] The Two-Way Approach agrees that there are conflicting interests here. But the conflict is *not* between 'the speaker' and 'the audience' as individuals. Instead, it is between 'the willing-to-communicate parties' and the 'unwilling-to-communicate parties'. That is, the focus here should be on how to ensure that the protestor can continue to invite and communicate with those who are willing, while at the same time not subjecting the unwilling audience to compelled communication. I suspect that in most cases, sufficient prior notice and careful administrative effort can do the trick. For example, in relation to unsolicited telemarketing calls, some jurisdictions now maintain a 'Do Not Call Registry', where people can opt out of certain communications. The Conventional Approach would see such a registry as sacrificing the speaker's right for the sake of protecting the hearer against compelled listening.[39] Whereas under the Two-Way Approach, such a Registry can ensure that everyone's right to free speech remains intact. This is because willing parties remain free to communicate with one another while unwilling parties are not forced into communications; and no one is required to sacrifice their interests to uphold the rights of others. It is only in rare cases where it is really impossible to secure everyone's rights that the courts will have to carry out the balancing exercise; and even then, given the special constitutional importance of free speech, it would be important to ensure that any restrictions that may limit willing parties from finding or communicating with each other are only imposed as a last resort.

There is a further complication regarding whether the protestor has a right to re-invite someone who previously rejected the invitation. The extent of any re-invitation right will of course depends on the form and content of the rejection – whether it is a definite blanket rejection of any further invites, or whether it is a mere 'not right now'. The challenge here is where we should draw the line between genuine re-invitations that are conducive to finding voluntary communications, and badgering or harassment.[40] Because communications can take on so many different forms, and because

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[38] See Corbin (2009) and Kendrick (2017) for examples of how courts resolve cases of compelled listening.

[39] See further analysis on telemarketing cases in Norton 2019.

[40] I thank the editor, Robert Goodin, for raising this point. See Goodin (2024) on this and other related issues that involve evoking consent.

communication itself is necessary for us to reach out and find willing communicative parties, it is especially important that the law gives special consideration to the scope of freedom that we need in order to create communicative relationships. Keeping this in mind, I am inclined to suggest that any ambiguities in terms of re-invitation should be interpreted in favor of the party who initiates communication. This also means that it is extremely difficult to justify banning our lone protestor from shouting slogans at the Speaker's Corner of the park just because she has no apparent audience at the moment. Even though no one is paying attention right now, the protestor still has a right to invite (and even re-invite) others to enter into a mutually voluntary communicative relationship. It is only when every single person in the community has indicated a definite and unequivocally permanent refusal to be invited that there is justification to ban the protestor from the Speaker's Corner. Of course, such an extreme scenario is almost unimaginable, not to mention how difficult it would be to prove in a court of law.

There is another important case where speech lacks an audience – speech made primarily for the purpose of self-expression. For example: private diaries, messy drafting notes that are only used to organize one's own thoughts, or someone singing in the shower expecting no one to hear them. Authors, such as Shiffrin and Baker, who advocate that free speech be grounded in values of self-expression, are of the view that 'private speech' without any intent of communication should be covered.[41] Since the Two-Way Approach focuses on voluntary *communication*, it will, *ipso facto*, mean that all purely private speech, which involves no transfer of thought from one person to another, is excluded from the scope of protection. Nothing in this article is intended to suggest that these activities do not warrant constitutional protection. What the Two-Way Approach does highlight is that communicative speech is fundamentally distinct from purely private speech.[42] Communication by its very nature involves someone else, a transfer from one to another, an effect on the outside world. On the other hand, purely private speech is completely self-regarding. Not only do I not need an audience to sing in the shower, my action has *completely zero* effect on anyone else in society (if someone can hear me, it is not truly private). For this reason, there have been no laws nor court cases at all that arise from purely private speech. Consider the prohibitions

[41] Baker 1989, p. 51; Shiffrin 2011, p. 285.

[42] To determine whether a speech is truly private, we can borrow a thought experiment from West (2003). Suppose there is a 'meaning obliterator', which will turn whatever the speaker said into gibberish in the minds of its audience (who is not the speaker herself). If the meaning obliterator has no effect on the essence of the speaker's activity, then it is a truly private speech (e.g. while my effort in writing this article will be rendered futile by the meaning obliterator, I would not care, or may even welcome its effect, if I am writing in my private diary).

related to fraud, hate speech and fake news – none of the related laws and regulations are applicable to speech that has absolutely no audience and is not intended nor expected to reach any audience at all. Restricting purely private speech would be akin to restricting 'freedom of thought and conscience' (to use Mill's wording).[43] In fact, given its completely private nature, maybe these two types of 'speech' should not fall under the same umbrella of 'free speech'; and maybe even if they do, they should warrant different understandings and justifications under our constitutional framework.

V. CONCLUSION

Analyzing the notion of communication can be tricky. Because speakers and audiences seem to play such different roles in the communicative relationship, it allows us to identify and describe speaker interests in a way that is distinct from audience interests (and vice versa). While this distinction can be helpful for abstract analyses, it may also have the unintended downside of detracting us from the essence of communication: that it is a joint and collaborative activity. In this article, I have tried to center this perspective. I have explained why, regardless of which values ground our justification for free speech, speech's value is premised on a mutual voluntary choice to enter into communication with one another. This collaborative essence is only preserved when we can freely choose what, when, where, how and with whom we communicate. I have also briefly outlined some implications the Two-Way Approach may have on our understanding of the scope of our right to free speech. Reconceptualizing free speech as a two-way right, I expect that the proposed approach would yield a different understanding for some of the more contentious free speech cases. The arguments outlined in this article would be especially relevant to issues related to illocutionary silencing, commercial speech and compelled listening. But unfortunately, a detailed analysis of how the Two-Way Approach would apply to these cases must remain a task for another article.

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[43] *Cf*. Shiffrin (2011, p. 283) who argues that protection of free speech is indeed the protection for the freedom of thought.

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The author declares that she has no competing interests.

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