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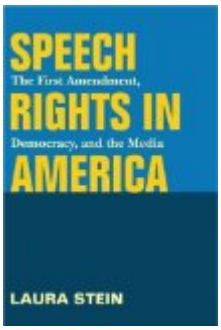


**Laura Stein.** *Speech Rights in America: The First Amendment, Democracy, and the Media.* Urbana: University of Illinois Press, 2006. 168 pp. $35.00, cloth, ISBN 978-0-252-03075-8.

**Reviewed by** Janice R. Wood

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Even first-year media law students will recognize some of the elements that Laura Stein weaves into an intricate tapestry in her book that assesses the current state of free speech. Along with familiar names, ideas, and cases, she intertwines more sophisticated legal and philosophical approaches to construct a compelling argument that the First Amendment, as interpreted today, is not being optimized. Stein is an assistant professor of communication at the University of Texas at Austin.

At stake, she writes, is whether courts and legislatures can reset the stage to better encourage "communication that serves democratic political processes, enabling citizens to deliberate over, define, and decide the common good" (p. 2). If the First Amendment is to fulfill its responsibility as the guardian of speech rights, its role should not be limited by the standard theories that students read about in basic law books, such as absolutism and the marketplace of ideas, for example. So she delves into more sophisticated philosophical and legal thought as well as the work of established scholars to build a theoretical framework in liberal democratic theory.

Key government policies and court decisions have cast the First Amendment into default mode. Stein is concerned with what happens when the government opts for deregulation or follows the absolutist "no law means no law" dictum. Gauging and providing the means through which democratic communication can be conducted is too important to trust to market forces. When it is assumed that communication needs will be served in a marketplace of ideas, media owners gain more control, often to the detriment of ordinary citizens. The situation is exacerbated by owners' obligations to corporate priorities and advertisers. Thus, the government needs to assert a proactive role to ensure channels for individuals to exercise free speech.

Stein cites a few familiar cases such as the often-studied *Red Lion v. FCC* decision (1969) on equal time rules and the *Miami v. Tornillo* decision (1974) that disallowed newspapers from equal access provisions. But she also includes a Supreme Court case (*Denver Area Educational*

*Telecommunications Consortium v. FCC*, 1996) that failed to recognize public-access TV channels as potential forums for public communication and lower-court decisions that favored private ownership of computer networks rather than public use.

Where is democratic communication going to take place? "While ordinary citizens have exercisable speech rights in public places, such as streets and parks, they have virtually no right to speak in the dominant communications forums of contemporary societies," Stein writes as she questions whether developing technologies will liberate or oppress free speech at a watershed juncture (p. 114). This is a theme echoed in Jeff Chester's 2007 book, ***Digital Destiny***. Focusing on the Internet and broadband communications, Chester sees corporate pursuits undermining public interest as cable, TV, and Internet providers scramble to control content and expand the commercial nature of the new media system;

Stein also might find common ground with Andrew Shapiro, who made an intriguing proposal in the July 3, 1995, issue of ***The Nation***. He envisioned a model for the Internet more closely resembling a traditional public forum--the streets and parks mentioned in the Stein quote--than business space. In virtual public space, Shapiro wrote, users would enter through a portal with access to open discussions and sites of personal interest but also exposure to picketing, heated arguments, solicitation, and unpleasant news. A user could pass through but not close his/her eyes to reality. While Shapiro admitted no technical expertise in actually building this world, he likened it to the free and pluralistic atmosphere in which democracy thrives.

There also might be some uncomfortable situations created by the "alternative policy principles for democratic speech rights" highlighted in Stein's final chapter:

1. "The government has a compelling interest in promoting democratic communication" (p. 119). If the state accepts a duty to promote free speech, well-honed approaches to media regulation--such as time, place and manner rules--might need to be modified.

2. "The courts must interpret First Amendment in light of real conditions" (p. 122). Theories aside, access to speech in mainstream media is severely limited to a privileged few in commercial media that continue to marginalize audiences not sought by advertisers.

3. "The media have a public function" (p. 125). The courts would need to rethink time-honored lines drawn between the private ownership of media and serving the public interest. Or as Stein writes, speech should be based on public function, not public/private ownership.

4. "Hybrid regulatory models are a means of protecting democratic communication" (p. 128). Particularly with new technology, forums for democratic speech and owner-controlled venues could co-exist if regulatory agencies thought outside the proverbial box, as happened with the development of cable TV regulation.

Stein closes with a lesson learned from history: a medium's shape and structure are determined by more than its technological capabilities. For example, in radio's formative years, the government chose to license the airwaves in favor of commercial broadcasters, closing off other avenues that could have fostered opportunities for democratic speech. Today as policymakers similarly grapple with controversial issues surrounding the Internet, such as content, access, and obscenity, they use tools besides computer systems. Their decisions--and the Internet itself--will also be influenced by their own views on the role of free speech in society, which is Stein's major point.

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