

## DEMOCRACY, FREEDOM OF SPEECH, AND FEMINIST THEORY: A RESPONSE TO POST AND WEINSTEIN

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PROFESSORS Robert Post and James Weinstein offer a series of arguments for democracy as the central value guiding First Amendment theory, and it is a pleasure to engage with such rich and important work. Along the way to their conclusion, they suggest that truth and autonomy—the two other, primary contending values—are less desirable than democracy both theoretically and as an adequate explanation for existing First Amendment doctrine.<sup>1</sup> Their criticisms of these alternatives rest, however, on particular, flawed models of truth and autonomy. Feminist philosophers in both epistemology and moral/political theory have developed strong critiques of both the traditional, Cartesian model of truth and the traditional, liberal model of autonomy. These feminist critiques ground alternative approaches to truth and autonomy that are not subject to the criticisms raised by Post and Weinstein. Moreover, a feminist perspective reveals that Post and Weinstein's democracy theories, while undoubtedly capturing a central concern of the First Amendment, also rest on a problematic model of autonomy.

I will begin by responding to their criticisms of the truth and autonomy theories from the perspective of feminist epistemology and moral theory. I will then briefly outline the central difficulty with their democracy theory and the way in which it relies upon a flawed model of autonomy. Their theories require a division between realms of life in which autonomy must be assumed, which are defined as public discourse, and realms in which autonomy need not be recognized. But human experience does not divide in

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<sup>1</sup> Robert Post, *Participatory Democracy and Free Speech*, 97 Va. L. Rev. 477, 485–87 (2011) [hereinafter Post, *Participatory Democracy*].

this way; the needs for autonomy and community are both interrelated and universal across all areas of life. Both of these critiques converge on a single, primary point raised by feminist theory: relationships must be seen as central to human experience, including our experiences of truth and autonomy.

In what follows, I will focus on theory rather than on the fit between theory and existing doctrine. I agree with Post that the point in constitutional theory “is not to determine what is ‘in the abstract’ the best possible theory of freedom of speech,” but I disagree with his characterization of the goal as “offer[ing] the best possible account of our actual historical principles.”<sup>2</sup> As Professor C. Edwin Baker has pointed out, a theory may take a more critical approach to existing case law.<sup>3</sup> Theory should, of course, explain the doctrine, but one way of explaining doctrine is to explain why, in light of the best understanding of our values, the doctrine is wrong. I believe that theory should also take a critical approach to the particular conceptualization of our values underlying the doctrine. Theory must address and be consistent with our deep concerns and commitments, but it can do so by criticizing the historical and present conceptualizations of those commitments.

One might see three levels at work here: on the surface we have the legal doctrine (for example, the rules categorizing different types of speech—commercial, sexually explicit, and so forth—and assigning different levels of protection to different categories); underlying the doctrine we have particular conceptions of values (such as the participatory model of democracy that Post and Weinstein support); and at the foundation we have our deep commitments (such as the commitment to autonomy that, I believe, provides the grounding for this model of democracy). Our theories must respond to and illuminate these deep foundations, but they can do so by criticizing both the doctrine and the particular conceptions of value at work in the current law. Indeed, if either the doctrine as a body or the particular conceptions of our values are taken as a given, then the critical capacity of theory is correspondingly limited. If theory is to go beyond the improvement of current

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<sup>2</sup> *Id.* at 477.

<sup>3</sup> See C. Edwin Baker, *Is Democracy a Sound Basis for a Free Speech Principle?*, 97 *Va. L. Rev.* 515, 524 (2011).

approaches and attempt to bring us a deeper understanding of our fundamental commitments, it must be able to call into question both the doctrine and the particular conceptions of value that have animated it. It is precisely such a critique of the dominant conceptualizations of truth and autonomy on which I will base my response.

Post and Weinstein criticize the truth theory of free speech on several grounds. First, they argue that the search for truth requires certain forms of discipline that are inconsistent with the First Amendment's commitment to freedom of speech. Truth is found through practices that require "respect, reason, fairness, accuracy, integrity, honesty, logic, and civility."<sup>4</sup> Because the First Amendment prohibits the government from imposing such disciplining processes, Weinstein argues that "the premise that a completely unregulated market of ideas will lead to discovery of truth is highly contestable."<sup>5</sup>

This argument could be understood in two different ways. First, Post and Weinstein might be saying that the truth theory would require government regulation of the speech marketplace (since such regulatory discipline is necessary for truth to result from the competition), but that the First Amendment, as the Supreme Court has so far interpreted it, would prevent such regulation. Therefore, the truth theory is not a good explanation for our current practices under the First Amendment. For the reasons discussed above, I reject the idea that a theory that fails to cohere with present practices is, for that reason, unacceptable.

Second, they might be arguing that the truth theory is flawed because it assumes that truth will result from an unregulated speech market when, in fact, it will not. This criticism may, indeed, apply to traditional truth theories,<sup>6</sup> but it does not apply to the alternative

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<sup>4</sup> Post, *Participatory Democracy*, *supra* note 1, at 478.

<sup>5</sup> James Weinstein, *Participatory Democracy as the Central Value of American Free Speech Doctrine*, 97 Va. L. Rev. 491, 502 (2011).

<sup>6</sup> Although, even with respect to traditional truth theory, there is the response that Professor Volokh suggests: that truth theory assumes only that a marketplace of ideas unregulated by the *government* will lead to truth. It leaves plenty of room for regulation in the interest of accuracy, respect, and so forth by nongovernmental institutions. See Eugene Volokh, *In Defense of the Marketplace of Ideas/Search for Truth as a Theory of Free Speech Protection*, 97 Va. L. Rev. 595 (2011) [hereinafter Volokh, *Search for Truth*].

models of truth developed by feminist philosophers. The feminist alternatives generally involve relational models of truth, as opposed to the traditional, Cartesian model.<sup>7</sup> As a number of feminist philosophers have argued, such a relational model avoids many of the pitfalls of the more traditional model of truth.<sup>8</sup> I believe that a relational model also addresses the important concerns inherent in our commitment to the value of truth: our need for both shared reality and deep critique, the demand that we pay attention to the impact of our decisions on subjects who matter, and our desire for connection to nonhuman reality.<sup>9</sup> Finally, and most relevant to the criticisms raised by Post and Weinstein, a relational model of truth, in which truth is understood as constructed through certain social

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<sup>7</sup> Cartesianism is an epistemological position in which truth is understood as a characteristic of beliefs: a true belief is one that accurately describes or reflects reality. Reality is objective: it exists independent of our understanding or perception of it and independent of our moral and political values. A person acquires knowledge of this objective reality through the use of his or her reason, sometimes supplemented by his or her sense perceptions. These faculties are independent of a person's social context: reason is the same for everyone, everywhere. As a result, knowledge is universally valid. There cannot be multiple, equally valid truths; there is only one truth. See Alison M. Jagger & Susan R. Bordo, Introduction, *in* *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing* 1, 3 (Alison M. Jagger & Susan R. Bordo eds., 1989).

<sup>8</sup> For general background on the feminist criticisms of Cartesianism and the development of alternative, relational models of truth, see generally *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science* ix–x (Sandra Harding & Merrill Hintikka eds., 1983); Sandra Harding, *Whose Science? Whose Knowledge? Thinking from Women's Lives* viii–xi (1991); Jagger & Bordo, *supra* note 7, at 1–3.

<sup>9</sup> See Susan H. Williams, *Truth, Autonomy, and Speech: Feminist Theory and the First Amendment* 95–129 (2004) (explaining these concerns and the way in which a relational model addresses them) [hereinafter *Williams, Truth, Autonomy, and Speech*]. Because it connects the search for truth to these underlying ethical/political considerations, a relational model of truth also avoids the criticism Weinstein raises about grounding free speech on an instrumental rather than an inherent value. See Weinstein, *supra* note 5. On this model of truth, speech is valuable not primarily because of what the truth-seeking process produces (in terms of information) but because of the moral relations created between people in the process itself. In this sense, it is exactly parallel to Weinstein and Post's argument for democracy. This inherent value of truthseeking is, perhaps, part of what Volokh had in mind when he described "the right to uncover the truth for oneself and as the right to participate in the continuing development of human knowledge." Volokh, *Search for Truth*, *supra* note 6, at 600–01.

relationships, would lead to a different understanding of the range of acceptable government regulations.<sup>10</sup>

The reason for the difference is that this model of truth reintegrates the ethical and political values that a more Cartesian model of truth attempts to exile from epistemology.<sup>11</sup> As Post's description of the truth-seeking process indicates, such ethical/political values as respect, integrity, honesty, and civility are a necessary part of the foundation for the search for truth.<sup>12</sup> When truth is understood in ways that make these moral/political preconditions clear, then the truth theory is itself a blend of cognitive values with moral/political ones.

Where the government is regulating speech practices for the purpose of ensuring that the ethical/political preconditions that allow for the pursuit of truth are met, such regulations are not invalid for that reason (although they may, of course, be invalid for some other reason). The government does not need the power to "judge ideas as true or false, as better or worse"<sup>13</sup> for free speech to serve the search for truth, but it does need the power to enforce the moral and political preconditions under which the search for truth progresses. In other words, within a relational truth theory, government regulations that guarantee such preconditions are not presumptively invalid in the same way as government efforts to prescribe the outcome of the truth-seeking process.<sup>14</sup>

Similarly, the criticisms Post and Weinstein raise concerning autonomy theory are largely inapplicable to the alternative models

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<sup>10</sup> See Williams, Truth, Autonomy, and Speech, *supra* note 9, at 175–98.

<sup>11</sup> Post suggests that "First Amendment jurisprudence is thus best interpreted as expressing ethical or political values, rather than cognitive values." Post, Participatory Democracy, *supra* note 1, at 479.

<sup>12</sup> *Id.* at 478.

<sup>13</sup> *Id.* at 487.

<sup>14</sup> See Williams, Truth, Autonomy, and Speech, *supra* note 9, at 186–88. Knowing which of these two is the more accurate description of the government regulation at issue is one of the many difficult judgment calls required by the First Amendment. Of course, every theory of free speech requires such difficult judgments on which reasonable people will differ. The issue, then, is whether a given theory offers (1) a reasonably practical explanation of how we should think about and argue about these questions and (2) an explanation of why this hard question is important enough to justify the struggle and attention that it will require. Cf. Post, Participatory Democracy, *supra* note 1, at 488 (arguing that the hard questions in democracy theory are "in the last analysis, the value judgments that we ought to be making").

of autonomy developed by feminists. Post and Weinstein criticize autonomy theory on two primary grounds. First, the value of autonomy is not unique to speech and, therefore, would lead to a scope of protection that is both impractically large and inconsistent with the First Amendment's focus on speech.<sup>15</sup> Second, the autonomy value cannot decide those cases in which the autonomy of the speaker conflicts with the autonomy of the audience.<sup>16</sup> For a narrative autonomy theory, however, the first criticism does not apply, and the second, while identifying a real issue in many cases, is not disabling.

A narrative autonomy theory identifies the central exercise of autonomy not in the moment of choice but in the ongoing process of telling one's own story. This model of autonomy is, like the alternative model of truth discussed above, fundamentally relational. It is also fundamentally expressive. In a narrative model of autonomy, the central focus is not on an act of volition but on the activity of interpretation and the creation of meaning.

The connection between narrative autonomy and speech is, therefore, exactly parallel to the connection Post and Weinstein see between their democracy theory and speech. As Baker argues, this democracy theory is actually an autonomy theory applied to democracy.<sup>17</sup> As opposed to Meiklejohn's democracy theory<sup>18</sup> (which focuses on the value of speech to the citizen listener who would use the information to make public decisions), Post and Weinstein endorse a theory focused on the citizen speaker (whose participation on terms that respect his autonomy is the necessary foundation for a legitimate democracy). In other words, this version of democracy theory is essentially an autonomy theory limited to the scope of democratic politics,<sup>19</sup> where democratic politics is

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<sup>15</sup> See Post, *Participatory Democracy*, supra note 1, at 479; Weinstein, supra note 5, at 503.

<sup>16</sup> See Post, *Participatory Democracy*, supra note 1, at 480. I do not consider their third criticism—that autonomy theory is inconsistent with certain lines of current doctrine—for the reasons discussed earlier.

<sup>17</sup> See Baker, supra note 3, at 523.

<sup>18</sup> See generally Alexander Meiklejohn, *Political Freedom: The Constitutional Powers of the People* (1948).

<sup>19</sup> Indeed, one of the difficulties with the theory explored by Professor Seana Shiffrin in her comments is the lack of explanation for why and how this autonomy con-

understood in terms of a particular model of public dialogue. As a result, autonomy is connected to speech by way of democracy: because democracy centers on public dialogue, the First Amendment focuses on speech, as opposed to other activities or choices through which people might exercise their autonomy.

An autonomy theory that sees the locus of autonomy in narrative works exactly the same way. By focusing on the mechanisms through which people tell their own stories, this model explains why autonomy is particularly connected to speech. Speech, understood broadly, is our primary mechanism for interpretation and meaning creation. Thus, a narrative autonomy theory is not subject to the same criticism as a choice-based autonomy theory, which might apply to the broad range of choices with no specific connection to speech.<sup>20</sup>

The second criticism concerns the potential for conflicts between the autonomy of a speaker and the autonomy of the audience. This potential is real and important, and it makes for some hard cases. There is, however, no inconsistency or incoherence here and such conflicts are not irresolvable. The real issue, as Post points out, is whether a theory can “illuminate[] the normative stakes in such cases” by providing resources for assessing the relative weight of competing claims and tools for accommodating each claim as much as possible.<sup>21</sup>

A narrative autonomy theory can do this. For example, a narrative autonomy theory highlights the autonomy interests on both sides in the issue of campaign finance regulation. In a narrative model, the autonomy claims of the speaker, while real, are reduced in significance, while the autonomy claims of other, would-be participants in the political dialogue appear more clearly and as more pressing.<sup>22</sup> Thus, recognizing autonomy issues on both sides is not

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cern is limited to politics. See Seana Shiffrin, *Methodology in Free Speech Theory*, 97 Va. L. Rev. 549 (2011).

<sup>20</sup> A narrative autonomy theory also offers a distinctive perspective on the connection between democracy and free speech. From this perspective, politics is seen as central not only to policy formation but also to the construction of identity and social relations. As a result, the need for a public dialogue based on practices of respect and responsibility is made clear and central. See Williams, *Truth, Autonomy, and Speech*, *supra* note 9, at 224–29.

<sup>21</sup> See Post, *Participatory Democracy*, *supra* note 1, at 485.

<sup>22</sup> See Williams, *Truth, Autonomy, and Speech*, *supra* note 9, at 210–21.

disabling as long as the theory provides tools for weighing the relative importance of the competing claims.

Indeed, I would argue that the fact that a free speech theory can recognize competing claims on both sides of a case is a virtue rather than a flaw. It is an intellectual and moral virtue in a theory that it can recognize the reality that the values protected by free speech can be at issue on both sides in a case and that there may be no way to decide without sacrificing some of them. Conversely, a theory that neatens up our moral conflicts in ways that suggest a clear “right” answer, with nothing of value lost, can lead to a dangerous self-righteousness that simply refuses to recognize the costs our values sometimes impose.<sup>23</sup> A theory is stronger if it can acknowledge the inevitability of occasional tragic choices in constitutional law and can help us to accept the responsibility such choices entail for addressing the “moral remainder” in other ways.<sup>24</sup>

Finally, the democracy theory proposed by Post and Weinstein raises some difficulties of its own. In my view, the most serious of these difficulties concerns the distinction between the realm of public democratic discourse and other speech. This distinction is central to the democracy theory’s claim to be able to contain the sphere of greatest First Amendment protection to a manageable size and to justify the lower level of protection afforded to other sorts of speech. This distinction, however, rests on a division between different models of the person, each of which applies in a different realm. In the realm of public discourse, persons are (and must be treated as) autonomous; outside of this realm, persons are (and may be treated as) constituted by community-based norms and understandings and therefore, in the sense that Post and Weinstein care about, nonautonomous.<sup>25</sup>

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<sup>23</sup> On the importance of recognizing tragic choices rather than trying to create a moral system that defines them out of existence, see Martha C. Nussbaum, *The Fragility of Goodness* 26, 31–32 (1986).

<sup>24</sup> On the issue of moral remainders and their relevance to free speech law, see Susan H. Williams, *Feminist Jurisprudence and Free Speech Theory*, 68 *Tul. L. Rev.* 1563, 1579–80 (1994).

<sup>25</sup> See Post, *Participatory Democracy*, *supra* note 1, at 482–85; see also Robert C. Post, *Constitutional Domains: Democracy, Community, Management* 10, 188 (1995) [hereinafter Post, *Constitutional Domains*]. This description ignores the third domain Post discusses in his book: management. For the purposes of the discussion in these papers—in which the most important line is the one between public discourse and all



Other commentators have already noted that this division between public discourse and the rest of life is inherently unstable.<sup>26</sup> They have also noted the widely shared, considered judgment that much speech outside of public discourse—the conversations in the kitchen, bedroom, or classroom—should be entitled to strong First Amendment protection.<sup>27</sup> I agree with these criticisms, but I would like to point to a different difficulty with this dividing line between public discourse and the rest of life: this division rests on and institutionalizes the idea that these two different models of the person (as autonomous, on the one hand, and as constituted by social connections, on the other) can and should be separated into different realms of life. We are autonomous in the realm of public discourse, but are socially constituted in other aspects of life. In addition to being impractical in application, as the other commentators have pointed out, I believe that this division is: (1) false as a matter of our experience of these different aspects of our lives; (2) conceptually untenable; and (3) based on an inadequate model of autonomy.

The division is false as a matter of experience, because we experience a need for both social constitution and autonomy within all of the different domains in our lives. Within the domain of community, as Post would identify it, we have a need for autonomy as well as connection. As Professor Steven Shiffrin has pointed out, even within many institutions not devoted to public discourse—schools, hospitals, workplaces, and so on—we experience injustice, and we want and need the resources to respond to that injustice with autonomous speech and action that contests the accepted norms of that institution (that is, dissent).<sup>28</sup>

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other speech—the distinction between management and community is much less significant than the distinction between the domain of democracy and everything else. I am emphasizing the role of community on the other side of this line because I believe that the demands of community capture deep normative imperatives, while those of management are primarily a matter of prudential concern.

<sup>26</sup> See Steven Shiffrin, *Dissent, Democratic Participation, and First Amendment Methodology*, 97 Va. L. Rev. 559, 561–64 (2011); Eugene Volokh, *The Trouble with “Public Discourse” as a Limitation on Free Speech Rights*, 97 Va. L. Rev. 567 (2011).

<sup>27</sup> See Baker, *supra* note 3, at 523; Shiffrin, *supra* note 26, at 564.

<sup>28</sup> See Shiffrin, *supra* note 26, at 562; see also Steven H. Shiffrin, *Dissent, Injustice and the Meanings of America* 89–91 (2000).

Conversely, I suggest that we also experience a need for the imposition of communal norms within the realm of political autonomy, such as norms concerning equal respect. I suspect that Post and Weinstein would assert that, while we can argue about these norms within public discourse, the norms should not be used as a basis for regulating public discourse itself. In a moment, I will address why I believe such a restriction on the use of these norms is conceptually untenable. Right now, what I am arguing is that our experience of democratic politics demonstrates that people feel a powerful need to use these norms in this way. Such a need might, in the end, be something we must deny rather than satisfy, but our experience suggests that we must recognize and come to terms with that need. So, our experience does not support this division.

Second, the division between the two models of the person is conceptually untenable, because each model requires and incorporates the other. Post has clearly recognized the practical interdependence of the different domains he describes.<sup>29</sup> The interdependence is, however, conceptual rather than merely practical: the very concept of community or autonomy requires the incorporation of the other, such that separating them is conceptually impossible.

The concept of community relies upon autonomy because socially constituted persons are never simply carbon copies of the community's ideal or norm. Both cultural studies, generally, and feminist theory, in particular, have highlighted the "essentially contestable" nature of cultural norms.<sup>30</sup> There is an inevitable exercise of autonomy in the interpretation, application, and evolution of communal norms and values. Community is, in other words, impossible—conceptually and not only practically—without autonomy.<sup>31</sup>

Similarly, autonomy is not possible without community. As Post recognizes, the very meaning and boundaries of public discourse are set by certain substantive value commitments: he identifies self-

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<sup>29</sup> See Post, *Constitutional Domains*, *supra* note 25, at 192–93.

<sup>30</sup> See Madhavi Sunder, *Cultural Dissent*, 54 *Stan. L. Rev.* 495, 514 (2001).

<sup>31</sup> Of course, the degree of autonomy that is encouraged or viewed as appropriate may vary in different communities. That is why it makes sense for people concerned about autonomy to worry about the degree to which a given community provides the resources and opportunities necessary for the development of autonomy. See Williams, *Truth, Autonomy, and Speech*, *supra* note 9, at 154.

determination and critical reflection as among these values.<sup>32</sup> He writes that “[t]he boundary between public discourse and nonpublic discourse is . . . ultimately a normative one.”<sup>33</sup> But the normative commitments do not stop at the boundary. If the notion of critical reflection has any content at all, then the fabric of public discourse, and not merely its boundary, is shaped by our collective normative commitments as well. What counts as an appropriate (or even recognizable) contribution to this discourse depends on the community’s understanding of normative concepts like reflection, discourse, and autonomy.<sup>34</sup>

In fact, the tension between autonomy and community is internal to each and every domain. We cannot resolve this tension by allocating the protection of one model of the person to one realm of life and the protection of the other model to a different realm. We need both aspects of personhood in all aspects of life, from the most private of family matters to the most public of political arenas.

The appropriate balance between autonomy and community may well be different in different areas of life, but this is a difference of degree rather than of kind. If the notion of the public domain is merely intended to point to the fact that, in some areas of life, our need for autonomy is generally more pressing than our need for community, then it is a useful reminder. Understood in

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<sup>32</sup> See Post, *Constitutional Domains*, supra note 25, at 142–43.

<sup>33</sup> See Post, *Participatory Democracy*, supra note 1, at 485.

<sup>34</sup> I believe that Post recognizes this conceptual interdependence between community and autonomy. See Post, *Constitutional Domains*, supra note 25, at 146 (“[W]e must understand rational reflection as itself a form of social action that depends for its fulfillment upon a specific normative structure.”). At times, however, his language seems to suggest that the domain of democracy really is neutral and that the commitments to self-determination and critical thinking represent a rejection of the claims of particular communities rather than being themselves the normative commitments of a particular community. See, e.g., id. at 138 (“The constitutional ‘shield’ established by *Cantwell* ensures that this competition [between communities] occurs on a level playing field, in which no particular community can obtain an unfair advantage and use the power of the state to prejudge the outcome of this competition by enforcing its own special norms or civility rules. This [is a] special neutrality . . .”); id. at 144 (“At root, therefore, the concept of critical interaction depends upon the continuous possibility of transcending what is taken for granted.”). My suggestion in the text associated with this footnote is that, if this relationship between autonomy and community is taken seriously, it calls into question the definition and role of the domain of public discourse in the democracy theory.

this limited way, however, the notion of the public domain is only a rough rule of thumb, which might often be overridden by a more finely grained contextual analysis of a particular case. Moreover, understood in this pragmatic way, the notion of the public domain would not be tied to this division between different models of the self.

In response to this argument at the conference, Post suggested that, even if this interrelation between autonomy and community is true as a matter of moral theory and experience, it would still make sense to create this division between them as a matter of First Amendment law. Of course, all theory abstracts from experience to some extent and, therefore, will fail to match it perfectly. But building First Amendment theory on the foundation of public discourse, understood in terms of this division of domains between autonomy and community, is not so much an abstraction from experience as a contradiction of it. If my description is accurate as a moral and experiential matter and we do need both autonomy and community in all of these domains, then a First Amendment theory that imposes this artificial division will fail to meet our needs. Indeed, such a theory will miss half of what is at stake in many cases.<sup>35</sup>

Finally, I would like to suggest that the difficulties the democracy theory has with defining and defending this division between the public domain and the rest of life arise, at least in part, from the particular model of autonomy that is at the heart of this theory. It is because autonomy is seen as threatened by the imposition of community norms that this division becomes important and the boundary of the public domain must be defended. If autonomy were understood in a more relational way, then the contribution of communal norms to the creation and maintenance of autonomy would be clearer.<sup>36</sup> I would argue that autonomy is dependent upon

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<sup>35</sup> I believe the strongest evidence for this claim is provided by some of the examples that Post offers, such as his suggestion that political conversations between family members would be a “close” case for core First Amendment protection. See Post, *Participatory Democracy as a Theory of Free Speech: A Reply*, 97 Va. L. Rev. 617, 623 (2011).

<sup>36</sup> For a sampling of feminist criticisms of the traditional model of autonomy and suggestions for more relational models, see Diana T. Meyers, *Self, Society and Personal Choice* 42–50 (1989); Marilyn Friedman, *Self-Rule in a Social Context: Autonomy from a Feminist Perspective*, in *Freedom, Equality, and Social Change* 158, 158 (Creighton Peden & James P. Sterba eds., 1989); Jean Grimshaw, *Autonomy and*

our relations to others at three levels: causally (we learn to be autonomous from others), substantively (the substance of our choices/stories is a product of communal norms and understandings), and conceptually (the very meaning of autonomy—in terms of its relation to self-respect, integrity of the person, responsibility and so on—cannot be understood separate from our relations to others).<sup>37</sup> In this alternative approach to autonomy, communal norms and relations are crucial to facilitate autonomy, and autonomy is crucial to maintain community. There is, of course, tension between them, but both must be sustained within each realm of life. The issue then becomes the balance between the two, and this is an issue that requires great attention to the details of particular contexts, institutions, and social practices. Public discourse, on this view, does not mark the domain in which autonomy is the paramount value; autonomy and community are values on both sides of that line.

Democracy theory's flaw, then, arises from its insistence on dividing the realm of autonomy from that of community by way of the concept of public discourse. This division rests, in turn, on a model of autonomy that does not give sufficient weight to the role of communal norms in grounding and facilitating autonomy (and vice versa). The result of that model is an understanding of the First Amendment that gives insufficient protection to the claims of autonomy outside of public discourse and insufficient protection to the claims of community within public discourse. Freedom of speech would be better served, I believe, by a theory that starts from a relational model of truth and autonomy.

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<sup>37</sup> See Williams, Truth, Autonomy, and Speech, *supra* note 9, at 59–66, 150–54.

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