Heckling, Free Speech, and Freedom of Association

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People sometimes use speech to interfere with other people's speech, as in the case of a heckler sabotaging a lecture with constant interjections. Some people claim that such interference infringes upon free speech. Against this view, we argue that where competing speakers in a public forum both have an interest in speaking, free speech principles should not automatically give priority to the 'official' speaker. Given the ideals underlying free speech, heckling speech sometimes deserves priority. But what can we say, then, about situations in which heckling clearly seems to infringe upon people's civil liberties, in a way that intuitively justifies intervention? In such cases, we argue, heckling infringes upon people's associative freedom. We present and defend an ethical framework for the institutional management of 'Speech Fights', geared around this insight.

1. Introduction: Speech Fights

What should we do in situations where people use speech to suppress other people's speech? We don't just mean people competing in the attention economy or trying to win debates. We mean scenarios – we will call them *Speech Fights* – in which two actors try to speak to the same audience at the same time and refuse to take turns. Persistent heckling is a paradigm case of this. Suppose X has the floor at a meeting – that it's X's turn to speak, in some sense – but Y is continually interjecting and making X's speech inaudible. This looks like an infringement of X's speech rights: a sort of lateral, *de facto* censorship. Here is a more fleshed-out illustration of this.

> *Lecturer*. While a government minister is delivering an invited public lecture at a university, student activists start to shout and chant critical slogans, drowning out the minister's speech. Security staff cannot stop them, and they seem to be carrying on open-endedly, so the lecture is cancelled.

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Many pundits see such conduct as an infringement of free speech and an affront to liberal ideals.[1] And this makes some sense, *prima facie*. Part of free speech's point is to ensure the toleration of controversial ideas, and the hecklers in LECTURER clearly aren't evincing a tolerant spirit. Nevertheless, Speech Fights like this cannot be adequately analysed, or met with sound policy prescriptions, via a free speech framework. That is our first claim in this paper, which we defend in §2, building on work by Jeremy Waldron (2017). Why do we think a free speech framework is inapt for analysing these scenarios? Part of our answer is that hecklers in Speech Fights are speakers in their own right. Their expression is uncivil, but free speech norms protect (much) uncivil speech, and heckling cannot just be deprioritized as 'low value' speech.[2] We could try to determine which messages are worth hearing and use this as a basis for prioritizing 'official' speakers and suppressing heckling. But that approach is inimical to the content-neutrality aspect of free speech and seems liable to bias or corruption.[3] In short, while we might want free speech norms to tell us how to police Speech Fights, the guidance derivable from those norms is, at best, limited.

Our second claim is that invoking *associative* liberty, as a distinct right from free speech, provides a better analysis of Speech Fights. Even if some heckling is protected speech, in principle, institutions running events still have a prerogative to suppress heckling, without this necessarily being an illiberal act of suppression. Not recognizing this prerogative makes the management of public events near impossible. We will argue that this prerogative's source is our associative liberties, which, properly construed, entail not only a right to speak, but also – unlike with free speech rights – a right to have one's speech heard by one's associates without third-party interference. We call this the *Association Account*. We will defend it in §§3-4, and then in

[1] 'Shouting down a speaker doesn't take courage… censorship is the tool of authoritarians and idiots' (Wilson 2017); 'The proportion of students who deem it sometimes or always acceptable to shout down speakers grew from 37% to 51%... only a minority of students today believe in the First Amendment' (Lindsay 2019); 'Freedom of speech doesn't just refer to the right to talk; it also encompasses the right to hear others speak. The rising antagonism toward speech we disagree with doesn't necessarily violate the First Amendment, but this attitude can be corrosive to its spirit' (Nott 2017).

[2] In other words, we cannot capture intuitions about what makes heckling wrong by differentiating high and low value speech and giving stronger protections to the former; see Sunstein (1988, p. 555).

[3] Indeed, content-neutrality in free speech principles can be justified on the grounds of counteracting biases of speech-regulating authorities, see Barendt (2005, p. 173).

§§5-6 outline its practical implications in generating policy guidelines for managing Speech Fights in institutional settings, including in controversial cases like LECTURER.

Here are three parameters for the discussion to follow. First, we assume that principles of basic liberty – like freedom of speech and association – impose constraints on both government actors and non-government actors and can thus be infringed in ways that don't involve state intervention. This is an assumption that is implicitly shared by those who defend the view we are criticizing, according to which ordinary people's heckling infringes upon others' free speech.[4]

Second, our interest is in how institutions manage Speech Fights. In face-to-face events this may involve security staff using force (ideally, minimal necessary force) to physically remove hecklers. In online meetings it will usually just involve a host clicking 'remove'. Our question is when institutions are justified in removing hecklers and other disruptors from venues. This question is directly tied to legal principles if government bodies are acting. But it implicates legal principles in other cases too, the question being whether the law supports a non-government organisation's removal of hecklers, or instead treats this removal itself as a potential rights infringement.

Third, we recognize that institutions can often cooperatively deescalate Speech Fights, enabling an event to continue while allowing a heckler to say their piece. This is welcome, but what motivates our inquiry are harder cases – cases where hecklers seem more like *de facto* censors, in that they carry on disrupting a speaker open-endedly.

2. Heckling and free speech

Some hecklers try to prevent a speaker from being heard. They don't employ institutional powers to this end, but their aims resemble those of government censors. They use the available means to suppress viewpoints that they oppose. So why do we believe the pundits are wrong to regard hecklers as *de facto* censors? We broadly endorse Waldron's answer to this. Hecklers are exercising their own speech rights, so if we value free speech we should, in general, tolerate them.

[4] This non-state-centric conception is compatible with classical liberal free speech theory. Mill opposes legal censorship, but says, '[T]he chief mischief of the legal penalties is that they strengthen the social stigma'; see Mill (1991 [1859], p. 37).

2.1 Free speech ideals

Waldron's argument has two parts. First, he argues that heckling derives support from key free speech ideals: Self-expression, Dignity, Truth, Understanding, and Accountability. *Self-expression* should be 'an interactive process, where one gives an account of oneself to a high-spirited audience… [who are] giving voice to their reactions' (Waldron 2017, p. 18). Heckling can be useful, then, because it makes occasions of self-expression more interactive. *Dignity* is another ideal underpinning free speech, insofar as censorship insults the censored party's dignity *qua* thinking being. But this applies to both heckl*ees and* hecklers. Waldron endorses Eve Wagner's claim here: 'a heckler's dignity will be harmed [if he is silenced], just as a primary speaker's would be if he were silenced' (Wagner 1986, p. 229; Waldron 2017, p. 19). As for a Millian view about free speech's relation to *Truth*, Waldron says Mill would be more troubled by 'contrary ideas being separated politely from one another in a sequence of uninterrupted presentations', than by 'the happy cacophony of democracy' (Waldron 2017, p. 20). Heckling creates the kind of discursive friction that upends falsehoods. And the same goes for our adjacent epistemic ideal, *Understanding*: 'Ideas come to life in the rough-and-tumble of active and even disruptive opposition' (Waldron 2017, p. 19).

Waldron perceives a particularly important connection between heckling and *Accountability*. Speech by authoritative and powerful actors is often carefully stage-managed. Hecklers disrupt this, thus making it harder for authoritative speech to function as the 'poised, planned, calibrated, self-possessed, and precisely choreographed performance that the primary speaker wants it to be' (Waldron 2017, p. 9). Heckling aids accountability, then, because it makes it harder for a powerful speaker to 'evade or mischaracterize his sins of omission and commission' (Waldron 2017, p. 21).

In sum, free speech ideals don't support suppressing heckling, because heckling positively contributes to the goods implicated in those ideals. We agree with this, but we aren't thereby assuming that all heckling is beneficial and virtuous. Heckling can be harmful or vicious, depending on its content and circumstances. We think free speech principles should generally protect heckling, not because every token instance of it advances liberal ideals, but because heckling *qua communicative type* does so. In this respect, heckling resembles other act-types protected by free speech. There are vicious token instances of protest, satire, journalism, and so on, but these are protected because of ideals advanced overall by the relevant communicative types.

In the second part of his argument, Waldron challenges the communicative ethos implicit in a free-speech-based critique of heckling. He sees this ethos as being unduly averse to spontaneous dialogue and sparring. People taking turns to speak is reasonable in theory, but in practice an orderly communicative environment can become stilted, leading to 'lifeless discourse' (Waldron 2017, p. 24). So we should have a more pro-confrontation ethos, in our communicative practices, and show more faith in people's ability to communicate amid discursive turbulence. Once we do this, it is evident again that, overall, the positive potential of heckling outweighs its disruptive downsides.

Waldron arguably oversimplifies the messy power dynamics of Speech Fights. Some hecklers are powerful, rather than being plucky underdogs.[5] Moreover, conflict-averse speakers with marginalized views could feel daunted, in entering discursive spaces that allow heckling. The self-censorship of such speakers will tend to subvert free speech ideals. Waldron arguably downplays the merits of a *parliamentarian* approach to free speech, that is, 'requiring some to shut up, so others can speak' (Fiss 1991, p. 2059).[6]

Nevertheless, we agree with Waldron about the positive connection between heckling and free speech ideals. Granted, if *most* heckling was used to 'punch down', that would be a problem, but that isn't the case. Moreover, a pro-heckling stance is compatible with imposing restrictions on the overtly discriminatory speech posing the greatest threat to discursive inclusion.[7] Institutions can make public discussions more inclusive, without micromanaging speaking events to guarantee that everyone receives equal quantity and quality of attention. And we can retain a nuanced understanding of the power relations involved in Speech Fights, while still interpreting heckling as an exercise of the heckler's own rights rather than *de facto* censorship.

2.2 Audience interests

But what about audiences? Even if heckling is an exercise of free speech, aren't there limits on its permissible exercise, given its unwelcome effect on audience interests? We might just want to say that heckling is suppressible if and only if it crosses over from 'mere' sonic disruption, and

[5] Thanks to Rae Langton and a referee for pressing these points.

[6] This recalls Catharine MacKinnon's claim that 'the free speech of men silences the free speech of women' (MacKinnon 1984, p. 337).

[7] Overtly discriminatory speech may silence its targets, in MacKinnon's sense (see note 6), or activate biases that lead to testimonial injustice, as in Fricker (2007).

creates a violent or otherwise dangerous situation for audiences.[8] But instigation of danger doesn't seem like a necessary condition for the justifiable suppression of heckling (even if sufficient), because we can identify non-dangerous forms of heckling that seem intuitively liable to suppression, given their negative effect on audience interests. Consider two examples.

> *Bible Study*. A women's bible group meets in a community hall. A couple attending another meeting in the venue overhear the group discussing traditional views of marriage, and, upset, they stage an impromptu intervention, shouting pride slogans to drown out discussion. The study leaders ask them to stop, but the couple continue until the group members give up and leave.
>
> *Festival*. An activist attends a literary festival to protest its failure to include writers with disabilities on the program. She prepares an hours-long lecture-cum-filibuster on the topic, and sits in one of the stage's front rows. When the talks begin the activist starts her epic heckle. Organizers are loath to remove the heckler, and so the speakers are left trying to talk over her all day.

In line with our arguments from §2.1, we don't regard the speakers in these examples as having their speech rights infringed upon. We would liken their position to that of a social media user whose posts elicit vigorous critical replies. Facing hostile counterspeech in response to an exercise of one's speech rights is often unpleasant. But this doesn't mean one's speech rights are violated.

The speech-related rights and interests of audiences can be analysed as a separate locus of concern, though. Eve Wagner's account of heckling emphasizes these interests, and thereby aims to capture the pro-suppression intuitions elicited in examples like Bible Study and Festival. If heckling is allowed then effective communication is thwarted and audiences cannot hear the speech they want to hear. For Wagner, if this happens then 'little is gained by the right to speak' (Wagner 1986, pp. 231, 233). Thus, on her view, an audience's interest in hearing what they want to hear is part of what free speech rights protect. So, we may suppress

[8] Such cases indicate a connection between Speech Fights and the 'heckler's veto' in First Amendment jurisprudence, that is, scenarios where the state suppresses speech in anticipation of an audience's violent reaction. In *Brown v. Louisiana* 383 U.S. 131 (1966) the US Supreme Court ruled that the state should protect speakers' rights against heckler's vetoes. Our focus is on heckling in an everyday sense, involving 'mere' verbal expression, not the violent reaction of the 'heckler's veto'. On when speech that risks violence is liable to suppression, see Howard (2019).

heckling, without infringing free speech, if and only if 'a reasonable person would conclude that this heckling substantially impairs the primary speaker from communicating… and/or the audience from hearing the primary speaker's message' (Wagner 1986, p. 234).[9]

We accept one of the general insights that underpins Wagner's proposal, namely, that free speech rights are not just for protecting speaker interests, but also audience interests, for example, in acquiring information.[10] We also share the main practical intuition animating her view. Preventing people from hearing someone they have planned to listen to, in a context where they have some reasonable expectation of doing so, is *pro tanto* wrongful in a way that can justify intervention.

But despite these points of agreement, we don't believe the specific audience interest that heckling infringes upon – their interest in *hearing the message they want to hear* – is among the interests whose protection underpins the right to free speech. One reason for scepticism about this, which Waldron highlights, is that audiences are collectives with varied interests: '[T]here are the hecklers, there are the devoted loyalists who really want to hear the speaker, and there are those in between' (Waldron 2017, p. 12). And the 'loyalist's' interests don't trump those of ambivalent or hostile audience members. Each member of an audience has to take their fellow audience members as they find them, Waldron argues, 'just as the speaker must take his audience as he finds them' (Waldron 2017, p. 12).

Still, our scepticism – about whether free speech protects the interest in hearing the message one wants to – goes further than this, and applies even when the audience's interests are aligned, as when a lone heckler is greatly outnumbered by 'loyalists'. The root of our scepticism is that we regard public discourse as an essentially conflictual arena. Free speech rights protect access to the naturally disorderly arena of public discourse, for those wanting to speak or listen. They are not there to impose order on the conflict, like a parliamentary chairperson. Indeed, something like the opposite seems more plausible, once we recognize how easily a parliamentarian ideal becomes a pretext for suppressing disliked views. The point of free speech isn't to make a safe space where platformed voices and viewpoints are shielded from contestation. It is to ensure that gadflies and rabble-rousers can challenge these voices,

[9] What does *substantial impairment* mean, for Wagner? Essentially, something that makes a speaker cut off their message prematurely (Wagner 1986, p. 235).

[10] See also Shiffrin (2014, pp. 166ff.).

even if the majority objects and prefers more decorous dialogue.[11] This is subverted if we suppress heckling so that audiences hear exactly what they want to.[12] If such suppression is justified in particular cases, its justification isn't free-speech-based.

2.3 Decent versus devilish

One might challenge these claims by distinguishing decent and devilish hecklers. *Decent* hecklers meaningfully contribute to a debate. They disrupt to convey an idea or to press a hard question. By contrast, *devilish* hecklers don't meaningfully contribute to debate; they just shout unintelligibly, or make 'jamming' noises like whistling. To illustrate, suppose someone arranges an all-day jackhammering operation, outside of an academic conference. Moreover, to be clear that no message is being delivered, suppose they do this simply as a prank. It is tendentious to call this a contribution to debate. Waldron agrees. If hecklers are merely trying to make it impossible for speakers to be heard, he says, this is 'a simple suppression of speech' (Waldron 2017, p. 30).[13]

So, the challenge to our view is as follows. Even if it's correct that free speech principles shouldn't protect an audience's interest in hearing exactly what they want to hear, such principles still protect an audience's interest in hearing *some message*, instead of mere noise. Free speech may not justify the suppression of decent heckling, but it can justify suppressing devilish heckling.

We agree with this in principle, but we don't think it reestablishes the utility of a free speech framework for analysing or policing Speech Fights. Intuitively, it seems justifiable for an organization to suppress the kind of heckling involved in cases like Festival and Bible Study. However, the hecklers in these cases are *decent*, not devilish. Granted, they are being provocative and uncooperative, but what counts is that they are, plausibly, contributing to debate in a meaningful way. At any rate, to deny this, we believe, is to adopt a limited and overly idealized understanding of how debate works. It is sometimes integral to

[11] For a free speech theory centring the gadfly and rabble-rouser, see Steven Shiffrin (1990).

[12] Free speech principles shouldn't protect all disruptive dissent. Appropriate restrictions are based on speech's time, place, and manner. That you're engaged in political protest doesn't entitle you to protest noisily at 3.00am, on a residential street. Wagner cites *Cox v. Louisiana* 379 U.S. 536, 554 (1965) on this point (1986, p. 217). However, such restrictions can still be misused to unjustifiably suppress political dissent; see Barendt (2005, p. 292).

[13] This distinction between devilish and decent hecklers doesn't apply to state interventions. States acting to censor debate can't simply insist they are contributing to debate through their suppression.

a speaker's message that they deliver it as a heckle. For example, our protestor in Festival isn't merely seeking a scheduled position on the event's line-up. Her unruly expressive *medium* is, to adapt Marshall McLuhan's phrase, an integral part of her *message*. The same might be said of the hecklers in Lecturer too. Dissenting viewpoints can be substantively altered if speakers are forced to communicate them non-disruptively, while decorously taking turns.[14]

We do not, and need not, claim that anything that conveys a message, in any sense, merits free speech-based protections. One could downplay the ethical distinctiveness of speech, and the case for its enjoying special protections, by playing up the message-conveying potential of non-speech conduct (Schauer 1984). Yet the distinctiveness of speech – its exceptional articulacy, its utility in retracting and qualifying its own contents, its power to engage an audience's capacity for critical reflection – has been robustly defended (for example, Baker 1989, ch.3; Shiffrin 2014, ch.3; Kendrick 2018). In all our examples above, Lecturer, Festival, and Bible Study, the hecklers are using speech in order to disrupt and convey a message. Our hecklers are not conveying messages in some loose, analogical sense: they are literally speaking, and thus exercising their speech rights. Our point is that their disruptive methods don't make them devilish, that is, don't nullify the message-contributing function of their heckling.

Still, the hecklees in Bible Study and Festival have a forceful complaint about how their civil liberties are treated. People have some interest in hearing who they want to, which is infringed in these cases. Our interim conclusion is that this interest isn't among the interests that underpin the right to free speech, such that we can justify the suppression of heckling, in these examples, as a protection of that right. To ratify this interest, among the interests that free speech protects, is to misrepresent free speech ideals. Our interest in expressive liberty is, fundamentally, about our having access to the bubbling mixture of ideas and information that make up our cultural stew. Our interest in hearing precisely who we want to hear, without interruption from people with other aims, calls for another interpretation.

[14] This relates to discussions of obscenity in cases like *Cohen v. California*, 403 U.S. 15 (1971), concerning whether the obscenity in the phrase 'Fuck the draft' was integral to the speaker's meaning. A widely espoused view is that uncivil expression warrants protection, because 'the more that words are caustic and angry, the more the regulatory authorities may see them as outside the range of permitted liberty'; the worry being that power to impose civility norms on debate is, in practice, the 'power to decide which views shall be expressed and which shall not' (Schauer 1982, p. 147).

3. The Association Account

Hecklers are free to speak their minds in public, but that doesn't mean that they can use speech to interpose themselves into other people's business. People have some right – a defeasible right, naturally – to avoid verbal pestering that derails their interactions with their associates. What is going on in cases like Bible Study and Festival, then, we propose, is an infringement not of the hecklees' expressive liberties, but of their associative liberties – what Mill, in his seminal account, describes as the liberty 'of combination among individuals… for any purpose not involving harm to others', and what Larry Alexander, more recently, describes as the liberty 'to enter into relationships with others, for any and all purposes, for a momentary or long-term duration, by contract, consent, or acquiescence' (Mill 1991 [1859], p. 16; Alexander 2008, p. 1). Heckling in these cases is an act of interference with a group of people associating in pursuit of a shared purpose, in a time and place that they are presumptively entitled to utilize in pursuit of that purpose.

The idea of associative liberty underpinning the Association Account is meant to be a standard one, and only partly non-standard (if at all) in how it is related to free speech. In short, we are adverting to the same right that is normally posited in liberal political theory, alongside free speech, as a basic requirement of justice, including in the leading contemporary liberal theory of justice.[15] This right also holds a prominent place in international law, as one of the essential core of rights in the post-war human rights framework.[16] We are not invoking the more demanding (heterodox) notion of associative freedom, with positive duties to associate, that Kimberlee Brownlee (2015) proposes. On our account, this right corresponds with a negative duty, not to interfere with other people's choices about who to associate with or about how to conduct that association. Moreover, to reiterate the assumption noted in §1, we take this duty of non-interference to apply to both government actors and non-government actors.

Associative rights are about people *combining for a purpose*. When communication is integral to an association pursing its purposes, then impeding people's normal channels of communication impinges upon

[15] Rawls's 'Justice as Fairness' theory shifts from privileging freedom of *assembly*, in the earlier *A Theory of Justice*, to privileging freedom of *association* in the later *Political Liberalism* (Rawls 1971, p. 61; Rawls 1993). Assembly is restricted to gatherings with political purpose, for example, protest, whereas association has a broader scope, including non-political purposes. Freedoms of assembly and association are commonly listed together in human rights law.

[16] See, for example, Article 22 of the International Covenant on Civil and Political Rights (1966).

this right. That is what heckling does, and if it's done persistently and forcefully, it amounts to a wrongful infringement. An example will help to illustrate this line of thought.

> DANCING. Three people are practising choreographed dances, in a quiet corner of a public park, trying to perfect them for a later performance. A group of tipsy day-drinkers see this and, deciding to mock them, relocate to a position right in front of the dancers, and take turns exaggeratedly mimicking their moves while the others cackle. The dancers are too distracted to practise and soon leave.

Strictly speaking, the day-drinkers' pestering doesn't stop anyone from dancing. And for the sake of argument, let's suppose our dancers are all formidable athletes, and thus have no safety-related fears. Despite these caveats, the drinkers' actions are disruptive enough to command the dancers' attention, in a way that prevents them making progress in refining their choreography. What is primarily interfered with isn't the dancers' ability to move as they so please, but their ability to pursue the aim towards which their movements were supposed to be coordinated.[17]

We want to interpret BIBLE STUDY and FESTIVAL similarly. Strictly speaking, the hecklers aren't stopping anyone saying what they want to. They are not robbing anyone of anything they are entitled to, under their right to free speech. This right doesn't guarantee that people's communicative aims won't be contested or thwarted by other people's rival communicative aims. What is infringed upon, primarily, is not the hecklees' ability to speak or listen, but their ability to pursue the associative purposes towards which their speaking and listening were coordinated. Again, associative rights protect us in combining to pursue shared aims. The hecklers in BIBLE STUDY and FESTIVAL wedge themselves between the speakers and audiences, thereby impeding them in combining for a purpose they are entitled to pursue, at a place and time at which they are presumptively entitled to pursue it. Not all instances of heckling are disruptive enough to derail communicative interactions to an associative-rights-infringing level. But those which are, are liable to suppression, in principle, because of that infringement.

One (potential) theoretical cost of our Association Account is that it requires us to conceive of associative liberty as a distinct right from free speech. This departs from how these rights are conceptualized in certain legal contexts, including American constitutional

[17] Our reasoning resembles the crux of Joel Feinberg's (1985) liberal argument for restricting conduct on offensiveness grounds.

jurisprudence, where associative rights are seen as grounded in expressive rights.[18] There are significant overlaps in the interests that these rights protect and advance. As Seana Shiffrin (2004) rightly says, associations are one important context for the development of our thoughts and ideas, and in that sense, serve similar interests to free speech. More generally, our reasons for valuing associative liberty seem partly contingent upon our having expressive liberty, so that our associations aren't stunted by constraints on what we can say to others. And conversely, the value of free speech seems to depend upon our being free from external controls in seeking out associates with whom we can exercise our communicative abilities in pursuit of shared goals.[19]

But the upshot of these observations should not be overstated. First, there are differences in the specific protections afforded by the two rights, irrespective of the partially overlapping interests they serve. Somebody's right to free speech is violated if his diaries or artworks are destroyed, even if he is a recluse with no plans of sharing these communicative artefacts with any other people. Conversely, the actors in DANCING – or similarly, people gathering in a public park's quiet corner, for a silent meditation activity, that involves no communicative interaction – have their associative rights violated if their activities are interfered with for no good reason. In short, infringements of expressive and associative rights can occur independently of each other.

Second, there are interests served by associative freedom that are not entirely reducible to the interests that are jointly served by association and speech. Again, as Mill says, associative rights are about people combining for purposes (that don't harm others), and such purposes aren't limited to purely expressive interests. This is illustrated in the meditation and DANCING examples, where people associate to pursue purposes that aren't fundamentally about conveying messages or forming opinions. We can associate with others in order to develop skills, indulge

[18] In a series of landmark decisions, the US Supreme Court ruled that organizations have a right to exclude individuals from membership (*Boy Scouts of America et al. v. Dale*, 530 U.S. 640 (2000)), or groups from participation in the organization's events (see *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston* 515 U.S. 557 (1995)), because forced association compromises an organization's ability to convey or maintain control over the content of its messaging. The right to associative freedom is thus construed as deriving from a First Amendment right to freedom in messaging. In this context, generally, associative freedom is 'instrumentally yoked' to free speech and only fully protected in intimate associations (Kateb 1998, p. 35). For an historical explanation of this relationship, see Boyd 2008.

[19] For instance, Gerald Lang argues, as a reconstruction of Mill's view, that free speech's value is constrained by freedom of association's value (Lang 2019, p. 117).

leisurely pastimes, or achieve collective tasks. (DANCING involves a mix of these.) Another distinct set of interests served by associative freedom are those involved in nurturing intimate relationships. Our interests in revealing private emotional vulnerabilities in intimate relationships are distinct from the broad social interests that underpin free speech, and these special relational interests are a distinct part of what free association protects.[20]

Admittedly, freedom of association without free speech doesn't do much good for people wanting to hold a bible study group in a society which suppresses Christianity. But it can still do some good in that society, for example, for people wanting to organize a union despite resistance from overbearing bosses, or who want to be permitted to marry. Of course, the liberal insists upon the mutual importance of both liberties. Our point is that despite areas of common ground, these liberties remain distinct, not only in the activities that they protect, but in the underlying interests they serve.[21]

All of this is compatible with the key thesis, central to our analysis of Speech Fights, that in some cases, interference with communicative activities infringes upon people's associative freedom, rather than their free speech. If an association's purposes cannot be effectively pursued amid impeded communication among the group, then the impeding interferences *ipso facto* infringe upon the associative right – and no less so if the interfering action involves an exercise of the interferer's free speech. In a liberal society we have a prerogative to form exclusive communicative coteries, with access limited to welcomed associates. But the source of that prerogative, where it obtains, is our right to establish coteries for pursuing *activities of whatever kind*, communicative or otherwise. Expressive activities often figure in the exercise of that prerogative. But the prerogative is derived from our associative liberties, rather than free speech.

[20] Such claims appear in some writing on associative freedom. Kateb sees association as a distinct aspect of a free life: 'Picking one's company is part of living as one likes; living as one likes… is what being free means' (Kateb 1998, p. 36). And Gutmann identifies a number of valuable ends linked to associative freedom beyond its relation to free speech, including intimacy and charity, and qualities of human life 'possible only in association with others' – like cooperation, competition, and camaraderie (Gutmann 1998, pp. 3-4).

[21] For more on how 'special rights' can remain conceptually distinct, despite significant overlaps in the interests they serve, see Kendrick (2017). For Kendrick, we can see speech and association as *cognate rights,* which have 'equally essential but differing relationships to autonomy. The two activities possess attributes that bear a family resemblance to each other. These activities are distinctive enough to be identified separately, and thus to count as speech rights' (Kendrick 2017, p. 102).

4. Speech fights as rights-in-conflict

Before explaining the Association Account's practical implications in §§5-6, we want to further highlight what makes it an attractive theoretical analysis of Speech Fights. One of its attractions is that it avoids the counterintuitive implications of a free speech-based analysis of Speech Fights (see §2). In addition, the Association Account vindicates the natural intuition that there really is a clash of rights in cases like Lecturer, Bible Study and Festival. It is harder than it may seem to vindicate this via a free-speech-based analysis. Two speakers trying to address the same audience at the same place and time usually have conflicting expressive aims. But there is no strict incompatibility in the exercise of their expressive rights, because their rights don't entitle them to realize their conflicting aims, or to be free from contestatory counterspeech. The real normative conflict, then, in the mutual exercise of these two parties' rights, pertains to how the hecklees' associative rights conflict with the hecklers' expressive rights (where the heckling medium is integral to the hecklers' messages).

The Association Account thus better diagnoses the character of the clash of rights in Speech Fights. It doesn't follow that associative rights should automatically or necessarily trump expressive rights in how institutions manage and resolve Speech Fights. We will have a range of reasons to afford priority to different rights in different contexts (see §5). The point of the Association Account is that it provides a better analysis of what those rights are, whose relative priority must be decided.

One clarification that the account calls for, admittedly, is why the hecklers in Bible Study or Festival shouldn't just be seen as members of the associations, instead of outsiders, in a way that would dissolve the clash of rights we've outlined. If Waldron is correct that audience members must take fellow audience members as they are, why can't one say, similarly, that people in informally constituted groups must accept a group's membership as it is? If one actor, among a group gathered at a given place and time, wants to heckle while another party is speaking, what entitles the rest of the group to treat the dissident voice as being somehow alien to their association?[22]

Standard theories of associative freedom offer a compelling, ready-made response. In short, excluding actors who don't share a group's unifying purpose is a subsidiary right necessarily entailed by a right to associative freedom. For groups to pursue shared aims effectively, it is

[22] See also §6. Thanks to anonymous referees for pressing us to say more about informal groups.

often necessary to exclude actors whose purposes are inimical or orthogonal to the group's. Sometimes this is just about practicalities. Four people trying to play doubles tennis can't do this if extra players keep joining. In other contexts, exclusion is about maintaining integrity in a group's commitments, which may be compromised if a group is forced to include members who don't share its commitments. As Brownlee and Jenkins say, a group must be able to set membership criteria, in order for it 'to *be what it is*, and to represent particular values, beliefs, or interests' (Brownlee & Jenkins 2019, §3.2, emphasis added).

Granted, as Stuart White (1997) argues, some exclusions illegitimately deprive people of opportunities to which they are entitled. If someone is excluded from a sports league purely because of identity-prejudice, that isn't a legitimate exercise of the other actors' associative rights, because the only shared purposes that necessitate such exclusion are illegitimate.[23] But absent this kind of delegitimizing factor, freedom of association entails a subsidiary right to exclude others from an association where effective pursuit of the group's purposes requires this. So, the heckling in our §2.2 examples shouldn't be interpreted as intra-group conflict. This interpretation of the examples ignores the subsidiary right. The hecklees in these cases would be entitled to say: 'You cannot insert yourself into our group if what you are purporting to do, through interacting with us, subverts the shared purposes that are the *raison d'être* for our association'.

5. Open and closed contexts

The Association Account can generate practical guidance for institutions seeking to fairly police Speech Fights. Our account foregrounds the issue of which association's purposes are, or should be, facilitated by a given event or platform. Whose civil liberties take priority, in cases of conflict, depends on this question about the priority of associative purposes. First and foremost, policies around Speech Fights need to start by distinguishing between *open* and *closed* associative contexts. Open contexts are ones in which every member of the relevant community (that is, the community where the venue or platform in question is located) has a presumptive right to participate in the relevant associative activities. Political meetings where government actors field questions from

[23] Although for a challenge to this claim, arguing that compelled inclusion has a stifling influence on associations that reject mainstream moral viewpoints, see Bedi (2010).

the public are a paradigmatic example of an open associative context. Other examples include platforms like speaker's corner, or indeed, open public spaces generally, where, as long as things remain consensual and minimally respectful, anyone is free to interact with anyone else. Paradigmatically *closed* associative contexts, by contrast, are those reserved for specific groups to use for specific purposes, like creative performances or faith-based meetings.

Naturally, there are cases that fall between paradigmatically open and closed contexts – middling cases along a continuum. For instance, suppose a company organizes a lecture on its premises to inform the public about its work, or that a library organizes a reading. If a Speech Fight arises in such cases, managing it demands that we carefully assess the point of the gathering, the allocation procedure for distributing access to the relevant platform, and the basis on which potential participants might affiliate themselves with (or seek to redirect) the group's shared purpose.

We elaborate on these points in §6. The key practical insight to emphasize, up front, is that the Association Account brings this distinction between open and closed associative contexts to the fore, and that this distinction gives us guidance for managing Speech Fights. In closed associative contexts, expression that impedes the exercise of people's associative liberties is liable to suppression, in principle – as long as the suppression doesn't involve a gratuitous or identity-prejudicial exclusion – because such expression is itself an infringement on people's associative rights. Conversely, in open associative contexts, in which these associative-liberty-based reasons for exclusion are not in play, heckling and other disruptive expression is not liable to suppression, unless it is danger-instigating or manifestly devilish. In an open context, to suppress heckling *because* it is disruptive, is – somewhat like suppressing a peaceful street protest in the name of law and order – to subvert the fundamental anti-authoritarian ethos that underpins a system of liberal rights.

Here is an example to illustrate. Waldron talks about how relocating a speech into a private space can be used to justify excluding hecklers and quash dissent (Waldron 2017, p. 14). Suppose a politician is heckled at a 'town hall'-style campaigning event. The instinctive, self-serving reaction, from the politician's team, will be to remove the heckler and ensure that the event's communicative choreography isn't thrown off. As we argued in §2.1, free speech theory's underlying ideals will often fail to generate clear guidance on what to do under these circumstances.

The Association Account offers a different approach. We begin by asking what sort of gathering this town hall meeting is. Is this a private discussion among a closed coterie? Or is it, as it has been portrayed – and, *per* our democratic ideals, as it really *should* be – an open context, where a government representative fields questions from the public, and any member of the public is presumptively entitled to participate? The answer seems to be the latter, and thus the heckler shouldn't be removed merely on account of the disruptive character of their contribution. Political actors have the same associative rights as anyone else in their private affairs. But there are weightier obligations at stake in interactions between the public and the government than the ones derived from the politician's associative liberty. When acting in her capacity as a public office holder, the politician cannot properly invoke rights of associative liberty to justify a refusal to interact with critics in a public discussion.

The terrain looks different in closed associative contexts. We can imagine Festival's protestor critiquing a freedom-of-association-based justification for removing her from the festival. She may argue that in prioritizing the other attendees' associative rights, we are perpetuating the same exclusions that she is protesting. But when considering closed contexts, like a festival staged for an audience that has coordinated for the purpose of listening to a specific group of performers, this complaint seems impotent. If the exclusion of actors with subversive aims isn't allowed in such closed contexts – if closed activities can be sabotaged whenever someone wants her own agenda to loom larger among a group's shared aims – this threatens to dissolve associative rights altogether, because it makes associating for a purpose so *sabotageable* as to be almost futile. In order to associate in pursuit of a shared purpose, we must settle upon some non-universal agenda, endorsed by some limited group of associates. The non-universality of our agenda may frustrate other actors with other aims. But this only generates a compelling justification for opening up the associative circle (and/or its aims), in scenarios – like the politician's town hall meeting – where part of the association's *raison d'être* is to engage with a wider population's viewpoints.

Sometimes, it may look harder to determine whether an event should be treated as an open or closed context. For example, consider an executive meeting at an oil company to decide on new fossil fuel mining projects. Participants at the meeting don't formally represent the public's interest, yet people outside the group seem to have a compelling interest in their decision-making, given the effects on climate change. Does that change the meeting from a closed associative context,

among a private company, into an open context? If hecklers intervened, might their removal be justified, in principle, under the Association Account?

We regard the oil company's meeting as a closed context, despite the weighty societal interests at stake. What is distinctive about the political town hall meeting isn't just that weighty societal interests are at stake, but that a politician has representative duties. To deny the closed nature of company meetings would end up disruptive to the point of anarchy, given how often group undertakings, in business and elsewhere, potentially affect broader societal interests. Still, there may be other justifications for heckling in such cases, perhaps as an act of civil disobedience to draw attention to the severity of the climate emergency. But in general, businesses can control the general public's entry into their premises and meetings.[24]

This brings us to the example we opened with, Lecturer. The example is a slightly adapted account of a 2011 incident at the University of Cambridge, at which students heckled the UK's Universities Minister, David Willetts, by shouting out a poem that was critical of the government, with enough persistence that the lecture was ultimately cancelled. Many commenters saw this as an affront to free speech (for example, Griffin 2011). Similar examples abound in the US campus culture wars (for example, Bauer-Wolf 2017).

If one wants to defend a suppression of heckling in this scenario, one must characterize it as a closed associative context, devoted to the pursuit of a temporarily constituted group's shared aims. In short, one must interpret Lecturer as being relevantly similar to cases like Festival or Bible Study. It isn't – despite some aspects of its appearance – an open context, like a town hall meeting with a government official. It isn't an impromptu clash between rival political actors in an open public

[24] Thanks to a referee for suggesting this example. To be clear, our account doesn't assert a distinction between associative rights that are and *aren't* affiliated with commercial ventures, so, for example, the associative rights in Festival and Bible Study are alike. One reason for this is that we see the wrongness of the heckling in such cases as having a similar intuitive basis, of undermining a group's prerogative to combine in pursuit of a shared cause. That some associates stand in a customer/vendor relationship doesn't affect that intuitive appraisal. Another reason is that, like Larry Alexander, we think it draws a bright line across what is, in real-life associations, a fuzzy continuum. As Alexander says, '[S]ocial clubs… are venues for close friendships, recreational activities, and commercial intercourse... Attempting to find the essential nature of any particular association… is a bootless quest, a misguided Platonism' (Alexander 2008, p. 13). One potential downside of not asserting a distinction is that we're affording businesses a *pro tanto* entitlement to exclude customers that don't share their purposes. But we are willing to accept this implication: the anti-identity prejudicial side-constraint on exclusions, commercial or otherwise (see §4), mitigates the main worry arising over commercial associations excluding customers.

space, in which expressive rights may be exercised independently of any agreed-upon agenda. Rather, so one must maintain, it's a staged event with a preordained agenda, into which attendees are obliged to fit any communicative contributions.

We think there are grounds for questioning this interpretation of Lecturer. When the speaker is a serving government minister, it is less plausible that a speaking event can be legitimately treated as a closed context. Government officials should not be able to evade full-blooded criticism from the public by turning an apparently public event into a closed gathering among a cooperative coterie.[25]

Even if one believes this event should be treated as a closed associative context, our analysis highlights an irony in debates about cases like Lecturer, where hecklers disrupt public talks at universities. Liberal authors often discuss free speech's importance in universities, saying, for instance, that a university that doesn't prize free speech cannot 'be meaningfully regarded as a proper institution of higher education' (Whittington 2018, p. 29). The pundits who regard incidents like Lecturer as an affront to the university's culture (note 1) commonly echo such claims. But this looks almost back-to-front, by our lights. If free speech makes for a *bona fide* university, and if a university is hosting a public meeting on an issue of general public interest, then a *bona fide* university's management should be deeply reluctant to send in security guards to remove dissident students who are verbally challenging a controversial speaker. The irony is that some commenters speak of events like Lecturer as if they were paradigmatically open associative contexts, while expecting those events to be managed like closed associative contexts. Claims about the priority of free speech are asserted, by some liberal pundits, to defend practices (of heckling suppression) which bespeak a relative *deprioritization* of free speech, and a prioritization of associative rights.

In highlighting this tension, we don't deny that in many campus settings heckling *is* an affront to the university's culture. Universities are not speaker's corners. Their primary role in our discursive ecosystem is to facilitate focused inquiry and knowledge dissemination among associations of academic experts and students. In formal teaching and research, the effective pursuit of a university's aims requires that academic experts discriminate between speakers who are competent or incompetent, and cooperative or uncooperative, and give expressive priority to the competent and cooperative (Post 2012; Simpson 2020). Closed associative

[25] David Estlund (2018) makes similar points about campus protests.

contexts, wherein discourse is governed by such demands, linked to the association's core epistemic purposes, are vital for universities.

Outside formal teaching and research, however, open contexts also play some role in the university's discursive practices. When designing policy for managing Speech Fights in universities, we have to tread carefully in deciding what marks out a particular event as an open or closed context. One policy rule-of-thumb that may help universities to better manage Speech Fights is to be more explicit in planning and advertising about what purposes are being pursued via extracurricular public lectures. Are these *bona fide* public discussions, like town hall meetings? Are they part of the (presumptively closed) practices of teaching and research? Or are they private gatherings among closed associations, similar to Festival or Bible Study? Universities should not *automatically* extend the rationale for protecting closed academic associative contexts to events put on by student societies or talks from visiting government officials.

6. Divided associations, outsiders, and access to platforms

A distinction between open and closed associative contexts is a good place to start in policymaking around Speech Fights. But further normative guidelines will be needed in various difficult cases. Drawing on the Association Account, we discuss two further considerations that should factor into policy.

6.1 Fair procedures for allocating platforms

Consider the following Speech Fight.

> *Open Mic*. At an open mic musical event, each act is supposed to receive ten minutes to perform. One evening it happens that many attendees know each other, and they cajole the compere into allocating all of the stage time to their coterie. This deprives other attendees of an opportunity to perform. One of the excluded performers reacts by playing their songs over the top of one of the on-stage acts, thereby sabotaging their performance.

Intuitively, the excluded performer here is wronged even though they don't have any formal right to this platform. But does associative freedom provide the in-crowd here with a pretext for monopolizing, and subverting fair access to, this platform? If they were to assert a freedom-of-association-based justification for suppressing the retaliatory

performer, this would seem like a dubious rationalization of an unfair exclusion. But how do we defend that? If the protection of associative rights can be cited in Festival, to justify a group's exclusionary control of a platform, why isn't a similar justification viable in Open Mic? It won't do to say that exclusions are justified if they help a group pursue its purposes. The in-crowd in Open Mic may be monopolizing the venue because they want a launch-pad for a nascent musical venture, but this doesn't seem to redeem their association-based justification for stage-hogging.

What is important here, we think, is whether there is a recognized (and not manifestly unfair) procedure for allocating access to the contested platform. If there is, then its outputs determine which groups are justified in using this resource for their associative-cum-communicative purposes. The in-crowd in Open Mic is bypassing the recognized procedure through which access to the relevant platform is allocated. By contrast, if a heckler disrupts the scheduled performers in Festival, their removal seems more justifiable because (or insofar as) the scheduled acts were selected via some kind of recognized and contextually appropriate booking process (as opposed to an impromptu act of stage-hogging). In Festival, unlike in Open Mic, the associative coterie of performers-plus-audience can lay claim to using the venue for their closed associative purposes, and so in principle they may suppress would-be saboteurs.[26]

6.2 The uniformity of associations

In some associations, including knitting clubs, bible study groups, and oil company board meetings, a group has a defined membership that agrees on the group's purpose. In other associations, purposes and membership boundaries are less well-defined. In Festival and Lecturer, the associations aren't united by anything more than attendance at a particular event. The attendees may have different reasons for attending, and different views on how things should proceed. Or consider a trade union having an internal dispute over whether its purposes should encompass general political campaigning, or should instead be limited to defending worker's rights. Its membership is clearly defined, but its members disagree on their association's purposes.

A lack of definition or uniformity in an association's purposes could arguably affect the scope of a free association-based policy for managing

[26] The commercial purpose of this association doesn't fundamentally affect the relevant rights. See §5.

Speech Fights. If a group is less well-defined, or if its aims are disputed or unclear, it seems harder to justify the exclusion of hecklers by appeal to the group's right to gather in pursuit of its shared purposes. One may ask: why protect these people's pursuit of their activities, and not these people's *plus the heckler's*? Why protect the pursuit of one set of ends, rather than the heckler's ends? Perhaps the justification for suppressing hecklers that we offered in §4 – that a heckler cannot insist on inserting themselves into a group, where that undermines the group's purpose – doesn't suffice for less cohesive groups.

In response to this challenge, our position is that total clarity about a group's *membership* doesn't matter, by itself, but clarity about a group's *purposes* does. Associative purposes need to be sufficiently defined for there to be a closed context to be invoked to justify excluding a heckler. In other words, there must be a genuinely *shared* associative purpose that the heckler would be subverting, in disrupting the activity.

Let us illustrate with a pair of examples. Suppose two public talks are staged at a festival. X's lecture attracts twenty positively minded listeners, but also two hecklers. Y's talk is less successful. It only attracts two people, both of whom heckle. Suppose the hecklers shout down both talks. Our analysis suggests that the hecklers infringe upon civil liberties in relation to X, but not Y. With X, the hecklers impede interplay among associates with shared purposes. But Y doesn't have such associates there to listen to her message, therefore no *shared* purposes are thwarted in her being shouted down.

It may seem perverse to afford less protection to an unpopular speaker than a popular speaker who attracts an engaged audience. But once we see that heckling is an exercise of protected speech (some vicious instances of which still merit protection), and that our reasons for suppressing (some) heckling derive from associative rights, the differential treatment of these cases seems warranted. And we cannot invoke the associative liberty part of our account to critique this, if there are no active associations at stake. It should soften the blow, however, that this surprising implication only arises when *zero* receptive listeners show up. If Y's lecture has just one engaged audience member, that activates associative rights. Y and her audience, meeting in a venue that is designated for the purpose of their interaction, have a right to pursue their shared purpose there without external interruption. Heckling that prevents this from happening infringes upon the right, whether the association includes two people or two hundred.

Could the heckler be a member of the association in the unpopular speaker case? Why do their disruptive aims not get counted as the

association's aims, or one of the aims in a contested association, where some assemble to listen to the speaker and others to disrupt? This brings us back to a point we made in §4: it cannot be so easy for a heckler to override the originally posited purpose of the gathering, that is, to hear this speaker in this venue, insofar as at least some actors share that purpose. To permit that kind of heckling, in principle, would undermine any exclusions of people acting at odds with an association's purposes, and in general these are needed in order for associations to function. By contrast, in the internal union dispute example, suppose that one union member heckled in order to disrupt the putting forward of a motion to join in some controversial political campaigns. If the union's official membership disagrees about the *raison d'ẽtre* for their association, such heckling does not infringe upon the other members' freedom of association. Rather, it is a presumptively valid contribution to the association's efforts to reach a collective resolution concerning its aims.

7. Conclusion

Our question was how to analyse Speech Fights. We argued that heckling is best understood as an exercise of free speech, not as a form of *de facto* censorship. We rejected Wagner's proposal for suppressing heckling on the basis of audience interests, but we agreed that if heckling is over-protected this enables hecklers to impose themselves unreasonably onto other people's interactions. The best way to interpret the justification for suppressing heckling in such cases is to invoke the associative rights of the hecklee-plus-audience, which entail a subsidiary right to communicate without external interference. This right isn't in play for events and interactions that rightfully belong in an open public forum. But if members of a closed group are exercising their right to associate in pursuit of shared purposes, at a time and place where they are entitled to do so, they should be protected against outsiders using speech to interfere with that.

The Association Account isn't a fully fleshed-out specification of institutional policies for policing Speech Fights. But it shows how a formulation of such policy should be grounded and oriented, and explains why an over-emphasis on expressive liberty, in this domain, is at best unilluminating. This reframing of Speech Fights, with reference to associative rights, can help institutions to develop principled regulations for dealing with hecklers in various settings, including universities, clubs and societies, corporate meetings, creative performances, and events

with government officials. Just as importantly, it gives us a way of analysing and addressing Speech Fights that doesn't involve a wrongheaded reconfiguration of our free speech ideals – one that turns these ideals into an alibi for privileging officially platformed speakers, and suppressing dissidents, rabble-rousers, and outsiders, in the name of communicative orderliness.[27]

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