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Speech and Spatiality

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Posted By [Timothy Zick](#) On February 4, 2012 @ 12:37 pm In [First Amendment, Symposium \(First Amendment Architecture\)](#) | [No Comments](#)

I too want to thank Danielle and Concurring Opinions for hosting this discussion. I think Marvin has addressed a really timely and important topic, speech spaces and architecture, in his [forthcoming article](#) ^[1]. As readers can tell from his posts here and elsewhere, and from reading the piece, Marvin challenges a fair amount of what passes for conventional wisdom in the free speech area. I look forward to discussing his thesis and some of its implications. In this post, I want to address why the framing of the issues Marvin addresses as distinctly spatial ones is critically important.

In my own work on [speech and spatiality](#) ^[2], I have focused on the importance to freedom of speech, assembly, and petition of access to public parks and plazas (public forums). Marvin's conception of speech spaces is much broader. It includes not only these traditional forums, but various channels of communication. Thus, he provides an expansive conception of free speech spaces, one that extends far beyond my own conception of the "[expressive topography.](#)" ^[2] Under Marvin's conception, newspapers, broadcast and cable stations, the U.S. mail, and the Internet are all speech spaces. They are part of our expressive architecture. By treating these channels as spaces or places rather than simply mediums of expression, Marvin begins to push against traditional conceptual boundaries. By framing the discussion in terms of spatality, he begins the process of rearranging conceptual, theoretical, and doctrinal boundaries.

The central payoffs from this conceptual framing are two-fold.

First, Marvin is able to provide a comprehensive conceptual framework, one which captures a broad range of spaces — physical, virtual, public, private, local, national, and global. Although he offers a spatial framework, Marvin avoids the critical mistake of the public forum doctrine. The analysis does not turn on how we characterize or categorize these spaces — they are all important to speech rights, and they all implicate common principles relating to government facilitation and regulation of expression. As the Occupy protests and various consumer petition drives have recently shown, now more than ever spatial pluralism is crucial to the full enjoyment of expressive rights.

Second, and nearer the core of Marvin's contribution, adopting a spatial frame leads us to the foundation of certain First Amendment doctrines and principles. Space is antecedent and primary. As breathing requires air, speech requires space. As Marvin observes, our free speech doctrines and principles recognize this fact — mostly in implicit terms. Some of these doctrines and principles are facilitative and positive in character, rather than merely or solely negative. The doctrinal implications of this spatial frame will need to be worked out. However, Marvin seems to be addressing primarily legislative and administrative officials. As Jack Balkin and others have noted, these officials will have a substantial influence on speech architecture in both the near and more distant future.

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URLs in this post:

[1] forthcoming article: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1791125

[2] speech and spatiality: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=673448

