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Meiklejohn, Monica, & Mutilation of the Thinking Process

Clay Calvert*

Fifty years after Alexander Meiklejohn first linked himself to free speech jurisprudence with the principle of democratic self-governance,¹ this Article links his writings about free speech to the ensuing media coverage of President Clinton's inappropriate relationship with former White House intern Monica Lewinsky.² It is a dubious distinction, no doubt, for the famed philosopher and educator³ to be

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1. See ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* (1948) [hereinafter MEIKLEJOHN, *FREE SPEECH*] (articulating a theory of free speech in democratic self-governance); see also RODNEY A. SMOLLA, *FREE SPEECH IN AN OPEN SOCIETY* 15 (1992) (observing that Meiklejohn's 1948 work was "influential" in defining the democratic self-governance theory of free speech).

2. President Clinton acknowledged in a televised speech on August 17, 1998, that he had "a relationship with Miss Lewinsky that was not appropriate." Peter Baker & John F. Harris, *Clinton Admits to Lewinsky Relationship, Challenges Starr to End Personal "Prying,"* WASH. POST, Aug. 18, 1998, at A1. For background on the upbringing and life of Monica Lewinsky, see Romesh Ratnesar, *The Days of Her Life*, TIME, Feb. 2, 1998, at 36.

3. See generally ALEXANDER MEIKLEJOHN: *TEACHER OF FREEDOM* (Cynthia Stokes Brown ed., 1981) (combining a collection of Meiklejohn's educational, philosophical, and legal writings with biographical information). Meiklejohn "wanted higher education to develop social intelligence in students," which he defined as "the ability to control one's social environment." MICHAEL R. HARRIS, *FIVE COUNTERREVOLUTIONISTS IN HIGHER EDUCATION* 46 (1970). Ultimately, he believed "that the college, standing apart from its social environment, should develop in its students the intelligence to become responsible citizens of a democratic society." *Id.* at 163.

linked with "Oralgate"⁴ and one of Bill Clinton's alleged affairs,⁵ but the link here is scholarly, *not* salacious.

This Article asserts that Meiklejohn's writings on the values of free speech in a self-governing democracy provide an excellent philosophic context⁶ and an ideal lens through which to consider and evaluate press coverage of the latest "Washington sex-and-deception scandal."⁷ That coverage, of course, has caused much consternation and self-reflection—or perhaps *pseudo* self-reflection—among journalists.⁸ Meiklejohn prized self-reflection. He once praised the United States and Britain for having developed what he called "the high political art of self-criticism."⁹ Today, Meiklejohn's own writings help to provide journalists and legal scholars alike with the necessary structure and guideposts for that same "art of self-criticism."¹⁰

In particular, Meiklejohn's work provides a serious, alternative framework to the pointless pontification and verbal masturbation of the Washington pundits who critique the media's performance while simultaneously stroking their own egos on frenetic talk shows such as CNN's *Crossfire*.¹¹ More importantly, his writings are laden with statements and admonitions which raise many important questions that *should* frame debate about whether the press did its job properly when it "saturated the airwaves and print media"¹² with ratings grabbing coverage¹³ about President

4. See Frank Rich, *The Joy of Sex*, N.Y. TIMES, Feb. 4, 1998, at A23. In addition to "Oralgate," the events have been dubbed "Zippergate" and "Clinterngate." See Rebecca Eisenberg, *It's the Sex, Stupid*, S.F. EXAMINER, Feb. 8, 1998, at B5; Michael Kinsley, *In Defense of Matt Drudge*, TIME, Feb. 2, 1998, at 41.

5. Lewinsky is alleged to have had "sexual liaisons with President Clinton." See William Booth & William Claiborne, *Lewinsky Seeks a "Normal" Life*, WASH. POST, Feb. 4, 1998, at A12.

6. Although modern legal scholars tend to think of Meiklejohn only for his writings on free speech, it must be remembered that, by education and training, Meiklejohn was first and foremost a philosopher and educator. See ALEXANDER MEIKLEJOHN: TEACHER OF FREEDOM, *supra* note 3, at 4-9 (describing Meiklejohn's studies of philosophy at Brown University and Cornell University and his work as an instructor of philosophy at Brown University). Meiklejohn served as dean at Brown University and later as president of Amherst College. See *id.* at 8-19.

7. See David M. Shribman, *Americans Will Take Policy Over Scandal*, BOSTON GLOBE, Feb. 17, 1998, at A1.

8. See Sherry Ricchiardi, *Standards are the First Casualty*, AM. JOURNALISM REV., Mar. 1998, at 30, 30-31 (describing a "journalistic standards meltdown" in reporting on the Lewinsky incident).

9. ALEXANDER MEIKLEJOHN: TEACHER OF FREEDOM, *supra* note 3, at 138.

10. See *id.*

11. See *CNN Crossfire: Are Reporters in Feeding Frenzy Over White House Controversy* (CNN television broadcast, Feb. 9, 1998) (discussing the media's coverage of the Lewinsky scandal).

12. *Times Washington Bureau National Perspective; Washington Insight*, L.A. TIMES, Feb. 11, 1998, at A5.

13. See Richard E. Berke, *Clinton's O.K. in the Polls, Right?*, N.Y. TIMES, Feb. 15, 1998, at Week in Review 1, 5. Traffic on Internet news sites, as well as newspaper and magazines sales, rose "markedly" after the Lewinsky story broke. See *id.* More people watched the NBC Sunday morning news show *Meet the Press* on the Sunday after the scandal broke than since the height of the 1991 Persian Gulf War. See *id.*; see also *CNN Reliable Sources: The Dangerous Backlash Against the Media* (CNN television broadcast, Feb. 14, 1998) ("Coverage of this story has been a ratings bonanza.

Clinton's alleged sexual relationship with Monica Lewinsky.¹⁴ The relevance of Meiklejohn's work extends well beyond the narrow reaches of the Clinton-Lewinsky entanglement, of course, and includes general press coverage of politics during the age of tabloid television and the cyber journalism of Matt Drudge.

This Article does *not* pretend, however, to resolve the issues it raises from a Meiklejohnian perspective regarding the press coverage of the Lewinsky scandal. Indeed, given Meiklejohn's penchant for the open-but-orderly process of debate at a town hall meeting,¹⁵ it would be inappropriate for one individual to resolve any issue alone. This Article *does*, however, use Meiklejohn's principles and theories to raise important questions concerning the recent press coverage. This inquiry is well grounded in a body of work associated, at least since the United States Supreme Court's seminal defamation decision in *New York Times Co. v. Sullivan*,¹⁶ with First Amendment¹⁷ jurisprudence that is fundamental to both a free press and a democracy at the close of the twentieth century. Furthermore, this Article teases out different perspectives and suggests possible responses and answers to these questions.

Particularly for cable shows, viewership is up.”).

14. Stories about the matter often have been salacious, appealing to prurient interests of the audience. See Adam Cohen, *The Press and the Dress*, TIME, Feb. 16, 1998, at 52 (describing the anatomy and chronology of the so-called “sex dress” story involving the allegation that Monica Lewinsky kept a dress allegedly stained with President Clinton's semen).

15. See ALEXANDER MEIKLEJOHN, POLITICAL FREEDOM: THE CONSTITUTIONAL POWERS OF THE PEOPLE 24 (1960) [hereinafter MEIKLEJOHN, POLITICAL FREEDOM] (Meiklejohn described the traditional American town meeting “as a model by which free political procedures may be measured. It is self-government in its simplest, most obvious form.”).

16. 376 U.S. 254 (1964). “*Sullivan* is often understood to reflect the conception of freedom of expression advocated by Alexander Meiklejohn—a conception of self-government, connected to the American principle of sovereignty.” CASS R. SUNSTEIN, THE PARTIAL CONSTITUTION 206 (1993). See LEE C. BOLLINGER, THE TOLERANT SOCIETY 49 (1986) (observing what he calls an axiomatic “Meiklejohn-*Sullivan* alliance”). The source of this link often is attributed to a 1964 law journal article about *Sullivan* that made specific reference to Meiklejohn. See Harry Kalven, Jr., *The New York Times Case: A Note on the “Central Meaning of the First Amendment,”* 1964 SUP. CT. REV. 191, 209 (1964) (stating that the *Sullivan* opinion “almost literally incorporated Alexander Meiklejohn's thesis that in a democracy the citizen as ruler is our most important public official”). Bollinger argues that Kalven's article confirmed the association between the Supreme Court's reasoning in *Sullivan* and the philosophy of Meiklejohn. See BOLLINGER, *supra*, at 49. Today, it is a “relatively uncontroversial working hypothesis that the [*Sullivan*] decision rested on Professor Meiklejohn's conception of the First Amendment.” See Cass R. Sunstein, *Hard Defamation Cases*, 25 WM. & MARY L. REV. 891, 898 (1984).

17. The First Amendment to the United States Constitution provides in relevant part that “Congress shall make no law . . . abridging the freedom of speech, or of the press” See U.S. CONST. amend. I. The Free Speech and Free Press Clauses are applied to states and local governments via the Fourteenth Amendment Due Process Clause. See U.S. CONST. amend. XIV; *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

Part I provides a brief primer on Meiklejohn's theory of free expression.¹⁸ Drawing directly on specific passages from Meiklejohn's writings, Part II raises five questions that help to frame debate and discussion about press coverage of the alleged sexual liaison between Lewinsky and the President.¹⁹ Furthermore, this part of the article explains why these particular questions are so relevant. Part III sets forth alternative responses and options to the issues raised in Part II.²⁰

I. THE IMPORTANCE OF POLITICAL SPEECH IN A SELF-GOVERNING DEMOCRACY

The principle of free speech, Meiklejohn wrote, "springs from the necessities of the program of self-government."²¹ Speech that serves a self-governing democracy is speech that facilitates the "voting of wise decisions"²² and deals with "the general welfare."²³ Therefore, such speech must receive the utmost First Amendment protection.²⁴ As Meiklejohn wrote, "[p]ublic discussions of public issues, together with the spreading of information and opinion bearing on those issues, must have a freedom unabridged by our agents."²⁵ The quality of that public discussion and debate, in turn, "is measured by its capacity to facilitate [wise] public decision-making."²⁶

A. *When Speech May Be Abridged*

Although Meiklejohn privileges political speech that is "upon matters of the public interest,"²⁷ some political speech *may* be abridged to facilitate an orderly, productive debate. Meiklejohn once remarked that the First Amendment "is not the guardian of unregulated talkativeness"²⁸ and that public discussion must not

18. See *infra* notes 21-61 and accompanying text.

19. See *infra* notes 62-123 and accompanying text.

20. See *infra* notes 124-146 and accompanying text.

21. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 27. For Meiklejohn, self-government is one in which "[r]ulers and ruled are the same individuals." See *id.* at 12. It entails a basic agreement or compact "that all matters of public policy shall be decided by corporate action, that such decisions shall be equally binding on all citizens . . ." See *id.* at 14.

22. See *id.* at 26.

23. See *id.* at 87.

24. See *id.* at 84. Meiklejohn supported "[t]he principle of the unqualified freedom of public speech." See *id.*

25. Alexander Meiklejohn, *The First Amendment is an Absolute*, 1961 SUP. CT. REV. 245, 257.

26. See ROBERT C. POST, CONSTITUTIONAL DOMAINS: DEMOCRACY, COMMUNITY MANAGEMENT 271 (1995).

27. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 24.

28. See *id.* at 26.

become "a dialectical free-for-all."²⁹ The manner of presentation of political speech is important. As he wrote, "facts and interests must be given in such a way that all the alternative lines of action can be wisely measured in relation to one another."³⁰ Some speech about politics may, then, be regulated. Thus, "[w]hat is essential is not that everyone shall speak, but that *everything worth saying* shall be said."³¹

Meiklejohn illustrated this point by offering up "the traditional American town meeting" as "a model by which free political procedures may be measured."³² The town meeting requires that "certain rules of order will be observed."³³ What speech is *out of order*? Speech that is redundant,³⁴ that "wanders from the point at issue,"³⁵ that is interruptive,³⁶ that mutilates the thinking process of the community.³⁷ The debate, in other words, must be reflective and deliberative, following certain procedures that facilitate these ends.³⁸ It must be structured.³⁹ Speech may also be abridged when it is unrelated to the governing of the nation. Meiklejohn wrote that

29. See *id.* at 25. The outbreaks and chanting at the "town meeting" at Ohio State University in February, 1998, in which United States foreign-policy officials tried to explain and defend United States policy in Iraq, represent the kind of dialectical free-for-all that Meiklejohn wanted to prevent. See Bruce W. Nelan, *Selling the War Badly*, TIME, Mar. 2, 1998, at 26, 27. Although Meiklejohn surely would allow the dissenters' views to be heard, he also surely would have objected to the out-of-order raucous that threatened to transform the meeting into communicative chaos.

30. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 26.

31. See *id.* (emphasis added).

32. See *id.* at 24. Today, town meetings are anachronisms "surviving only in a few eccentric backwaters of Ye Olde New England." Andrew Ferguson, *Ye Olde Town Gimmick*, TIME, Mar. 2, 1998, at 88.

33. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 24.

34. See *id.* at 26. Meiklejohn wrote:

If, for example, at a town meeting twenty like-minded citizens have become a "party," and if one of them has read to the meeting an argument which they have all approved, it would be ludicrously out of order for each of the others to insist on reading it again. No competent moderator would tolerate that wasting of the time available for free discussion.

Id.

35. See *id.* at 24-25. As Meiklejohn observed "all facts and interests *relevant* to the problem shall be fully and fairly presented to the meeting," thus speech that is irrelevant to the public issue would be out of order and not protected. See *id.* at 26 (emphasis added).

36. See *id.* at 25. "If one man 'has the floor,' no one else may interrupt him except as provided by the rules." *Id.* at 24.

37. See *id.* at 27. "It is that mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed." *Id.* at 27 (emphasis omitted).

38. See Cass R. Sunstein, *The First Amendment in Cyberspace*, 104 YALE L.J. 1757, 1762 (1995) (stating that Meiklejohn's views on the United States' constitutional system emphasize "deliberative democracy" in which there is "reflective and deliberative debate about possible courses of action").

39. See LUCAS A. POWE, JR., THE FOURTH ESTATE AND THE CONSTITUTION 247 (1991) (noting that Meiklejohn depended on structure).

the First Amendment does *not* protect "private interests."⁴⁰ For instance, he observed that the First Amendment gives no protection to the defendant in the *private* defamation action.⁴¹ In addition, "[w]ords which incite men to crime are themselves criminal and must be dealt with as such."⁴² Meiklejohn acknowledged that in these cases "decisive repressive action by the government is imperative for the sake of the general welfare."⁴³

Meiklejohn also suggested that speakers who are "not engaged in the task of enlarging and enriching human communication,"⁴⁴ but who instead are "engaged in making money,"⁴⁵ do not always receive full First Amendment protection. Private profit is *not* the goal of free speech. Meiklejohn wrote: "[T]he First Amendment does *not* intend to guarantee [individuals the] freedom to say what some *private interest* pays them to say for its own advantage. It intends only to make [individuals] free to say what, as citizens, they think, what they believe, about the general welfare."⁴⁶

Private media enterprises thus must do *more* than serve a purely private profit-making function for owners and shareholders. Meiklejohn suggested that they must "cultiv[ate] those qualities of taste, of reasoned judgment, of integrity, of loyalty, of mutual understanding upon which the enterprise of self-government depends."⁴⁷ Unfortunately, many media enterprises "have used [the First Amendment] for the protection of private, possessive interests with which it has no concern."⁴⁸

Finally, Meiklejohn suggested that individuals and entities must exercise self-control in the use of free speech. "Political freedom does not mean freedom from control. It means self-control."⁴⁹ In turn, "we must exercise control over our separate members."⁵⁰ We must cooperate with each other and engage in "responsible" discussion.⁵¹

B. *When Speech May Not Be Abridged*

Speech may *not* be prohibited because it is thought to be false, dangerous, unwise, unfair, un-American, or disagreeable.⁵² As Meiklejohn wrote, citizens

40. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 57.

41. See Meiklejohn, *supra* note 25, at 259.

42. MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 21.

43. See *id.*

44. See *id.* at 87.

45. See *id.*

46. See *id.* (emphasis added).

47. See *id.* at 87.

48. See *id.*

49. *Id.* at 13.

50. See *id.* at 16.

51. See *id.* at 25.

52. See *id.* at 27.

"may *not* be barred [from speaking] because their views are believed to be false or dangerous. No plan of action shall be outlawed because someone in control thinks it unwise, unfair, or un-American."⁵³

Likewise, verbal attacks made to show the unfitness of a candidate for governmental office should not be subjected to legislative control.⁵⁴ Instead, as Meiklejohn wrote, "all facts and interests relevant to the problem shall be fully and fairly presented to the [town hall] meeting."⁵⁵ All information that can make voters "as wise as possible"⁵⁶ must be permitted. Thus, Congress *may* create legislation designed to "enlarge and enrich" free speech on public issues and to facilitate "the unhindered flow of accurate information," so long as such legislation does not take away from the presentation of diverse perspectives.⁵⁷ Congress, as Meiklejohn put it, is "*not* forbidden to engage in that positive enterprise of cultivating the general intelligence upon which the success of self-government so obviously depends."⁵⁸

C. Overview: Substantive and Procedural Aspects of Meiklejohn's Theory

Meiklejohn's theory of free speech is both *substantive* and *procedural*. *Substantively*, speech that affects the general welfare, described as speech "upon matters of public interest,"⁵⁹ must be given heightened constitutional protection compared to speech concerning private issues that does not affect self-governance or public policy issues. *Procedurally*, however, political speech must occur in an ordered fashion that brings maximum benefit to the audience and the potential voters, not the speakers. Speakers' rights thus may be abridged, Meiklejohn wrote, because "the point of ultimate interest is not the words of the speakers but the minds of the hearers."⁶⁰ Phrased differently, the autonomy of speakers may be sacrificed at the altar of service for a collective need for wise decision making.⁶¹

53. See *id.* (emphasis added).

54. See Meiklejohn, *supra* note 25, at 259.

55. MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 26.

56. See *id.*

57. See *id.* at 19. "Congress is not debarred from all action upon freedom of speech. Legislation which abridges that freedom is forbidden, but not legislation to enlarge and enrich it." *Id.*

58. See *id.* at 19-20 (emphasis added).

59. See *id.* at 24.

60. See *id.* at 26.

61. See POST, *supra* note 26, at 276 (providing that Meiklejohn's theory "postulates a specific 'objective' for public discourse, and it concludes that public debate should be regulated instrumentally to achieve this objective" and that this objective may lead to the censorship of "speakers whose expression is deemed incompatible with the achievement of a rich and informative public dialogue").

II. FRAMING DEBATE ABOUT COVERAGE OF THE LEWINSKY SCANDAL

Meiklejohn's writings suggest at least five questions that frame the debate concerning press coverage of the allegations that President Clinton had an "inappropriate physical relationship" with a White House intern. This quintet, in turn, raises a number of sub-issues that are also useful in analyzing and critiquing press coverage of these allegations.

It must be emphasized that these five questions focus narrowly on press coverage of the alleged sexual liaison itself, *not* coverage of whether President Clinton suborned perjury of Ms. Lewinsky. Why?

It is the reportage of President Clinton's sexual life that has attracted the most public criticism, with sixty percent of U.S. adults surveyed in January, 1998, believing that Americans should *not* be informed about the private lives of Presidents, including any extramarital affairs,⁶² and another seventy-five percent telling pollsters that there is too much coverage of the scandal.⁶³ Journalism professor Mark Popovich observed that "[q]uestions of how to deal ethically with invasions of privacy, marital infidelity, and sexual escapades in the political arena have taken on as much importance as how to cover candidate platforms, party strategy and campaign events."⁶⁴ The subject matter of the five questions posed here focuses broadly across the legal, ethical, and political landscape. Furthermore, as the editors of the *Columbia Journalism Review* opined, in light of the press coverage of the Lewinsky incident, there has never been "a better time to start examining what journalists can do, immediately, to improve and recapture public respect."⁶⁵ It is the press that ultimately "stands to lose in the court of public opinion" from "this lamentable and depressing affair."⁶⁶

A. *The Questions*

The questions set forth here draw directly from the language of Meiklejohn's writings. Each, as described later, raises a series of sub-issues that also pertain to Meiklejohn's writings. The five pertinent questions are as follows:

1. Is speech about the sex life, oral or otherwise, of the President of the United

62. See *The People's Court*, TIME, Feb. 2, 1998, at 32, 33.

63. See Rich, *supra* note 4, at A23; see also James Bennet & Janet Elder, *Despite Intern, President Stays in Good Graces*, N.Y. TIMES, Feb. 24, 1998, at A1 (stating that three-quarters of Americans polled by *The New York Times*/CBS News believe the press has spent too much time on President Clinton's sexual relationship with Lewinsky). In contrast to coverage of the alleged sexual affair, more than 60 percent of individuals polled by *The New York Times*/CBS News feel it is important to know whether President Clinton asked Lewinsky to lie under oath. See *id.*

64. Mark Popovich, *The Press, Privacy and Politicians*, in CONTEMPORARY MEDIA ISSUES 156, 156-57 (William David Sloan & Emily Erickson Hoff eds., 1998).

65. See *What We Do Now*, COLUM. JOURNALISM REV., Mar.-Apr. 1998, at 25.

66. See *id.*

States speech "upon matters of the public interest"⁶⁷ or speech that affects the "general welfare"⁶⁸

2. Does press coverage of the sex life of the President of the United States contribute to the "*mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed*"⁶⁹ or is it part "of cultivating the general intelligence"⁷⁰

3. Are journalists akin to moderators at a town meeting who should reduce their own coverage of the sex scandal if it becomes repetitious and "wast[es] . . . the time available for free discussion"⁷¹

4. Is broadcast journalism, as illustrated by coverage of the Lewinsky matter, becoming a "dialectical free-for-all"⁷² in which promotion of democratic self-governance is taking a backseat to the promotion "of private, possessive interests,"⁷³ namely, the financial well-being of the owners and operators of media outlets?

5. Does repetitious coverage of the alleged Lewinsky affair "enlarge" debate about public issues while, conversely, *not* serving to "enrich" that debate?⁷⁴

B. Why the Questions are Important

This section describes the relevance and importance of the questions set forth above. It addresses each question separately. In the process, it identifies sub-issues or mini-questions to which each of the five major questions direct attention.

1. Question No. 1

The threshold question is perhaps the most important of the quintet: Is speech about the sex life, oral or otherwise, of the President of the United States speech "upon matters of the public interest"⁷⁵ or speech that affects the "general welfare"⁷⁶

This question raises the issue of whether the allegations of the President's

67. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 24.

68. *See id.* at 87.

69. *See id.* at 27.

70. *See id.* at 20.

71. *See id.* at 26.

72. *See id.* at 25.

73. *See id.* at 87.

74. *See id.* at 19 (providing that Congress may legislate to "enlarge and enrich" speech).

75. *See id.* at 24.

76. *See id.* at 87.

extramarital sexual conduct is *political speech*. The question, in turn, suggests a speech *debate* that divides speech into categories of *political expression*, speech that affects the general welfare and promotes wise and informed decision making, as Meiklejohn would put it,⁷⁷ and *private speech*. It must be remembered that Meiklejohn's theory of free speech is hierarchical in nature, placing political speech at the top of a hierarchy of free speech values, while speech that serves private interests or is irrelevant to the general welfare receives a lesser protection.⁷⁸

The question also suggests a parallel dichotomy to the *political/private* expression debate. This dichotomy is based on Meiklejohn's concern with protecting speech "upon matters of the public interest."⁷⁹ This second dichotomy thus focuses on the meaning of the phrase *public interest*. Is the public interest what the public merely is interested in—*individual-level wants and preferences*—or is the public interest something that serves the *collective-level needs* of society as a whole?⁸⁰

It appears that many members of the public were clearly interested in the subject matter of the Lewinsky allegations, considering Americans "devoured every tidbit available about sluttiness, sleaze and public slime."⁸¹ As Joshua Quittner of *Time* magazine observed, "I don't care what the polls say about how everybody thinks the media overcovered Monica. As one of the guys who runs *Time Daily's* Web site, I know better: You wanted as much of her as we had to give. And then some."⁸² To summarize, the public *wanted* the information, but did they *need* it?

The threshold question evoked by Meiklejohn's writings thus raises two dichotomies, *political speech versus private speech*, and *individual wants versus public needs*, that nicely frame discussions about both the nature of the speech at issue in the Lewinsky sex-allegation scenario and journalists' responsibilities in reporting about it. If the speech is political or serves public needs, Meiklejohn's work sets forth sound reasons for its distribution and dissemination. If, on the

77. See *supra* notes 22-23 and accompanying text.

78. See *supra* notes 44-48 and accompanying text.

79. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 24.

80. As communications professor George Gladney asked, "should newspapers give readers what they need to make intelligent decisions in a participatory democracy, or should they give readers what they want, even if it means forgetting public policy decisions?" George Albert Gladney, *Giving Readers What They Want or Need?*, in *CONTEMPORARY MEDIA ISSUES* 291, 292 (William David Sloan & Emily Erickson Hoff eds., 1998). Ideally, "[n]ews media should tell people what they *need to know* because [the] media ha[s] the power to affect the lives of individuals and groups within society." See Deni Elliott, *Foundations for News Media Responsibility*, in *RESPONSIBLE JOURNALISM* 32, 35 (Deni Elliott ed., 1986) (emphasis added). See generally Christopher Meyers, *Justifying Journalistic Harms: Right to Know vs. Interest in Knowing*, 8 *J. MASS MEDIA ETHICS* 133 (1993) (describing a similar dichotomy between the public's right to know and the public's interest in knowing).

81. See Reese Cleghorn, *The News: It May Never Be the Same*, *AM. JOURNALISM REV.*, Mar. 1998, at 4.

82. See Ricchiardi, *supra* note 8, at 32.

other hand, one judges the allegations about President Clinton's sexual life to fall on the private side of the metaphorical border separating political from private speech, then Meiklejohn's work does *not* support publication.

The press, as the dispute over the coverage of the Lewinsky incident amply illustrates, polices the metaphorical border between the public and private realms. Its coverage tests the social constructions of private speech and political speech, suggesting the temporal and amorphous qualities of these terms. Meiklejohn's work, in turn, forces us to confront these issues, concepts, and constructions through both a philosophical and First Amendment framework.

2. Question No. 2

Meiklejohn's writings suggest a second question that encourages further thinking about issues raised by the first question. The second question is: Does press coverage of the sex life of the President of the United States contribute to the "*mutilation of the thinking process of the community against which the First Amendment to the Constitution is directed*"⁸³ or is it part "of cultivating the general intelligence"⁸⁴?

This question is pivotal because it suggests another dichotomy that frames debate, a dichotomy that differentiates between press coverage that *cultivates* or *mutilates* individual thought concerning politics. Both of Meiklejohn's statements that are captured in this question involve how the public thinks about politics, one focusing directly on "the thinking process"⁸⁵ involved in our political decision-making process and the other centering on our "general intelligence"⁸⁶ about politics.

This dichotomy, in turn, forces consideration of whether unfettered press coverage of the President's sex life detracts from the manner in which the public thinks about and processes politics. Do stories "about oral sex and presidential semen"⁸⁷ really promote intelligence and clear thought about modern political matters? More specifically, do these stories promote intelligence and clear thinking when they rest only on the slenderest reeds of evidence—unidentified, uncorroborated sources?⁸⁸

83. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 27.

84. *See id.* at 20.

85. *See id.* at 27.

86. *See id.* at 20.

87. *See* Cleghorn, *supra* note 81, at 4.

88. *See* Ricchiardi, *supra* note 8, at 32 (observing that the story about Lewinsky's allegedly semen-stained dress was often times attributed "to unnamed sources" and that *Newsweek* magazine, the publication that broke the story, refused to identify the source).

Meiklejohn's discussion of a "thinking process"⁸⁹ also suggests that the *manner* of press coverage should be deliberate. It should be such that actual thinking, not pseudo-reflection or purely emotional responses, may occur; thinking, in other words, that is not rushed or hurried by a scoop mentality.⁹⁰ In the Lewinsky incident, there was a "rush to publish"⁹¹ stories that often appeared "pegged more on salacious rumors than solid news gathering"⁹² and that may have ultimately mutilated the thinking process of both journalists and the public concerning truth and falsehoods in politics.⁹³ Does cultivation of the general intelligence⁹⁴ require more deliberate, better-sourced reporting? Meiklejohn's work, as parsed in Question No. 2, provides a framework for analyzing these knotty issues.

3. Question No. 3

The third question is: Are journalists akin to moderators at a town meeting who should reduce their own coverage of the sex scandal if it becomes repetitious and "wast[es] . . . the time available for free discussion"?⁹⁵ This question is important for a number of reasons.

First and foremost, it forces consideration of the *role* the press plays, or, perhaps, should play, in facilitating debate or discussion about issues such as the Lewinsky scandal. Is the press really responsible for organizing and presenting information in a particular manner that cultivates the kind of wise decision making that Meiklejohn viewed as the ultimate goal of free speech? Is the press truly a *moderator* of that discussion or merely an *information provider*? Is the news media, in their many forms—print, broadcast, cable, Internet—, providing a modern-day kind of metaphorical town hall meeting?

The question is important for a second reason. It calls attention to issues of self-restraint and self-control on the part of journalists in covering sensational news stories like the Lewinsky incident. Meiklejohn admonished that "[p]olitical freedom does not mean freedom from control. It means self-control."⁹⁶ Is it better then for journalists, as compared to the government, to perhaps play the role of moderator of their own coverage? Surely most people would answer this question

89. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 27.

90. See generally NORMAN E. ISAACS, *UNTENDED GATES: THE MISMANAGED PRESS* 44-62 (1986) (providing background on the scoop mentality that often guides the behavior of journalists).

91. See Ricchiardi, *supra* note 8, at 33.

92. See *id.*

93. "The rush to be first or to be more sensational created a picture of irresponsibility seldom seen in the reporting of presidential affairs." Jules Witcover, *Where We Went Wrong*, *COLUM. JOURNALISM REV.*, Mar.-Apr. 1998, at 18-19.

94. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 20.

95. See *id.* at 26.

96. See *id.* at 13.

in the affirmative, fearing government control over the press more than the press' unfettered control over itself. Yet at the same time, the public clamors for *some* kind of restraint on press coverage when it comes to issues about the sex lives of individuals, including the President.⁹⁷

For instance, a *Washington Post* poll taken ten days after the Lewinsky story broke found that seventy-four percent of those surveyed thought that the press was giving "too much attention" to the story.⁹⁸ A Pew Research Center poll of 844 people taken from January 30 through February 2, 1998, found that fifty-four percent of those surveyed thought the press did only a "fair or poor performance in providing the right amount of coverage" of President Clinton's sex life.⁹⁹

An issue of *quantity*, not just *quality*, of reporting thus springs from Question No. 3. At what point does speech about an issue, such as the Lewinsky scandal, become, as Meiklejohn might have put it, redundant, repetitious, and that "wast[es] the time available for free discussion"?¹⁰⁰ At what point does the press beat a story into the ground so that its coverage no longer channels new, useful information into the public decision-making process? Is there really a quantifiable threshold at which coverage suddenly becomes out of order?

Question No. 3 also highlights a tension between the *profit interests* of media organizations and the *public interests* of self-governance. News media coverage that Meiklejohn may consider repetitious and that "wast[es] the time available for free discussion,"¹⁰¹ on issues such as the alleged Lewinsky affair, may nonetheless be very profitable for the networks. Indeed, despite the networks' protestations that there was too much coverage, the fact remains that "[v]iewing and listening audiences swelled, as did newspaper and magazine circulation, accommodated by special press runs."¹⁰² In other words, a story such as that about Lewinsky may be exceedingly profitable in terms of press coverage and yet, at the same time, the repetitious and redundant coverage of that story may not serve democratic self-governance.¹⁰³

In turn, this tension raises a further concern. Does the media attempt to turn an issue that many Americans apparently feel is a private matter into a political one

97. See *supra* notes 62-63 and accompanying text.

98. See Witcover, *supra* note 93, at 19.

99. See *What We Do Now*, *supra* note 65, at 25.

100. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 26.

101. See *id.* at 23.

102. See Witcover, *supra* note 93, at 19.

103. Meiklejohn believed that redundant speech could be restricted. See *supra* note 34 and accompanying text.

in order to *justify* and maintain profitable coverage?¹⁰⁴ Some journalists might argue that the story is political speech as Meiklejohn would define it, *not* because they really believe it is political in nature, but *instead* to provide a legitimate cover, excuse, or mask for otherwise sensationalistic and salacious information about an individual's alleged sexual escapades which is profitable. The *pretense* of political coverage may allow traditional mainstream news sources to cross over seamlessly into the realm of tabloid news.¹⁰⁵

4. Question No. 4

The fourth question, again borrowing directly from Meiklejohn's own words, follows up on the issues just raised: Is broadcast journalism, as illustrated by coverage of the Lewinsky matter, becoming a "dialectical free-for-all"¹⁰⁶ in which promotion of democratic self-governance is taking a backseat to the promotion "of private, possessive interests,"¹⁰⁷ namely, the financial well-being of the owners and operators of media outlets?

The question is important for a number of reasons. First, it calls into question the speech format offered on a growing number of frenetic news talk shows in which journalists engage in what Meiklejohn might call dialectical free-for-alls. During these news shows, journalists take part in what might be considered "pointless prediction"¹⁰⁸ about the outcome of the Lewinsky matter and argue over how these speculative outcomes may affect society. To use Meiklejohn's phrase, some of these shows may be thought of as the epitome of "unregulated talkativeness"¹⁰⁹ which the First Amendment should not protect. Perhaps, then, we should question "why reporters spend so much time directing our attention toward what is [no] . . . more than guesswork on their part."¹¹⁰

In the Lewinsky situation, for instance, the January 25, 1998 taping of ABC's *This Week with Sam and Cokie* included veteran journalist Sam Donaldson

104. See Marjorie Connelly, *Polls Are Split On Credibility of Key Figures*, N.Y. TIMES, Mar. 18, 1998, at A19. As of the writing of this paper, Clinton's job approval ratings continued to be very high despite the allegations. See *id.* Three separate polls conducted on March 16, 1998 report that more than sixty percent of respondents approved of the way Clinton was handling his job, even in the aftermath of the *60 Minutes* interview with Kathleen Willey. See *id.* This suggests that people make distinctions and draw lines between the private lives and public performances of individuals. See *id.*

105. In the Lewinsky situation, "the reports of some mainstream outlets scarcely [were] distinguishable from supermarket tabloids." See Witcover, *supra* note 93, at 19.

106. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 25.

107. See *id.* at 87.

108. See JAMES FALLOWS, BREAKING THE NEWS: HOW THE MEDIA UNDERMINE AMERICAN DEMOCRACY 31 (1996). Calvin Trillin dubs the Sunday morning journalists "who are paid to pontificate on television" news shows as "Sabbath Gasbags." See Calvin Trillin, *Titanic (Glub)*, *Lewinsky (Blab)*, TIME, Mar. 23, 1998, at 36.

109. See MEIKLEJOHN, POLITICAL FREEDOM *supra* note 15, at 26.

110. See FALLOWS, *supra* note 108, at 32.

predicting that President Clinton might have to resign from office within a week.¹¹¹ Such predictions amount to little more than a dialectical free-for-all and also, as Meiklejohn might put it, allow speech to "wander from the [political] point at issue."¹¹² The point, ultimately, is *not* what one celebrity journalist speculates, but the ability of the public to vote wisely.¹¹³

Moreover, Meiklejohn observed the importance of protecting "everything worth saying."¹¹⁴ Is the speech that occurs on dialectical free-for-all news talk shows really worth saying? It is time to address this question in light of the speech concerning the President's sex life. It appears that some members of the American public, at least according to polls, apparently believe it is *not* worth saying.¹¹⁵

Question No. 4 also forces consideration of whether a lust for income and fame perpetuates this profitable dialectical free-for-all. As Calvin Trillin noted, in reference to journalists who are paid to pontificate on television:

When the Sabbath Gasbags inform you what the American people want, what they're really saying is what they—the Gasbags—want, and it usually coincides with their own professional interests. It's the Gasbags who would love an opportunity to chew over Bill Clinton's detailed explanation of his relationship with Monica Lewinsky.¹¹⁶

As noted earlier, Meiklejohn called both for self-restraint in speech and for limited protection of speech that serves only *private interests*, not the public interest.¹¹⁷ He wrote that "the First Amendment does *not* intend to guarantee [individual] freedom to say what some *private interest* pays them to say for its own advantage."¹¹⁸ This language is clearly relevant to the dialectical free-for-all coverage of the Lewinsky matter that is promoted by some journalists in order to engage in discussions for the sake of their own ego gratification and profit. Meiklejohn also suggested that speech should "cultiv[ate] those qualities of taste, of reasoned judgment, of integrity, of loyalty, of mutual understanding upon which the enterprise of self-government depends."¹¹⁹ Whether the fast paced format of broadcast journalism (not to mention the fast changing pace of news on the Internet) and the talk shows

111. See *This Week With Sam and Cokie* (ABC television broadcast, Jan. 25, 1998).

112. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 24-25.

113. See *id.* at 26.

114. See *id.*

115. See *supra* note 104 and accompanying text.

116. Trillin, *supra* note 108, at 36.

117. See *supra* notes 44-51 and accompanying text.

118. See *supra* note 46 and accompanying text.

119. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 87.

that are a growing part of its ethos actually *cultivate* qualities of *taste, reasoned judgment, and integrity* in political decision making is a ripe question for discussion in light of the coverage of the Lewinsky incident.

Accuracy, unfortunately, also may be sacrificed in the dialectical free-for-all and in the rush for profits. As mentioned above, Meiklejohn called for "responsible" discussion.¹²⁰ In summary, the *manner* of speech—not just the *quality* of the speech—is important for Meiklejohn. Question No. 4 calls attention to this raft of issues.

5. Question No. 5

The fifth question at first appears to involve little more than an exercise in verbal gymnastics and semantics. As discussed here, however, the word choice is very important for evaluating press coverage of the Lewinsky matter. The fifth question, once again borrowing from Meiklejohn's own writings, is: Does repetitious coverage of the alleged Lewinsky affair "enlarge" debate about public issues while, conversely, *not* serving to "enrich" that debate?¹²¹

This question addresses more than the issue of the *manner* in which information is presented. Specifically, this question focuses on the *quality* of the information disseminated to the public for consideration. It suggests a difference between simply adding information to the discussion—*enlarging* speech—and increasing the quality of that information—*enriching* speech.

For instance, in the days following the break of the Lewinsky story, new information was disseminated by the press to the public—the metaphorical speech market was enlarged—but that information was *not* always correct or of high quality. Meiklejohn's critical use of two distinct terms—enlarge and enrich—highlights this difference and provides a framework for evaluating not only the *amount* of reportage but the *quality* of it. In brief, the speech market may be enlarged without being enriched. ¶

Thus, repetitious coverage may not really enlarge the speech market, but instead, may actually force out other important political speech that might in fact facilitate democratic self-governance. Redundant coverage night after night in a thirty minute or hour long newscast or news magazine show necessarily occupies time that might be allocated to other stories. The initial blanket news coverage of the Lewinsky incident no doubt crowded out other news stories during the week it first arose or reduced them to small blips at the margins of the news radar screen.¹²²

120. *See id.* at 25.

121. *See id.* at 19 (providing that Congress may legislate to "enlarge and enrich" speech).

122. During the week the scandal broke there were many newsworthy events, including the Pope's historic visit to Cuba and Theodore Kaczynski's plea of guilty in the Unabomber case. *Time* magazine, for instance, devoted a mere one-page story—a page that included two photographs—to Kaczynski's

C. Overview

The five questions set forth above, all of which draw directly from Meiklejohn's work and writings, tap into critical issues about the *quality, quantity, and manner* of information conveyed and gathered by the press in the Lewinsky matter. They cut to vital differences between speech that serves democratic self-governance and speech that does not serve the politic, between speech that cultivates general intelligence and speech that mutilates the thinking process, and between well-reasoned, orderly debates and dialectical free-for-alls. All of these distinctions provide a context for analyzing press coverage of the Lewinsky scandal. In brief, Meiklejohn's writings are as relevant today to the concepts of free speech, free press, and democracy as they were a half-century ago when he first published *Free Speech and Its Relation to Self-Government*.¹²³

III. ADDRESSING THE ISSUES

Meiklejohn's work, as Part II demonstrates, provides the foundation for framing a multitude of issues and questions concerning the press coverage of the alleged sexual relationship between Monica Lewinsky and President Clinton. This Part of the Article does not pretend to resolve once and for all these issues or their concomitant sub-issues. These issues, instead, require the kind of input, from all affected by their resolution, that might occur at the type of town hall meeting that Meiklejohn cherished. Although one individual at the meeting cannot resolve the issues in isolation, this Part nonetheless offers possible alternative positions on the quintet of questions raised in Part II. To the extent that the alternatives offered here are challenged by readers of this Article or that readers think of other arguments on these issues, the better this Article has served its purpose in creating a dialogue about important questions affecting the press and democracy.

A. Question No. 1

This question tapped into the threshold issue of whether the President's sex life constitutes political speech.¹²⁴ To the extent that any potential voters may be influenced by this information—to the extent that it may influence or affect "the

guilty plea, while placing a picture of President Clinton and Lewinsky on its cover and allocating thirty-three pages to the Lewinsky story. See TIME, Feb. 2, 1998.

123. MEIKLEJOHN, FREE SPEECH, *supra* note 1.

124. See *supra* notes 75-82 and accompanying text.

voting of wise decisions"¹²⁵—the subject itself would appear to be political speech and deserve the utmost First Amendment protection.

That a minority of Americans may think that the scandal and the President's sex life are not important and are better left without press coverage does *not*, however, affect this answer. Why? Because the First Amendment must not simply protect speech that the majority thinks appropriate and prohibit speech that the majority finds inappropriate. Indeed, for Meiklejohn, speech cannot be restricted merely because some find it offensive, unwise, or un-American.¹²⁶

Although some may find the President's sex life interesting for its own prurient sake, independent of its impact on politics, others may find it important on the question of the character of a public official. Character becomes the vehicle or device for transferring information from the private realm to the public (and, in particular, the political) sphere.¹²⁷ It transfers matters of mere *interest* to the public into the realm of matters of public *concern* that affect the general welfare—speech "upon matters of the public interest"¹²⁸ as Meiklejohn described it. Whether everyone accepts the character argument is irrelevant because if any individuals find it relevant for the voting of wise decisions, which is the telos of free speech in a Meiklejohnian perspective, it becomes speech "upon matters of the public interest."¹²⁹ As Meiklejohn wrote, "*all facts* and interests relevant to the problem shall be fully and fairly presented to the [town hall] meeting."¹³⁰ Meiklejohn, in fact, specifically admonished that verbal attacks made to show the unfitness of a candidate for government office should not be subjected to legislative control.¹³¹

The subject matter of the President's sex life thus may be viewed as political speech. That the speech itself is political, however, does not resolve all issues, as Meiklejohn's writings also focus on the *manner* in which the subject is discussed and its *effect* on the thinking process and the general intelligence about politics. Thus, it is now necessary to turn to the next question.

B. Question No. 2

The second question used Meiklejohn's writings to make a distinction between speech that *mutilates* the thinking process of the community with respect to politics

125. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 26.

126. See *supra* notes 52-53 and accompanying text.

127. Communications professor Louis A. Day makes a similar point with the press coverage of former United States Senator Bob Packwood's sex life. According to Day, "[t]he private sex life of Senator Bob Packwood . . . would not normally be a matter of public interest. But when several women accused Senator Packwood of sexual harassment—a charge that eventually led to an investigation by the Senate Ethics Committee—the accusations became a matter of legitimate public concern." LOUIS A. DAY, ETHICS IN MEDIA COMMUNICATIONS: CASES AND CONTROVERSIES 120 (1997 2d ed.).

128. See MEIKLEJOHN, POLITICAL FREEDOM, *supra* note 15, at 24.

129. See *id.*

130. See *id.* at 26 (emphasis added).

131. See Meiklejohn, *supra* note 25, at 259.

and speech that, conversely, *cultivates* the general intelligence about politics.¹³²

Under one perspective, the massive coverage of the President's sex life reduces politics to little more than the substance of an afternoon talk show like that hosted by Jerry Springer or Ricki Lake. It denigrates the substantive issues that politicians must deal with on a regular basis. The thinking process of the community about politics, in turn, becomes little more than a thinking process about oral sex and semen-sullied dresses. At a time when very few people bother to vote in presidential elections,¹³³ such news coverage can only further harm the public's perception about the lack of importance of participating in politics. People may think more about the sex lives of politicians than their political position on important issues that, as Meiklejohn put it, affect the general welfare.

Under an alternative perspective, the news media's discussion of the President's sex life actually *cultivates* our general intelligence about politics. We learn that politicians are not always individuals of high integrity, that they possess the same foibles that many in the community have, and that they may make mistakes in their personal lives. In other words, politicians can become, in a sense, more "real" to the public. Our general intelligence about the nature of politics and politicians is increased.

Likewise, if one answers the first question posed here in the affirmative—that speech about the President's sex life *is* speech about politics—then this speech may cultivate our general understanding about how politics works. We may learn that politicians attempt to keep some information out of public view for fear that it may hurt their political careers. We may learn information about them that affects our voting decisions. We may learn that some politicians are hypocrites who preach about one set of family values to the public while simultaneously adopting another set of values for their own lives. Finally, we may gain some understanding of why many people simply do not enter politics because they do not want all of the details of their lives exposed in the morning newspaper, on the evening news, or on a site on the World Wide Web.

As this section suggests, arguments can be made to show *both* that news media coverage of the President's sex life cultivates *and* mutilates the thinking process and the general intelligence of the community about politics and politicians.

132. See *supra* notes 83-94 and accompanying text.

133. According to a Voters News Service poll, a scant forty-nine percent of the voting-age population cast a ballot in the 1996 presidential election which was less than half of all potential voters and the lowest figure since 1924. See Eric Schmitt, *The 1996 Elections: The Presidency—The Voters; Half the Electorate, Perhaps Satisfied or Bored, Sat Out Voting*, N.Y. TIMES, Nov. 7, 1996, at B6. The decrease in voter turnout is especially troublesome because voter registration is probably at its highest level since 1968. See *id.*

C. Question No. 3

The third question asked whether journalists were moderators at a town hall meeting who should reduce their own speech about the sex scandal if it becomes repetitious and "wast[es] . . . the time available for free discussion."¹³⁴

One perspective on this question is that journalists are *not* moderators. Rather, they are merely *speakers*. They do not need to reduce their own speech or organize it in such an orderly fashion as Meiklejohn envisioned. There is a critical difference between playing the role of *information provider* and the role of *discussion organizer*.¹³⁵ *Contrary* to Meiklejohn's view, in fact, journalists might argue that it is more important that everyone shall speak and not that "everything worth saying shall be said."¹³⁶ The fact that the news media's speech about the sex scandal may become redundant is not important if that speech is profitable when it attracts large audiences of readers and viewers.

An alternative perspective is that journalists *are* moderators. They moderate the flow of information to the public in their gatekeeping role.¹³⁷ In turn, television news talk shows, call-in radio, and news websites are the modern-day equivalent of town meetings (even if the participants often are pundits or journalists themselves). Journalists must exercise control, at the very least, because their voices at the metaphorical town meeting are certainly the loudest and most powerful due to their increased access to the means of mass communication for transmitting and propagating their views. The sheer *quantity* of coverage about the President's sex life, *not* the subject matter itself, may be reduced or moderated by journalists to better serve democracy. As tied to Question No. 2, in turn, it may be argued that it is the quantity of information about the President's sex life and not the topic itself that actually mutilates, as opposed to cultivates, the thinking process and general intelligence of the community about politics.

The third question, as explained in Part II, also raises an issue about the threshold for when speech about the sex scandal may, in fact, become a waste of available time for free discussion. One alternative here is to consider any amount of coverage, no matter how redundant or massive, *not* a waste of time if people are interested in reading or hearing it. In other words, if people *want* to read about it,

134. See *supra* notes 95-105 and accompanying text.

135. It should be noted that the so-called civic or public journalism movement calls for journalists to do *more* than simply play the role of information provider. Proponent Davis Merritt believes "we are nearing a state of paralysis caused by the gush of information," and therefore, journalists should go "beyond merely telling the news." See DAVIS MERRITT, *PUBLIC JOURNALISM AND PUBLIC LIFE* 9 (2d ed. 1998).

136. See MEIKLEJOHN, *POLITICAL FREEDOM*, *supra* note 15, at 26.

137. See generally David Manning White, *The "Gatekeeper": A Case Study in the Selection of News*, in *SOCIAL MEANINGS OF NEWS* 63 (Dan Berkowitz ed., 1997) (describing the gatekeeping concept and its role in journalism).

it is not a waste of time, even if a vast amount of coverage takes away time and/or space that could be spent on other issues. This, of course, plays on the distinction between the wants and needs discussed earlier.¹³⁸

Another reason to protect all amounts of coverage is simply that determining what is a "waste" is impossible. The term is vague and ambiguous. If it is true, as the United States Supreme Court wrote in *Cohen v. California*,¹³⁹ that "one man's vulgarity is another's lyric,"¹⁴⁰ then it certainly is true that one person's waste of time is another person's ideal use. Meiklejohn's phrasing thus makes bright-line drawing exceedingly difficult on this issue.

D. Question No. 4

In analyzing this question,¹⁴¹ one initially can easily consider the early press coverage of the Lewinsky affair a dialectical free-for-all rather than an orderly discussion. Poorly sourced,¹⁴² rushed stories that too often relied on the phrase "if true,"¹⁴³ as well as fast-paced news talk shows with so-called experts, contributed to the dialectical free-for-all and unregulated talkativeness atmosphere that was scorned by Meiklejohn.

Second, one can conclude that such a dialectical free-for-all is driven and perpetuated in part by private possessory interests—namely, profits for corporations and their shareholders—that Meiklejohn, it will be recalled, found were *not* tantamount to the interests protected by the First Amendment.¹⁴⁴ Large audiences were attracted to the coverage the news media offered, be it on television or on the World Wide Web. Rather than hold off reporting until better information was available and risk losing large amounts of revenue, economic interests dictated the nature of reportage about the Lewinsky matter.

An alternative perspective, of course, is that the coverage itself actually was solid and *not* a dialectical free-for-all. Indeed, it has been observed that "[m]any news media outlets have acted with considerable responsibility, especially after the first few frantic days, considering the initial public pressure for information, the burden of obtaining much of it from sealed documents . . . and the stonewalling of

138. See *supra* notes 80-82 and accompanying text.

139. 403 U.S. 15 (1971).

140. See *id.* at 25.

141. See *supra* notes 106-120 and accompanying text.

142. "Loose attribution of sources abounded" in the coverage of the Lewinsky scandal. See Witcover, *supra* note 93, at 23.

143. See *id.* at 21.

144. See *supra* notes 44-46 and accompanying text.

President Clinton and his White House aides."¹⁴⁵ In addition, one can argue that the speech was serving more than just the private, pecuniary interest of the owners of the news media, but was also serving the public interest by providing them information that affected the general welfare and the voting of wise decisions.

E. Question No. 5

The final question—does repetitious coverage of the alleged Lewinsky affair "enlarge" debate about public issues while, conversely, *not* serving to "enrich" that debate?¹⁴⁶—may be answered in several ways. First, it may be argued that the initial coverage of the scandal itself was so repetitive and contributed so little new, substantive information that it did not in fact *enlarge* debate about a public issue. It merely *cluttered* or *polluted* the discussion in a kind of dialectical free-for-all described in Question No. 4 that is contrary to the responsible, orderly type of discussion that Meiklejohn believed was paramount for the effective discussion of issues affecting democratic self-governance.

Alternatively, that coverage can be seen as enlarging the debate but *not* enriching it because it was not always of high quality. Of course, one can also take the view that the coverage both enlarged—by providing a greater *quantity* of information—and enriched—by providing a high *quality* of information—discussion of an important public issue about the President's character. As argued in Part II, the difference between *enlarge* and *enrich* as used by Meiklejohn is more than a matter of semantics; it suggests the difference between the quantity and the quality of information.

IV. CONCLUSION

Fifty years separate the initial writings of Alexander Meiklejohn on the relationship between free speech and democratic self-governance from the events surrounding President Clinton and Monica Lewinsky. This Article, however, has argued that Meiklejohn's writings are as important today for analyzing press coverage of the Lewinsky matter as they were for understanding the free speech censorship dangers a half century ago when faced with the fears of communism.

This Article has framed questions drawn from Meiklejohn's work to guide discussion about news media coverage of the alleged Clinton-Lewinsky relationship. Clearly there are approaches other than a Meiklejohnian one to analyzing press coverage of President Clinton's sex life. Moreover, it is no doubt possible to find lurking in Meiklejohn's writings *more* than the quintet of questions

145. See Witcover, *supra* note 93, at 19.

146. See *supra* notes 74, 121-22 and accompanying text.

raised in this Article.¹⁴⁷ Finally, one is more than welcome to challenge the perspectives and possibilities offered here for analyzing these issues. Those added perspectives can only contribute to the type of town meeting discussion prized by Meiklejohn.

The subject of the press coverage of the President's sex life undoubtedly will be discussed in journalism ethics classes for years to come. The writings of philosopher-educator Meiklejohn provide a substantive context that is recognized in First Amendment jurisprudence for analyzing the complex issues nested in that press coverage. Meiklejohn, ultimately, "could not see how democracy can exist unless all people are able and willing to puzzle over it, question it, and deal with its apparent dilemmas and contradictions."¹⁴⁸ His writings provide a context for analyzing and puzzling over the dilemmas and contradictions posed by the press coverage of the Lewinsky matter and its impact on self-governing democracy.

147. One wonders what questions Meiklejohn himself would have posed to the press and the public about the media coverage of the Lewinsky incident.

148. See HARRIS, *supra* note 3, at 168.

